

**AGENDA**  
**MINNETONKA ECONOMIC DEVELOPMENT AUTHORITY**

Monday, May 11, 2009  
5:00 p.m.

Council Chambers  
Minnetonka Community Center, Upper Level

1. Call to Order.
2. Roll Call:           Ellen Cousins                   Brad Wiersum  
                          Dan Duffy                         Tony Wagner  
                          Bunny Robinson                 Bill Yaeger  
                          Peter St. Peter
3. Approve minutes from March 23, 2009 and March 30, 2009 meetings.
4. Election of officers.

**BUSINESS ITEMS**

5. Affordable housing indexing system.  
Action: Continue implementation of the system as it currently exists.
6. TIF report follow up and TIF/tax abatement policy.  
Action: Review and provide feedback.
7. Staff Report.
8. Other Business.

The next regular EDA meeting will be **Monday, June 29 at 6:00 p.m.**

9. Adjourn.

If EDA Commissioners have questions about any of the agenda items, please contact Julie or Elise prior to the meeting.

Julie Wischnack (952) 939-8282  
Elise Durbin (952) 939-8285

\*\*The mission of the Economic Development Authority is to advise  
the City Council on matters related to affordable housing, redevelopment,  
and economic development.\*\*

**UNAPPROVED  
MINNETONKA ECONOMIC DEVELOPMENT AUTHORITY  
SPECIAL MEETING MINUTES**

**MARCH 23, 2009  
5:30 P.M.**

**1. CALL TO ORDER**

EDA President Peter St. Peter called the meeting to order at 5:30 p.m.

**2. ROLL CALL**

EDA commissioners present: Ellen Cousins, Dan Duffy, Bunny Robinson, Peter St. Peter, Tony Wagner, Brad Wiersum, and Bill Yaeger.

Staff present: Julie Wischnack, Desyl Peterson, Elise Durbin, and Merrill King.

Others present: Mark Ruff, Steve Bubul and Tom Wartman.

**3. APPROVE MINUTES OF MARCH 2, 2009 EDA MEETING**

Wiersum moved, Wagner seconded a motion to approve the March 2, 2009 meeting minutes with the following change:

Page 10: He was not as concerned with having 15 ~~30~~ years instead of 30 ~~45~~.

Cousins, Duffy, Robinson, Wagner, Wiersum, St. Peter, and Yaeger voted yes. Motion passed.

**4. Resolution approving an Amended and Restated Contract for Private Redevelopment between the City of Minnetonka, the Economic Development Authority in and for the City of Minnetonka, and Glen Lake Redevelopment LLC**

Wischnack explained that the purpose of the meeting was for EDA commissioners to review the final draft of the redevelopment contract. The contract will be reviewed at the city council immediately following the EDA meeting.

Wischnack gave the staff report. There will be a delay in the land use approval until the developer's financing has been worked out. She reviewed elements of the redevelopment contract.

Wischnack reviewed a change memo dated March 23, 2009. It outlines the role of the city council in the event a default would occur.

Tom Wartman, applicant, was surprised by St. Therese's request for a delay, but, with the market and economy the way it is, he understands. He hopes to be back sooner than later for final approval. He has talked to other parties interested in the site.

Wiersum acknowledged that St. Therese is not out of the process, but that the financing is taking a little more time than expected. He asked if a third party would redesign the site. Mr. Wartman is talking to two interested parties. One would proceed with the plan in its current form. The other party would have a reason to revisit the site plan because they have a facility located close to the site.

Mr. Wartman stated that the floors are currently being laid in the Gold Nugget. It is on target to be open by the end of April.

Wagner stated that the staff report indicated the intent would be that if a profit is created that the city would use the funds for affordable housing purposes. He asked if it should be made part of the motion or the contract. Wischnack explained that if that profit would be generated, then that action would be taken separately to reallocate those funds. Mr. Bubul, legal counsel for the city, agreed with Wischnack. The contract does stipulate that the city may use the tax increment left after other obligations have been paid off for other affordable housing projects. Commissioners located and reviewed the wording. Wischnack noted that the staff report and minutes will be part of the record.

Wiersum found a correction on Page A56. The word "million" was written twice when only one "million" is accurate.

In response to Wagner's question related to Page A70, Mr. Bubal clarified that the term "redevelopment project" includes the whole project area.

Duffy noted the potential for turnover in a senior housing facility and questioned if the 15-year time period should begin once the certificate of occupancy has been issued rather than after a certain number of units have been rented. Wischnack agreed that the certificate of occupancy would be easier to determine, but commissioners reached a general consensus about starting this when half of the affordable units were rented.

St. Peter recalled requesting an option to purchase or right of first refusal on the back end in regard to the Kinsel site. There is no back end in the

event that the developer defaults. He said while he does not support the first right of negotiation as written into the contract, he is inclined to vote to move the application forward to the city council on the recommendation that the council table action or deny the request, given the timing and scheduling of meetings.

Wiersum talked about the possible options for Phase 3. St. Peter recommended that a purchase option or right of first refusal be drafted. A right of first refusal is easier to draft. St. Peter found that acceptable. There is no requirement that the developer move forward and continue to comply with the agreement because the teeth have been taken out of it.

Wiersum agreed that negotiating in good faith sounds nice and, not to say that there is not good faith, but the issue is that the economy has changed so dramatically it cannot be predicted what will happen next month. A right of first refusal does not obligate the city, but gives the opportunity to purchase the property if things do not proceed as all involved hope that it does. He would like to understand the terminology of the right of first refusal and what that obligates the city to do, but he was agreeable to that.

Mr. Bubul explained how a right of first refusal would be drafted. It would have less of an economic impact on the value of the land and the ability to borrow against it or do something with it, with respect to a third party. Wiersum asked if it would reduce the likelihood to find a buyer or reduce the price. Mr. Ruff explained that it is the developer's position that it could diminish the value or create another hurdle for the development. The developer's position is that a potential buyer would be discouraged by knowing that the property could be tied up for several months. Over one-third of the tax increment would come from the property. He understood the EDA's position, which wants action.

Wischnack added that the additional partnership complicated matters. Wiersum stated that the agreement has sufficient teeth. He does want to create roadblocks. He wanted to see things happen with the proposal.

Duffy agreed with Wiersum's comments. He wanted to make sure the property would be accessible and put to good use, such as a park. If the project takes longer than anticipated, there should be a safeguard to allow the city to have the first option to recapture the property.

Yaeger considered the possibility of a condition kicking in one year after default. Mr. Bubul stated that it would depend on if the extension of the time period of the TIF district is successful or not.

St. Peter asked if staff had a sense of how the extension request is being received at the legislature. Wischnack stated that there will be a hearing a

week from Friday, and that staff has spoken with the tax committee chair. Wischnack felt it was going well.

St. Peter asked what the TIF increment for Kinsel would be if the extension of the district did not occur, assuming that it would be set up to go out to 2022 or 2023.

Wiersum said he wants to move forward, and that it would be in the best interests of the residents of Minnetonka and Glen Lake to do so. There are enough teeth and the incentives are in place. When he thought about how much things have changed and all of the challenges with real estate, he hopes that something would be built. St. Peter concurred.

Wagner moved, Robinson seconded a motion to recommend that the city council adopt the resolution approving an amended and restated contract for private redevelopment between the City of Minnetonka, the Economic Development Authority in and for the City of Minnetonka, and Glen Lake Redevelopment LLC.

Cousins, Duffy, Robinson, St. Peter, Wagner, Wiersum, St. Peter, and Yaeger voted yes. Motion passed.

## 5. **ADJOURN**

Wiersum moved, Cousins seconded a motion to adjourn the meeting. All voted yes. Motion passed. The meeting adjourned at 6:15 p.m.

**UNAPPROVED  
MINNETONKA ECONOMIC DEVELOPMENT AUTHORITY  
MEETING MINUTES**

**MARCH 30, 2009  
6 P.M.**

**1. CALL TO ORDER**

EDA President Peter St. Peter called the meeting to order at 6 p.m.

**2. ROLL CALL**

EDA commissioners present: Ellen Cousins, Dan Duffy, Bunny Robinson, Peter St. Peter, and Tony Wagner. Brad Wiersum and Bill Yaeger were absent.

Staff present: Julie Wischnack, Elise Durbin, GERALYN BARONE, and Loren Gordon.

Council members present: Dick Allendorf, James Hiller, Amber Greves, and Terry Schneider.

Others present: Mark Ruff, Cathy Bennett, and John Carter.

**BUSINESS ITEMS**

**3. TIF REPORT PRESENTATION**

Wischnack gave the staff report and recommended follow up actions.

Mark Ruff, financial consultant for the city, highlighted some aspects of the the city's use of TIF, including history, rules, opportunities, and use of resources. He works with cities on providing TIF management, and a lot of energy is expended on the front end to create a tax increment project.

Ruff explained the chart on Page A3 that illustrates how much of Minnetonka's tax base is captured in TIF districts, which is less than two percent. There is no legal maximum in Minnesota; however, Minnetonka has been very judicious in its use of tax increments. Minnetonka has gone from a tax capacity tied in TIF districts in 2006 of \$3.8 million to \$1.7 in 2009, and in a couple of years will drop to under \$700,000.

Ruff said bond rating agencies view point is that TIF encourages market value growth and anything that results in positive market value growth is a good thing. If a city is loading up on general obligation tax increment debt that is dependent on development happening, then that creates a risk for shortfalls that a city's rating may reflect. In terms of capturing value, it has a neutral, if not positive impact on a city's bond rating. He has seen rating reports that applaud the use of

tax increment. The viewpoint is that redevelopment is hard and sometimes it takes additional financial resources to make redevelopment happen. In a rating's viewpoint, if a city is not redeveloping, it is falling behind its neighbors. Minnesota ratings are good because ratings are judged in comparison to other areas.

Ruff stated that the first TIF district established in Minnetonka was in 1977 in the Glen Lake area, and was decertified in 1990. He reviewed different developments that utilized TIF. He reminded that when a TIF district is created, a boundary is drawn and the taxes paid for the properties within the area are captured for a designated period of time. Following the urban renewal guidelines, the money may be spent outside of the boundary area, but in the project area.

Ruff reviewed pooling and limits to the size of a district and the requirement to show blight or justification to expand a district. The legislature is striving to shut down TIF districts as soon as possible and not find ways to spend the tax increment once the original obligation has been fulfilled. One area of policy that is supported is affordable housing. Minnetonka has the opportunity to take advantage of three existing districts if used specifically for affordable housing. The basic issue is to consider if the city wants to continue the three TIF districts beyond their current life, and, if so, to determine the scale of which to do so. One of these districts is the Beacon Hill district established in 1994. Housing districts have a maximum life of 26 years of TIF, but the last payment is due August 1, 2009. There may be unpaid balances in the TIF note. In 2001, the legislature cut the amount of taxes rental properties were required to pay almost in half. The city is left with \$135,000 per year from 2010 to 2021. The TIF district may be kept open because it is a housing district, but the funds can only be used in the project area or in other affordable housing developments that meet certain affordability requirements. These requirements are more restrictive than the Metropolitan Council standards.

Ruff explained that a formal process similar to creating a new TIF district would need to be followed if a modification needs to be made. The modification would not have to be done by August of 2009, but money would have to be turned back if it has not been obligated after August 2009. For the Beacon Hill district this would equal \$135,000 a year.

Ruff said that the Minnetonka Mills TIF district, created in 1996, is in a similar situation. Payoff will occur by the end of 2014. The TIF after this date is \$11,000 per year. There are administrative costs that go along with keeping a TIF district open even though there are no other obligations.

In response to Schneider's question, Ruff acknowledged that if the TIF districts are closed, the taxes would go to the city and would help relieve the tax burden on residents. That is the policy decision that needs to be made on whether to keep the districts open or not. Most schools do not oppose the use of TIF because TIF districts do not capture the operating levy that are based on market value. The vast majority of the remaining levies are matched by the state. TIF

districts are relatively revenue neutral for most schools. A TIF district reduces a county's tax base, however.

Ruff said that the administrative costs to keep the Minnetonka Mills TIF district open would equal approximately \$2,000.

Ruff stated that the third TIF district to discuss is the Boulevard Gardens district. The note was issued in 1996 on the TIF district set up in 1995. It was originally \$8.5 million for CommonBond and Twin City Christian Homes. The note is expected to be paid around 2011 or 2012. The last year of assistance is 2012. This is a redevelopment district, and the rules are different than for a housing district. Under the redevelopment district, the district must be shut down because the original obligation is gone. There is a special provision included in the law several years ago that allows up to 10 percent of the total increment from a district to be for tax-credit-eligible housing. The TIF can only be used if tax credits are not. There are not very many developments that meet tax credit restrictions, but do not get tax credits. There are potentially some that could. The positive is that one could have potentially up to \$1.8 million to use again for a development, whether it be for rental senior housing or rental family housing. That is the only opportunity available for keeping open a redevelopment district after its initial obligation is paid off.

Ruff stated that the only other existing TIF district is the soils district for Hedberg, and because it is a soils district, there is no ability to pool for other uses. The district was decertified, but the remaining funds were left in place to pay for on-going environmental monitoring costs. It is not receiving any new tax increment, but there is a.

Ruff encouraged the city to not wait too long to make a decision on when to decertify, especially for Beacon Hill, which could lose some resources.

Schneider asked how the district had performed. Ruff had not gone back to compare the market values. For a while, it looked like the note may not be paid off because of the property tax reform in 2001 that affected not just rental housing, but also commercial industrial dropped significantly. It has fared better than expected.

There was discussion about purchasing the property behind Kraemers hardware on Williston to then sell for housing. Ruff has heard from other communities that "planned banking" is a commonway for doing such a transaction. Without eminent domain, there are not that many opportunities to get key sites purchased unless the seller is willing. Timing wise, there may not be a developer who would be ready to take on the site, but it would give the city flexibility to purchase a piece of property to be used at some point. Some communities like to be able to select the developer and what kind of development will occur. Legislative actions that occurred in the late 1990s and early 2000s that put a drop-dead date on redevelopment of the site otherwise the property would be forfeited. The knock

down would need to occur within 5 years. If a TIF district was not set up, the city could hold onto the land for as long as it wants.

There were questions about the difference in pooling rules. Ruff explained the differences. Between now and 2012, if the city had extra money, up to 15 percent could be used for other redevelopment projects around the community. The city does not have extra money coming off. There is maybe \$10,000 to \$20,000 of extra money coming off in balances right now. The 10 percent is the affordable housing and the 15 percent is the redevelopment.

In response to Allendorf's question, Ruff stated that all but one district has been closed early in Minnetonka.

In response to a comment, Ruff stated the legislature likes to focus on captured TIF as a percentage of tax base. Minnetonka is at 2 percent, so the legislature would be hard pressed to criticize Minnetonka's handling of TIF. The state auditor does have the opportunity to pursue any TIF district in the state.

There was a question about what would attract the state auditor's attention. Ruff replied that using TIF in a responsible manner that does not try to take a gray area of law and expose it as something being done in the city's best interest, but just staying within the confines of the law's intent would keep the city out of the state auditor's attention.

Wagner moved, Cousins seconded a motion to request a legal interpretation as to the potential uses of TIF funds and functionality of each district; review and discuss whether changes should be made in the practice of decertification of districts; and request staff prepare a TIF and tax abatement policy to guide the future consideration of such public subsidies. Cousins, Duffy, Robinson, St. Peter, Wagner, and St. Peter voted yes. Wiersum and Yaeger were absent.  
Motion passed.

Wagner chose to wait until another meeting to direct staff to review the existing policy regarding affordable housing and direct any changes within that policy. Wischnack stated that the item would be on the May 11, 2009 meeting agenda.

#### **4. OPPORTUNITY CITY PILOT PROGRAM PRESENTATION**

St. Peter welcomed the visitors.

Wischnack recognized Minnetonka Park Board, Community Commission, Planning Commission, EDA, and City Council members, and staff. She explained how a grant was made available by the Urban Land Institute (ULI) in conjunction with the Regional Council of Mayors (RCM). The goal of the Opportunity City Pilot Program (OCP) is to identify and implement tools and strategies that support a full range of housing choices.

Cathy Bennett, consultant working with the Urban Land Institute of Minnesota, stated that she has been working on the OCPP project since mid-2008. The majority of the work for the five cities should be completed by May 2009. The process has cost each city approximately \$5,000 for a \$20,000 to \$30,000 project. Future work is planned to do more cities. The other four cities were Shoreview, Brooklyn Park, Richfield, and Rosemount. All of the mayors and staff of the cities were interested. The age of the housing stock and demographics were determining characteristics.

Bennett explained that The ULI is made up of 40,000 members of the public and private communities. Minnesota is fortunate that its group is so active. She also gave background on the RCM.

Bennett explained that a couple of years ago, the ULI got the group back together and has been the driver to get the initiatives going. The group is bi-partisan and sometimes makes recommendations regarding policies. It is not a lobbying organization.

Bennett said the OCPP is part of a housing initiative that looks at things from a region-wide perspective and looks deeply at cities individually. The process includes a housing audit, community change reports, and site analysis. She also explained the corridor development process for Minnetonka Mills.

Bennett said the OCPP process may be a model for other cities. Tools and strategies may be implemented, and best practices will be shared with others. The audit process includes reviewing goals and policies, testing effectiveness of land use strategies and programs, understand community change, and identifying gaps. That is where the process is now.

Bennett explained that she does not tell a city what it should be doing, but provides information from the analysis. She wants the dialogue to come from the audience. She thanked Julie, Elise, and Stephanie for the hours they put into providing her information.

Bennett began the presentation by reviewing the city goals and policies listed in the 2008 comprehensive guide plan: strengthen neighborhoods by improving the existing housing stock; promote new affordable and market-rate rental and for-sale housing; encourage diversity in the types, sizes, and prices of housing units; and create partnerships with other agencies to ensure the longevity of affordable housing. She said a lot of the goals are similar and specific to land use issues. Bennett stated that the metropolitan council informed her that ideas from the study could be added to the comprehensive guide plan prior to its adoption by the city.

Bennett described the steps taken to complete the housing audit.

Bennett stated that it is expensive to redevelop existing uses which, in turn, makes it difficult to provide affordable housing. The end use is very expensive.

Minnetonka is still holding its high property value, and it is difficult to attract young families due to the cost of housing.

Bennett said there is a lack of support for high-density housing in Minnetonka. The cost of redevelopment requires higher densities to attract work-force housing. Minnetonka considers 12 units per acre high density; however, in some communities high density is closer to 20 units per acre.

Bennett said the households in Minnetonka are aging. In some cases, elderly with fixed incomes are having trouble paying for maintenance of a residence even if they do not have a mortgage. She also said the large retail sector provides lower wages and the employees have a challenge to live in the community. There is a disconnect between workers and available housing. Bennett stated access to transit is very limited. Even where there is transit there is low ridership.

Bennett reviewed Minnetonka's affordable housing programs, which address a variety of income levels and uses. The Homes Within Reach program is a large investment per home per household, but there is a long-term gain from that money and it assists reaching the city's goal of long-term affordability. HWR has purchased 33 homes in the city since 2002. Minnetonka should be very proud of that. Compared to other cities, Minnetonka is way ahead. It is an excellent investment.

Bennett said the rehab funds are recaptured if the residence is sold. There have been 30 emergency-deferred loans since 2006. That provides up to \$5,000 at 0 percent interest for 10 years. There are 66 owner-occupied rehab loans that have been provided since 2000 and 475 loans since the program started. The city does not market or use this program as actively as it did previously. It provides up to \$20,000 in deferred loans at 0 percent interest for 10 years. The income limit is 50 percent of median income. For a family of 4, that would equal a little over \$40,000 annual income.

Bennett said land use strategies and official controls was looked at during the housing audit. The city uses

- Tax increment financing
- A HRA levy to support the land trust program in 2009.
- The city has talked about point of sale and rental licensing programs, but there has been no action to date on those types of programs. All of the other opportunity cities have rental licensing and both Richfield and Brooklyn Park have point of sale programs.
- The city uses flexibility on letters of credits, requirements to reduce development costs, and proactively purchases housing sites for future public use.
- The EDA proactively identified future high-density housing sites.

Bennett reviewed the 11 community site principles developed by ULI. Site principles enhance economic competitiveness, diversifies property tax base, reduces pressure on local budgets, reduces commute time, protects environment, and promotes healthy living by providing more public and open space.

Bennett said the report looks at the city's human infrastructure. It is a collection of resident information, household demographics, and household usage history and turn-over patterns. It evaluates the flow of the data. The report looked at distribution of households by age, housing type, homestead status, homestead status for new house owners, turnover of households by age and housing type and aging in place, retention of households by origin and destination, and commute and labor shed information. John Carter, who worked on the data, was introduced.

The following data was reviewed:

- The median age in 2007 was 52 years. A majority of households, 44 percent, are 55 years and older. Baby boomers are between 45 years and 68 years of age.
- Brooklyn Park and Richfield are a much younger community.
- Housing by age include residents under 35 years of age live in apartments with 6 units or less. The larger apartment complexes house the older age group.
- Townhomes were utilized by residents 35 years of age and older. Townhomes have provided a market for residents as they age in suburbs.
- Of all households, 66 percent of units are owner occupied, but only 27 percent of those households are under the age of 35 years.
- Homeownership remains high in those residents 55 years of age and older and rental housing seems to be important for all age groups. In other communities, a big dip is seen in the rental for younger ages and levels out for the older ages. Minnetonka has a really strong base for all ages for rental housing.
- Of the new households coming in, the majority are rental. Residents are renting homes rather than buying homes.

Carter when a large share of the population is not moving, the population is aging in place. The chart shows the difference in the households from 2004 and 2007. The net result is that there is tremendous momentum in a community due to aging. A city needs a lot of turnover to counteract that and achieve a balance. Minnetonka has a large portion of its age range between 45 to 65 years and there is little young population behind it. It is one of the key points of the analysis.

Carter explained how the information was collected and that the oldest person in a household is the head of the household. Property tax and driver's license records were used to establish resident age information. The census uses the

first person listed on the census. He said he hoped to use the information to create a projection for the future.

The chart indicated to Allendorf that the city needs more affordable housing. He asked if the chart also indicates that more rental units are needed to draw in younger people so that there will be a population behind the wave. Bennett replied that there is a lack of rental units and owner-occupied units at a higher density, which helps to decrease the costs.

Allendorf wanted to understand what action plan it suggests. He questioned if it would be beneficial to target developers of rental housing. Wischnack noted that the owner occupied units are such a high percentage of the housing stock. There needs to be a shift in regard to how the city thinks of younger families; it is not just the rental piece it is also the owner-occupied piece. The senior availability and turn over in upper-end age category is an issue. The city needs young, owner-occupied housing to counteract the issue or the city will have only one sector of the population.

Allendorf noted that the city was criticized heavily for using tax increment financing for the Ron Clark development. What that seems to do is draw in younger families that can afford those units, whether rental or ownership units. He favored jumping on those opportunities.

Wischnack asked Bennett to highlight the senior regeneration program. Bennett said in Roseville, the senior housing regeneration program was utilized through a non-profit organization where the city and county purchased homes from seniors as they were. The houses were rehabbed and sold specifically to buyers whose household had to have at least one child under the age of 16, which is a protected class. Surveys indicate that the 22 percent that occurred without the program, increased to 44 percent.

A question was asked if criteria were in place to determine the amount of funds to be spent on redevelopment. Bennett stated that it was the trust the city had with the nonprofit group called the Greater Metropolitan Housing Corporation that was brought up to a higher standard than health and safety issues. It was brought up to a marketability level. The house still had to be sold.

Bennett reviewed the retention of households and the origin of who is moving into the community. Of the moves, 22 percent stayed in the city. This is lower than Brooklyn Park and Rosemount's retention rates due to less diversity in Minnetonka's housing stock. Retention was higher for households looking for multi-family housing and those seeking single-family housing were only 16 percent. Of all single-family moves, 26 percent were retained in another single-family home. Richfield's statistic from residents moving from apartments to single-family housing was 28 percent. They are capturing the rental market and single-family homes. They are losing those moving from a single family to a single family. That is 15 percent. The move-up housing is a challenge for Richfield. The cities have programs to renovate the existing houses.

Bennett commented that the data updated next year will show a better reflection of what is happening in the market now.

Bennett reviewed household origin and destinations for moves. Of all incoming households, 41 percent came from Minnetonka, Minneapolis, and St. Louis Park. The community change report shows labor and commute shed. In response to a question, Carter recalled that 16 percent of residents of Minnetonka working in Minnetonka is a pretty high percentage compared to the other cities in the study. Bennett explained that the data tied the resident base to the wages in the community to determine if the workers in the city are making enough to afford to live in the city. This decreases commuting distances and allows for residents to have more time to be actively involved. One of the strategies is to have more of a balanced community.

Bennett stated that the shortage of affordable homes available for young households may impact the number of workers to be employed in the city and future value of the housing stock. Reinvestment in older apartment areas preserves and enhances some of the most affordable housing in the city. With regard to the programs, the financial support of the home program results in a positive return for the city's investment. It decreases deferred maintenance, it reduces code enforcement, and a similar program is needed for younger-family housing stock as well.

Bennett stated that Minnetonka's population is aging. Additional strategies are important to help regenerate neighborhoods and address some of the aging in the community. She reviewed nation-wide statistics regarding "aging in place" residents over 55 years of age. A question was asked about how that would play out over 5 years. Bennett said heard that, nationally, in the U.S., more babies were born in 2008 than in the baby boomer years.

Bennett reviewed that the households that are aging in place live in some of the oldest housing in the city. Senior housing, senior home maintenance programs, senior housing regeneration programs, and being proactive with city and developer marketing to current owners 75 years and older and younger than 35 years of age are needed. Senior specific universal design housing type units should also be considered.

Bennett went over the observations and options. Wischnack noted the city has regular contact from condominium developers. The most recent case is the new regulations for swimming pools. The homeowners associations for the condominiums could not afford to bankroll the improvement. The city does not have a tool to deal with that effectively at this time.

Bennett discussed the best methods used to engage resident participation regarding the importance of housing diversification and higher densities. Neighborhood formation and regular engagement processes may be used by suburban communities.

Bennett stated that the Urban Land Institute is trying to get funding to do a model ordinance for the region, so the city may benefit from that as well. She reviews ways to better connect current and future housing to jobs in the community.

Bennett said that the next step is for those present to discuss the report, go through the quarter development process, and then come back with a final report based on the discussion.

In response to Greves question, Bennett stated that the report deals mainly with housing and land use, but with regard to the parks part of the efficient use of the land and success of and use is the connectivity to open space, parks and trails, and services. Sidewalks, alternate forms of transportation, and bike paths are important components that should be evaluated during redevelopment or renovation.

Wagner looked at the number of new households created and saw that the city needs more affordable housing as well as mid-ranged pricing. There are many \$340,000 houses that need about \$100,000 of work. He questioned how the city could market to emergency loan program and income limit rehabs and encourage reinvestment.

A question was asked about how the rehab loans are marketed. Wischnack noted that the *Minnetonka Memo* is one source of information for residents. Some of the programs are handled by other agencies; for instance, the emergency repair program. Durbin clarified that the emergency repair program is administered by another agency; however, the city does work through the application process and advertises the program. An article from time to time will be published in the *Minnetonka Memo*, but it's usually word of mouth. Some of the other funds are not advertised by the city because other agencies do active marketing. Wischnack noted that if a property owner or neighbor notifies the city of an issue, the city refers the resident to an available program.

There was a comment that the city takes advantage of outside agencies that provide the expertise to residents across parts of the west metro to match callers with a variety of programs and do some triage, but there is overlap in the services these agencies provide. Wischnack noted that H.O.M.E. is promoted through the senior center as well.

Duffy commented that a resident does not need to go 10 miles down the road to reach a home that is a little bit newer and maybe a little bit bigger and will meet their needs. The aging housing stock is a huge problem. A state program called *This Old House* allowed a property owner to make improvements to their home and the additional improvements would not be taxed for 10 years.

Robinson lives in a neighborhood where her neighbors are all aging in place, but there is a history of being connected. Programs that give residents an incentive to meet neighbors are really important to people, whether they have kids or not. Her neighbors are just as friendly as someone that would have young kids.

Many of Robinson's friends have moved out of larger houses and into townhomes. For all practical purposes they are still in the same community, but they may be competing for the same space as the younger families. It is going to be interesting to see how Minnetonka deals with that group.

Cheleen asked if surveys had been done in other cities asking residents what type of housing they would like in 5 years. Bennett was not aware of a city that has taken it to that level. Wischnack mentioned that the city conducted a senior focus group of 10 seniors. She felt it might be interesting to contact these people each year for follow up. It would be beneficial to compare a statistical report against direct feedback from residents. New residents could be asked why they chose Minnetonka. Bennett said that Brooklyn Park did this at one time.

Allendorf felt a survey should not be done unless the information can be used. From a policy stand point, he questioned who the city wants the programs to attract. If the city wants to retain residents over 75 years of age, then the city should make that a policy. The type of housing and residents the city wants to attract and how to attract those needs to be identified. The demographic information helps identify where there is a gap. The city is in need of more young adults and kids to support schools and the work force. The fear of being "politically correct" prevents commissioners and council members from asking the question and it seems that the answer is needed in order to define the programs that should be in place.

A comment was made that reasons why the city wants to attract a certain age resident need to be established.

Wischnack stated that information will be brought back to the EDA, and more work plans and strategies will be discussed.

## **5. STAFF REPORT**

Durbin gave the staff report, with items including the Southwest Transitway Station Area Study, the Southwest Transitway DEIS Study, Homes Within Reach, the Minnetonka Mills LISC study, and foreclosures.

## **6. OTHER BUSINESS**

The next regular EDA meeting will be Monday, May 11, 2009 at 5 p.m.

Wischnack and commissioners discussed publishing contact information for EDA members.

## **7. ADJOURN**

Wagner moved, Robinson seconded a motion to adjourn the meeting. All voted yes. Motion passed. The meeting adjourned at 9:07 p.m.

**EDA Agenda Item #4**  
**Meeting of May 11, 2009**

**Brief Description:** Election of officers

**Recommended Action:** Elect EDA officers for 2009-2010 year

**Background**

The EDA by-laws call for an election of a President and Vice-President each year. The offices are held for one-year terms.

The current EDA President is Peter St. Peter, and the Vice-President is Dan Duffy.

By tradition, City Council representatives on the EDA have not held office but there is nothing in the by-laws to prohibit them from doing so.

The Secretary to the EDA is Community Development Staff, while the EDA Treasurer is the city's Finance Director, who also serves as City Treasurer.

**Recommendation**

Staff recommends the EDA take time on May 11 to elect a President and Vice-President.

Submitted through:

Julie Wischnack, AICP, Community Development Director

Originated by:

Elise Durbin, AICP, Community Development Supervisor

**EDA Agenda Item #5  
Meeting of May 11, 2009**

**Brief Description:** Affordable housing indexing system

**Recommended Action:** Continue implementation of the system as it currently exists

**Background**

Prior to the establishment of Homes Within Reach (WHAHLT), the indexing system was set up to maintain affordability of owner-occupied homes and has been used in several developments, including (see page A1 for a map of their locations):

<b>DEVELOPMENT</b>	<b>NUMBER OF INDEXED UNITS</b>
The Gables at Westridge Market	48
Ridgebury	56
The Enclave	1
Wyldeewood Condominiums	8
Cloud 9 Condominiums	16
<b>TOTAL</b>	<b>129</b>

The Gables, Ridgebury, and Enclave units are all townhouse units. The Wyldeewood and Cloud 9 Condominium units, which were constructed after the establishment of Homes Within Reach, use the indexing system because the land trust model is not able to provide long-term affordability on condominium units like it can on single-family or townhouse units.

The indexing system was first introduced at The Gables townhouses of Westridge Market in the mid 1990's. Tax Increment Financing was used to write down the cost of the units so that the city could provide affordable owner-occupied units. In exchange for the price reduction, the city attached 30-year restrictive covenants (see pages A2-A9 for an example of the restrictive covenants) on the property limiting the resale price of the property in order to maintain affordability into the future. This resale price is adjusted each year by calculating the average annual increase in sales for the metropolitan area. The sales price of these units cannot exceed this maximum resale price (see page A10 for an example of the calculation). Staff will review this calculation in detail at the meeting.

Revisions to the indexing system were made in 2004, prior to the Wyldeewood and Cloud 9 Condominium units coming online. The indexing system used for The Gables, Ridgebury and The Enclave used 100% of the average annual percent increase of the metropolitan area in the calculation to find the maximum resale price. In 2004, EDA Commissioners felt it was necessary to change the system because the previous system had not been successful in keeping the resale prices affordable due to the rapid

increase in the metropolitan area average sales price. Therefore, the EDA adopted a resolution that changed the indexing system to use 50% of the average annual percent increase of the metropolitan area, rather than 100% of the average annual percent increase used previously. The Wyldewood and Cloud 9 Condominium units use this revised system.

### **Average Sales Price**

Over the 13 years that the restrictive covenants have been in place, the average sales price in the metropolitan area (13 counties) has increased, until the past two years. Table 1 shows the average sales price since the program began.

*Table 1—Average sales price in metropolitan area*

<b>Year</b>	<b>Average Sales Price</b>
1995	\$117,053
1996	\$124,022
1997	\$130,171
1998	\$140,300
1999	\$155,108
2000	\$172,849
2001	\$209,710
2002	\$221,329
2003	\$238,446
2004	\$256,252
2005	\$272,522
2006	\$278,462
2007	\$274,767
2008	\$236,953

With the recent large decrease in the average sales price, this significantly impacts the maximum resale value of the units. For units that have been in the program from the beginning or near the beginning, such as The Gables and Ridgebury, there is less of an impact on the maximum resale value. The decline in average sales price for the newer units, such as The Enclave, Wyldewood and Cloud 9, has much more impact, and in Wyldewood and Cloud 9, the maximum resale price in 2009 is less than the original sales price of the unit.

### **Policy Discussion**

Staff has been working with a real estate agent who is selling a unit that is a part of the indexing program. Since the 2009 maximum resale prices have not yet been distributed to owners, this unit is being sold under the 2008 maximum resale price. The real estate agent has expressed concern regarding the implications of the decline in the average

sales price on the maximum sales price and what this means for the next buyer of the unit who will likely see a decline in their maximum sales price below the price they bought the unit for.

The real estate agent, after reviewing the Restrictive Covenants, noted that the covenants discuss the “average sales price *increase*”, and has questioned whether, with this language, if the maximum sales price should be able to decrease or stay the same (or at least not decrease past the current buyers sales price) when circumstances like this year arise.

Steve Bubul, legal counsel from Kennedy & Graven, has drafted all of the restrictive covenants that are in place in Minnetonka. Mr. Bubul, and city attorney Desyl Peterson, agree that the interpretation of the covenants on how to handle situations like this is a policy question for the EDA to discuss.

### **Recommendation**

Staff recommends that the covenants continue to allow the maximum resale price to increase or decrease as the formula currently provides for due to the following reasons:

- There are many applications of this covenant already in place throughout the city.
- The owners of the units are aware of the covenant and the maximum resale price when they purchase the unit.
- The decrease in price is an anomaly and in the 13 years that the covenants have been in place a significant decrease has not occurred until this year.
- The formula in which the maximum resale price is calculated from is connected to market conditions and thus fluctuate accordingly, which is a fair methodology.

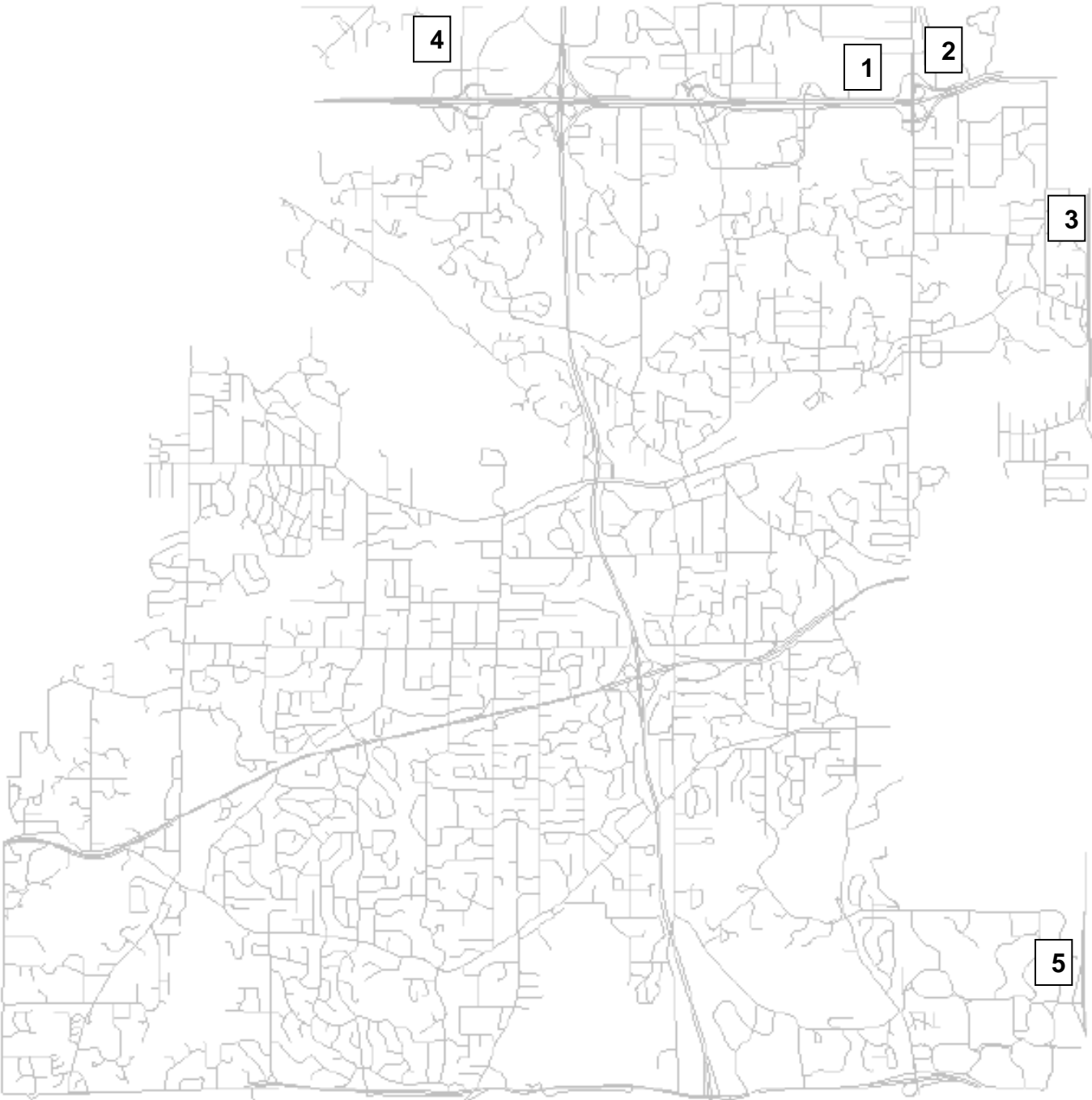
Submitted through:

Julie Wischnack, AICP, Community Development Director

Originated by:

Elise Durbin, AICP, Community Development Supervisor

# LOCATION MAP



No.	Development	Number of Indexed Units
1	The Gables of West Ridge	48
2	Ridgebury	56
3	The Enclave	1
4	Wyldewood Condominiums	8
5	Cloud 9 Condominiums	16



## DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Agreement") dated as of January 28, 2002, by Halley's Custom Homes, Inc., its successors and assigns (the "Owner") is given to the City of Minnetonka (the "City").

## RECITALS

WHEREAS, the City Council of the City approved a plat designated as Enclave Addition (the "Plat") on July 24, 2000; and

WHEREAS, in exchange for higher density of residential development in the Plat, the Owner agreed to restrict the purchase price of one parcel in the Plat to an amount that is affordable to persons of low and moderate income; and

WHEREAS, the parcel within the Plat to be so restricted is described in Exhibit A to this Agreement (the "Property"); and

WHEREAS, in order to implement the condition of Plat approval described above, the Owner has agreed to enter into this Declaration of Restrictive Covenants in favor of the City; and

WHEREAS, the Owner under this Agreement intends, declares and covenants that the restrictive covenants set forth herein governing the transfer of the Property shall be and are covenants running with the Property for the term described herein and binding upon all subsequent owners of the Property for such term, and are not merely personal covenants of the Owner.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner agrees as follows:

Section 1. Definitions. In this Agreement, unless a different meaning appears from the context:

"Maximum Purchase Price" means a Purchase Price that does not exceed the initial Purchase Price (\$119,000) adjusted each year during a Calculation Period by the Average Percent Increase in Average Sales Price during such Calculation Period, plus an additional 6.0 percent of such adjusted amount applied at the time of each Transfer but not compounded as part of the adjustment in sale price for any subsequent Transfer, where:

A "Calculation Period" is the period from and including the calendar year 2002 and including the most recent calendar year for which an Average Sales Price is available as of the date of the subject Transfer.

The "Average Sales Price" for any calendar year is the average sales price for single family detached homes, condominiums, townhouses and twinhomes, in the entire area

reported by the Minneapolis Area Association of Realtors ("MAAR"), as reported in the Residential Real Estate Activity Report published annually by MAAR; or, in the event the report described in this paragraph is no longer produced by MAAR, any reasonably comparable index of average sales price for the Minneapolis/St. Paul metropolitan area that is reasonably comparable to the data provided by MAAR and is approved by the City.

The "Average Percent Increase" is the total percent increase in Average Sales Price from the first year of the Calculation Period to the last year of the Calculation Period, divided by the number of years in the Calculation Period. Example for a Transfer of the Property that occurs in 2004 (when the most recent Average Sales Price available is for calendar year 2003): 2002 Average Sales Price = \$100,000 and 2003 Average Sales Price = \$110,000; the Average Percent Increase for that Calculation Period is  $10\%/3 = 3.333\%$ . The Maximum Purchase Price equals \$119,000, increased by 3.333% for one year (\$122,963) plus 6% of the adjusted amount (\$7,378), for a total Maximum Purchase Price of \$130,341.

"Metro Area" means the Minneapolis St. Paul metropolitan statistical area.

"Purchase Price" means the cost of acquiring the Property from the Owner and includes the following: all amounts paid, either in cash or in kind, by the purchaser (or a related party or for the benefit of the purchaser) to the Owner (or a related party or for the benefit of the Owner) as consideration for Transfer of the Property to the purchaser. Whether or not the purchaser purports to separately purchase such items that are fixtures under State law (such as light fixtures or wall-to-wall carpeting), the cost of those items must be included in the cost of acquisition. Property that is not considered a fixture under State law, such as appliances that are not built in, is not considered part of the Property and the cost of acquiring such property is not included in the cost of acquiring the Property (unless the acquisition costs of such excess items exceeds their fair market value, in which case the amount of the excess must be included in the acquisition cost of the Property). If, as part of the purchase of the Property the purchaser agrees to pay or assume liability for a debt of the Owner, the principal amount of such debt must be included as part of the cost of acquiring the Property. If the terms of the Transfer provide for installment payments by the purchaser to the Owner, the Purchase Price shall be determined using the principal amount owing to the Owner as of the date of Transfer, or, if no principal amount is stated under any instrument of Transfer, then the Purchase Price shall be determined by calculating the present value of the installment payments as of the date of the Transfer, assuming a discount rate equal to the prevailing market rate for owner-occupied residential mortgage loans in the Metro Area as of the date of the Transfer, as approved by the City.

For the purposes of this definition, the cost of acquiring the Property <sup>does</sup> not include the usual and reasonable settlement and financing costs. Settlement costs include titling and transfer costs, title insurance, survey fees or other similar costs. Financing costs include credit reference fees, legal fees, appraisal expenses, permitted origination fees that are paid by the buyer, or other costs of financing the acquisition.

"Property" means the real property described in Exhibit A to this Agreement, together with all improvements and fixtures thereon.

"State" means the State of Minnesota.

"Transfer" means any total sale, assignment, conveyance, or transfer in any other mode or form of or with respect to the Property, or any contract or agreement to do any of the same. A lease of the Property without purchase option, or a lease with option to purchase at fair market value, shall not constitute a Transfer. Any lease with option to purchase at less than fair market value shall constitute a Transfer.

Section 2. Recording and Filing; Covenants to Run With the Land. (a) Upon execution and delivery by the Owner, the Owner shall cause this Agreement to be recorded and filed with the Office of the Recorder or the Registrar of Titles of Hennepin County, as the case may be, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Owner shall immediately transmit to the City an executed original of the recorded Agreement showing the date and document numbers of record, or a duly certified copy of the executed original.

(b) The Owner intends, declares and covenants, on behalf of itself and all future Owners of the Property during the term of this Agreement, that this Agreement and the covenants set forth herein restricting the Transfer of the Property (i) shall be and are covenants running with the Property, encumbering the Property for the term of this Agreement, binding upon the Owner's successor's in title and all subsequent owners of the Property, (ii) are not merely personal covenants of the Owner, and (iii) shall bind the Owner (and the benefits shall inure to the City) and its respective successors and assigns during the term of this Agreement. The Owner hereby agrees that any and all requirements of the laws of the State to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements or privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the land. For the term of this Agreement, each and every contract, deed, or other instrument hereafter executed conveying the Property or portion thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Property or portion thereof provides that such conveyance is subject to this Agreement.

Section 3. Representations, Covenants and Warranties of the Owner. (a) The Owner is a corporation organized under the laws of the State, and is qualified to transact business under the laws of the State, has the power and authority to own its properties and assets and to carry on its business as now being conducted, and has the full legal right, power and authority to execute and deliver this Agreement.

(b) The execution and performance of this Agreement by the Owner will not violate, or as applicable, have not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and will not violate, or as applicable, have not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it is bound.

(c) The Owner will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Property free and clear of any lien or encumbrance.

(d) The Owner warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

Section 4. Maximum Purchase Price; Restrictions on Transfer.

(a) The Property shall be subject to the following covenants and restrictions:

(i) The Owner shall not make or allow to be made or created any initial Transfer of the Property for a Purchase Price of \$119,000.

*exceeding*

(ii) After the initial Transfer of the Property during the term of this Agreement, no subsequent Owner shall Transfer the Property for a Purchase Price that exceeds the Maximum Purchase Price. A subsequent Owner may, without restriction, Transfer the Property for a Purchase Price that is equal to or less than the Maximum Purchase Price.

(b) Upon or before closing on any Transfer of the Property, the Owner shall deliver to the City written evidence reasonably satisfactory to the City that the subject Transfer complies with the provisions of this Agreement. Such evidence shall include, at a minimum, a fully executed purchase agreement and certification by the buyer that he or she intends to occupy the unit.

(c) Promptly after receipt by the City of evidence of compliance with the terms of this Section as to the initial Transfer of the Property, the City will furnish the Owner with an appropriate instrument so certifying. Such certification by the City shall be (and it shall be so provided in the certification itself) a conclusive determination of satisfaction of the covenants in this Agreement with respect to the obligations of the Owner with respect to the subject Transfer, and shall be substantially in the form attached hereto as Exhibit B.

(d) Promptly after receipt by the City of evidence of compliance with the terms of this Section as to the subsequent Transfer of the Property after the initial Transfer, the City will furnish the Owner with an appropriate instrument so certifying. Such certification by the City shall be (and it shall be so provided in the certification itself) a conclusive determination of satisfaction of the covenants in this Agreement with respect to the obligations of the Owner with respect to the subject Transfer, and shall be substantially in the form attached hereto as Exhibit C. Upon expiration of the term of this Declaration, the City will furnish the Owner with an appropriate certificate or instrument releasing the Property from all restrictions under this Agreement.

(e) The certificates provided for in Sections 4(c) and (d) of this Agreement shall be in such form as will enable them to be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Property. If the City refuses or fails to provide any certification in accordance with the provisions of this Section, the City shall, within 30 days after written request by the Owner, provide the Owner with a written statement, indicating in adequate detail in what

respects the Owner has failed to comply with the restrictions on Transfer under this Section and what measures or acts it will be necessary, in the opinion of the City, for the Owner to take or perform in order to obtain such certification.

(f) ANY TRANSFER IN VIOLATION OF THE TERMS OF THIS SECTION SHALL BE DEEMED VOID.

Section 5. Term of Agreement. This Agreement and the restrictions on Transfer specified herein shall commence on the date hereof and end on the date which is 30 years after the date hereof.

Section 6. Enforcement. (a) The Owner acknowledges that the primary purpose for requiring compliance by the Owner with the restrictions provided in this Agreement is to ensure compliance of the Property with the housing affordability covenants for one unit in the Plat, which requirement is a condition of approval by the City of the Plat; and by reason thereof, the Owner, in consideration for such approval of the Plat, hereby agrees and consents that the City shall be entitled, for any breach of the provisions of this Agreement, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Owner of its obligations under this Agreement in a state court of competent jurisdiction. The Owner hereby further specifically acknowledges that the City cannot be adequately compensated by monetary damages in the event of any default hereunder.

(b) If the Owner breaches any of its obligations under this Agreement, and the City employs attorneys or incurs other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the Owner under this Agreement, the Owner agrees that it shall, within ten days of written demand by the City, pay to the City the reasonable fees of such attorneys and such other expenses so incurred by the City.

Section 7. Miscellaneous.

(a) Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

(b) Notices. Any notice, demand, or other communication under this Agreement shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally to parties at the addresses set forth below:

To the Owner:                   Halley's Custom Homes, Inc.  
  1421 East Wayzata Blvd., Suite 230  
  Wayzata, MN 55391

To the City       :                   14600 Minnetonka Boulevard  
  Minnetonka, MN 55345-1597  
  Attn: City Manager

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

(c) Governing Law. This Agreement shall be governed by the laws of the State of Minnesota.

(d) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 8. Termination of Restrictions. Notwithstanding anything to the contrary herein, in the event that the Owner of the Property secures a mortgage from a commercial lender that is sold to a secondary market investor such as the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation or secures a mortgage insured by the United States Department of Housing and Urban Development, the restrictions under this Agreement shall terminate with respect to the mortgagee and any subsequent purchaser of such property if title to the Property is transferred by foreclosure, or deed in lieu of foreclosure, or if the mortgage is assigned to the Secretary of the United States Department of Housing and Urban Development, all in accordance with federal regulations, 24 CFR Section 203.41(c)(2).

Section 9. Limitation on Owners. For purposes of this Agreement, a person or entity shall be deemed an "Owner" of the Property only from the date of such person's or entity's acquisition of such Property until such person or entity transfers the Property in accordance with the terms of this Agreement. After a person or entity transfers the Property in accordance with the requirements of this Agreement, such person or entity shall have no further responsibilities under or with respect to this Agreement. Nor shall any Owner be liable as a result of another Owner's failure to comply with the terms of this Agreement or have any responsibility for the enforcement of any term of this Agreement as it relates to another Owner.

IN WITNESS WHEREOF, the Owner has caused this Agreement to be signed by its duly authorized representatives, as of the day and year first above written.

OWNER

HALLEY'S CUSTOM HOMES, INC.

By *Michael A. Halley*  
Its *Vice-Pres.*

STATE OF MINNESOTA )

COUNTY OF Hennepin)

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of January, 2002, by Michael A. Halley the V.P. of Halley's Custom Homes, Inc., a Minnesota corporation, on behalf of the corporation.

*Shirley A. Varney*  
Notary Public

This document was drafted by:  
KENNEDY & GRAVEN, Chartered  
470 Pillsbury Center  
Minneapolis, Minnesota 55402  
Telephone: 337-9300



EXHIBIT A

DESCRIPTION OF PROPERTY

Lot 1, Block 1, Enclave Addition, according to the recorded plat thereof, Hennepin County, Minnesota.

**2008 Resale Price**

As of December 31 <sup>st</sup> of the Year	Year	Average Sales Price of Metro	Average Annual Percent Increase	Your Resale Price for Year	Your Resale—No Real Estate Commission	Your Maximum Resale Price (Includes a 6% Real Estate Commission)
2001	Base	\$209,710				
2002	1	\$221,329				
2003	2	\$238,446				
2004	3	\$256,252				
2005	4	\$272,522				
2006	5	\$278,462				
<b>2007</b>	<b>6</b>	<b>\$274,767</b>	<b>5.2%</b>	<b>2008</b>	<b>\$161,302</b>	<b>\$170,980</b>

**CALCULATIONS FOR MAXIMUM RESALE PRICE**

**1. Find the Average Annual Percent Increase**

A) 
$$\frac{2007 \text{ Avg Metro Sales Price} - \text{Base Price } (\$274,767 - \$209,710)}{\text{Base Price (2001 Ave. Metro Sales Price)} \quad \$209,710} = \frac{\quad}{\quad} = 31.0 \text{ total increase since 1999}$$

B) 
$$\frac{\text{Total Increase since 2001} \quad 31.0\%}{\text{Total Number of Years} \quad 6 \text{ Years}} = \frac{\quad}{\quad} = 5.2\% \text{ average annual percent increase}$$

**2. Calculate the Adjusted Resale Price**

Original Value \* % Increase = Dollar Increase + Original Value = Adjusted Resale Price  
 \$119,000 \* 5.2%=\$6,188 + \$119,000=\$125,188 (Adjusted Resale Price for Year 1)  
 \$125,188 \* 5.2%=\$6,510 + \$125,188=\$131,698 (Adjusted Resale Price for Year 2)  
 \$131,698 \* 5.2%=\$6,848 + \$131,698=\$138,546 (Adjusted Resale Price for Year 3)  
 \$138,546 \* 5.2%=\$7,204 + \$138,546=\$145,750 (Adjusted Resale Price for Year 4)  
 \$145,750 \* 5.2%=\$7,579 + \$145,750=\$153,329 (Adjusted Resale Price for Year 5)  
 \$153,329 \* 5.2%=\$7,973 + \$153,329=\$161,302 (Adjusted Resale Price for Year 6)

**3. Calculate the Maximum Resale Price for 2008**

Adjusted Resale Price + 6% Real Estate Commission = Maximum Resale Price  
 \$161,302 + 6%=\$170,980

**YOUR MAXIMUM SALES PRICE FOR 2008=\$170,980**

**EDA Agenda Item #6**  
**Meeting of May 11, 2009**

**Brief Description:** TIF report follow up and TIF/tax abatement policy

**Recommended Action:** Review and provide feedback

**Background**

At the March 30 EDA meeting, Commissioners heard a presentation and received a report from Ehlers and Associates regarding the city's Tax Increment Financing (TIF) districts. At that meeting, the EDA requested a legal interpretation of potential uses of TIF funds and the functionality of each district as well as request that staff prepare a TIF and tax abatement policy.

**Legal Interpretation**

Steve Bubul of Kennedy & Graven, the city's legal counsel on public finance projects, reviewed the Ehlers and Associates TIF report. He has provided his comments and has recommended changes to portions of the report so that it is legally accurate. Ehlers and Associates is updating the report based upon Mr. Bubul's comments, and it will be distributed at the EDA meeting.

Additionally, Mr. Bubul has prepared a memo (pages A1 to A4) that discusses some of the significant rules that apply to the management of TIF districts, including project areas and the five year rule, which includes extra pooling percentages. Mr. Bubul is not available to attend the meeting; therefore, the commission may want to discuss the potential use of funds and staff could verify the feasibility and have the attorney available in June.

**TIF and Tax Abatement Policy**

To begin formulating a policy, staff has provided possible criteria by which to consider tax increment financing. Many of the criteria are reflective of the city's comprehensive plan and typical historical use of TIF.

- At the time of any application for a guide plan amendment, rezoning or site plan approval for a project, whichever occurs first, the applicant must divulge that TIF financing will be requested.
- The projects must be compatible with the Comprehensive Guide Plan and the development plans and redevelopment objectives of the city. Special consideration will be made for projects within the "village areas" identified in the 2008 Comprehensive Plan. Projects should maximize the use of other financial resources.

- 
- Projects which are mixed use or are residential in nature and include affordable housing units which meet the city's affordable housing standards.
  - Projects which contain amenities or improvement which benefit a larger area than the identified development.
  - Projects which improve blighted or dilapidated properties, provide cohesive development patterns, or improve land use transitions.

The following criteria are related to the use of tax abatement. These criteria are different than the TIF criteria in that tax abate would be more appropriately used when there are broader public benefits (i.e. major infrastructure improvement).

- Increase or preserve the tax base
- Provide employment opportunities in the City of Minnetonka
- Provide or help acquire or construct public facilities
- Help redevelop or renew blighted and dilapidated areas
- Finance or provide public infrastructure
- Produce long-term affordable housing opportunities

### **Recommendation**

Staff recommends the EDA discuss the criteria for tax increment financing and tax abatement.

Originated by:

Elise Durbin, AICP, Community Development Supervisor  
Julie Wischnack, AICP, Community Development Director

**Kennedy**

**&**

**Graven**

**CHARTERED**

470 US Bank Plaza  
200 South Sixth Street  
Minneapolis MN 55402

(612) 337-9300 telephone  
(612) 337-9310 fax  
<http://www.kennedy-graven.com>

## **MEMORANDUM**

**TO:** Julie Wishniack  
Elise Durban

**FROM:** Stephen Bubul

**DATE:** May 8, 2009

**RE:** TIF Management

You asked me to review and comment on the Management Review & Analysis, Tax Increment Financing District, prepared for the City of Minnetonka by Ehlers & Associates (the “Management Report”), and to describe more generally some of the key rules that affect the management of TIF districts.

I concur with the conclusions in the Management Report. Following are additional comments that give additional context to those conclusions.

### **Project Areas**

A fundamental concept in TIF is that tax increment must be used to finance the cost of a “project.” The term project does not refer to a particular development; rather, it refers to a geographic area and a set of powers associated with that area. These “projects” are authorized under several statutes, including Minnesota Statutes, Sections 469.001 to 469.047 (the “HRA Act”) and Sections 469.124 to 469.134 (the “Development District Act”). In other words, it is actually the powers in those underlying statutes that govern what an authority may do and how it may use tax increments. Minnesota Statutes, Sections 469.174 to 469.1799 (the “TIF Act”) provides limitations, rules and time frames.

Minnetonka has created projects under both the HRA Act and the Development District Act. Glen Lake Station is a redevelopment project created by the former Minnetonka HRA (though the project was later transferred to the EDA). Housing Development and Redevelopment Project (Minnetonka Mills) is what the name suggests—a housing

development and redevelopment project, created along with the Minnetonka Mills housing TIF District.

A “redevelopment project” is an area in which the City finds the presence of blight, including conditions that may lead to the emergence of blight if not addressed. A “housing development project” is an area or set of activities to facilitate the development of housing for low and moderate income persons. (Hence, in the Minnetonka Mills project, both blight-correction and affordable housing are part of the public purpose.)

By contrast, Development District No. 1 (created for the Ridgebury TIF district) and Development District No. 2 (created for the Hedberg TIF district) are development districts established under the Development District Act. Under that statute, cities are authorized to create districts in order to promote economic development, with no findings of blight required. The EDA has the power to create these districts as well.

Recall that tax increments may be spent outside the boundaries of a TIF district (subject to certain limitations, discussed below), but within the larger “project.” As noted in the Management Report, the EDA’s separate project areas limit the EDA’s flexibility in the use of pooled increment. The EDA and City may wish to review ways to consolidate project areas, but with the caution that such consolidation may require additional findings about blight and the need to prevent the emergence of blight, and/or findings about the need to promote affordable housing.

### **Five Year Rule**

Another fundamental concept in TIF is the so-called “five year rule” under Section 469.1763, subd. 3 of the TIF Act. This rule was enacted in 1990, and was intended to prevent the use of tax increment for new activities that begin five years after the district was certified.

The rule is intertwined with the pooling rule. The pooling rule (in Section 469.1763, subd. 2 of the TIF Act) states that 75% of the tax increment from a redevelopment district, and 80% in the case of a renewal and renovation district, must be spent within the boundaries of the district. Administrative expenses are deemed to be spent outside the district, and are therefore part of the 25% (or 20%) pooling allowance.

The five-year rule states that tax increments will be deemed to be spent within the district only if the increments are used:

(1) to pay for qualified activities to a third party within five years after certification of the district;

(2) to pay debt service on bonds issued to third parties within five years after certification (and the bond proceeds are spend within three years after the date of issuance);

(3) to pay under a contractual obligation that was entered into with a third party within five years after certification of the district;

(4) to reimburse a party for costs that were incurred within five years after certification of the district; or

(5) to pay for certain qualified housing expenditures (discussed in more detail below).

This rule means that once the five-year period has passed, the “in-district” percentage of tax increment must be used only to pay for bonds or contracts that were entered into in the first five years. Once those bonds and contracts have been paid in full, the district must be terminated.

Clause five is the significant exception, which means that two types of housing expenditures are exempt from the five-year rule:

#### *Housing Districts*

Expenditures of increment from any housing district are deemed to spent within the district, no matter when they are spent, and even if they are spent outside the actual boundaries of the TIF District. Such expenditures must still be made within the project area where the TIF District is located, and must be used for housing that meets the appropriate rental or owner-occupied income limits.

This means that the EDA always has the choice, in the case of a housing district, to keep the district open even after any initial bonds or contracts have been paid off. This decision must be made *before* the payoff has occurred on those bonds or contracts.

If the choice is made to keep a district open, the TIF Plan needs to be modified, and thought given to how and where the funds will be spent within the associated project area. This would also be the time to consider whether to modify boundaries of the project area itself (which action is not subject to any time limitations).

#### *Extra Pooling Percentage*

The other exception to the five year rule is for an additional pooling allowance from *non-housing districts*, but where the funds are used to finance tax-credit eligible housing. Section 469.1763, subd. 2(d) of the TIF Act allows an authority to increase the pooling allowance for any district by up to 10 additional percentage points, so long as the expenditures are used to finance tax-credit eligible rental housing, and the expenditures do not exceed the qualified basis (within the meaning of the federal tax credit law) after deducting the amount of any tax credit.

These additional expenditures may be made anywhere in the City—unlike expenditures pooled from a housing district, the money is not limited to the boundaries of the project area.

Further, these expenditures—including the original pooling allowance and the additional 10%—may be spent at any time, without regard to the five year rule. As with housing districts, however, the election to use this percentage must be done (by a TIF Plan modification) before all original contracts or bonds have been paid off.

This means that the EDA may decide to keep a district open, even after all initial bonds and contracts have been paid, in order to spent up to 35% (in the case of a redevelopment district) or 25% (in the case of a renewal and renovation district) of the increment for tax-credit projects located anywhere in the City.

Because of the strict tax-credit limitations, this provision has been little used by authorities throughout the State. However, pending legislation would expand the use of this added pooling allowance, to allow financing of single family housing that replaces vacant, foreclosed, or substandard housing. The EDA may wish to revisit this issue after close of 2009 legislative session.

If you or EDA commissioners have further questions about this material, please let me know.

**EDA Agenda Item #5  
Meeting of May 11, 2009**

**Brief Description:** Staff Report

**Southwest Transitway Station Area Study**

A public open housing is being held on Wednesday, May 13 from 5:00-7:00 p.m. at the Marriott Southwest Hotel in Opus. The purpose of this meeting is for the public to view and provide feedback on the concept plans for both the Shady Oak and Opus station areas.

**Southwest Transitway DEIS Study**

The DEIS study is continuing its technical review. Each of the alignments (1A, 3A, 3C, and 3C sub-alternative) will undergo technical review of certain evaluation criteria, including: planning compatibility, transit mobility, cost estimates, and environmental factors. This technical review will help the Policy Advisory Committee make a recommendation to the Hennepin County Regional Rail Authority on the locally preferred alternative, which will happen later this summer.

**Minnetonka Mills Corridor Development Initiative**

The first workshop was held on April 19. Approximately 60 people were in attendance. The first half of the meeting focused on providing background information, including past and present city efforts in this area, a real estate market update, and design consideration. The second half of the meeting had the attendees break into small groups to discuss questions relating to the area (likes, concerns, needs).

The second workshop to be held on May 19 will have an interactive component to the meeting, which will allow the participants use blocks to create a development (type of buildings, height, density) that they think would be suitable for this area. The designs will be drawn and a financial analysis will be done for each of the scenarios that evening.

Remaining public meetings include:

Workshop II: Development Opportunities	Tuesday, May 19 6-8 p.m.	ICA Food Shelf Meeting Room 12990 St. Davids Road
Workshop III: Developer Discussion	Tuesday, June 2 6-8 p.m.	ICA Food Shelf Meeting Room 12990 St. Davids Road
Workshop IV: Framing the Recommendations	Tuesday, June 16 6-8 p.m.	ICA Food Shelf Meeting Room 12990 St. Davids Road

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### Foreclosures

From January 1 to April 30 there have been 41 foreclosures in the city. As in the past, these are in scattered site locations and there is no one area of the city that is more affected than another (A map is provided in attachments).

Value Range	Number of Foreclosures
\$0-100,000	0
\$100,001-\$200,000	12
\$200,001-\$300,000	13
\$300,001-\$400,000	5
\$400,001-\$500,000	3
\$500,001 +	8*

\*Of these 8, 5 are developer owned and 1 is a business

### Crown Ridge

The semi-annual meeting with CommonBond, Hopkins School District and city staff was held on April 20. The Advantage Center and occupancy reports are attached. Both the Advantage Center Coordinator and the Site Manager are new to Crown Ridge within the past two months.

### Upcoming Events

Wednesday, May 27

Chasing the American Dream: What does it really mean today?

Sensible Land Use Coalition Program

11:30 a.m.-1:30 p.m.

Park Plaza Hotel (4460 W. 78<sup>th</sup> St. Cir., Bloomington)

Monday, June 30

EDA Meeting

6:00 p.m.

### Attachments

- 2009 EDA Work Plan
- Project update
- Foreclosure map
- Crown Ridge update
- May 27 Sensible Land Use program information

Submitted through:

Julie Wischnack, AICP, Community Development Director

Originated by:

Elise Durbin, AICP, Community Development Supervisor

**2009 EDA Meetings**  
Updated May 5, 2009

<b>Meeting Date</b> Meetings at 6:00pm unless otherwise noted	<b>Item Description</b>	<b>Room/Special Notes</b>
Monday, May 11	Regular EDA Meeting	Council Chambers •Election of officers •Indexing system •City financing policies
Monday, June 29	Regular EDA Meeting	Council Chambers
Monday, July 20	Regular EDA Meeting	Council Chambers •Budget review
Monday, August 17	Regular EDA Meeting	Council Chambers •2010 Preliminary HRA levy
Monday, September 21	Regular EDA Meeting	Council Chambers
Monday, October 19	Regular EDA Meeting	Council Chambers •Non-profit funding
Monday, November 30	Regular EDA Meeting	Council Chambers •2010 Final HRA levy
Monday, December 28	Regular EDA Meeting	Council Chambers •2010 EDA work plan

\*\*Note: This schedule is tentative and subject to change.

Other Potential Agenda Items

- Opportunity City Pilot Program recommendations and follow-up discussion (ULI sponsored program)
- Southwest Station Area Study report and follow-up discussion
- Senior Regeneration Program
- Neighborhood Revitalization Program

## PROJECT UPDATE

### Affordable Housing

#### *Livable Communities Act Goals*

\*(The results to date include all affordable units approved by the City Council; however, some units have not been built yet).

	Goals (1995-2010)	Results	Percent of Goals
Owner-Occupied New Construction	180 units	223 units	124%
Rental New Construction	324 units	213 units	65%
TOTAL	504 units	436 units	86%

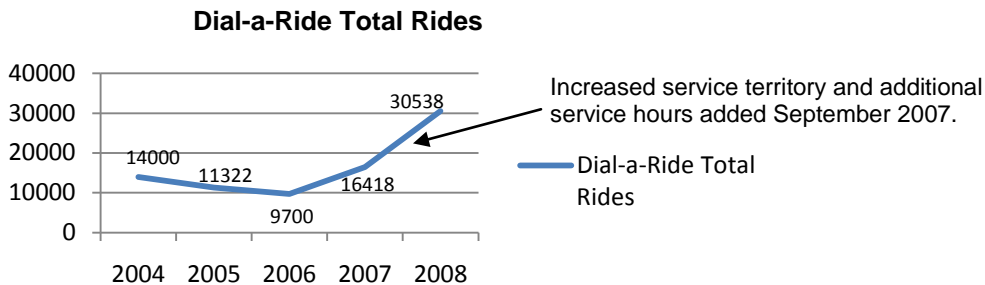
#### *Project Updates*

Project	Total Units	Affordable Units	Update
Sanctuary	23	4	Fourth unit is still pending.
Glen Lake	248	41	All 11 affordable units at The Oaks of Glen Lake (Exchange building) are occupied.
HWR (WHAHLT)			34 Minnetonka units, 63 units total.

### Transit

#### *Metro Transit*

- Route 612 (Minnetonka Heights/7-HI/Glen Lake/Downtown Hopkins) was reinstated in June 2008. Ridership numbers have been much lower than anticipated, and will be discontinued in September 2009.
- Dial-a-Ride ridership numbers

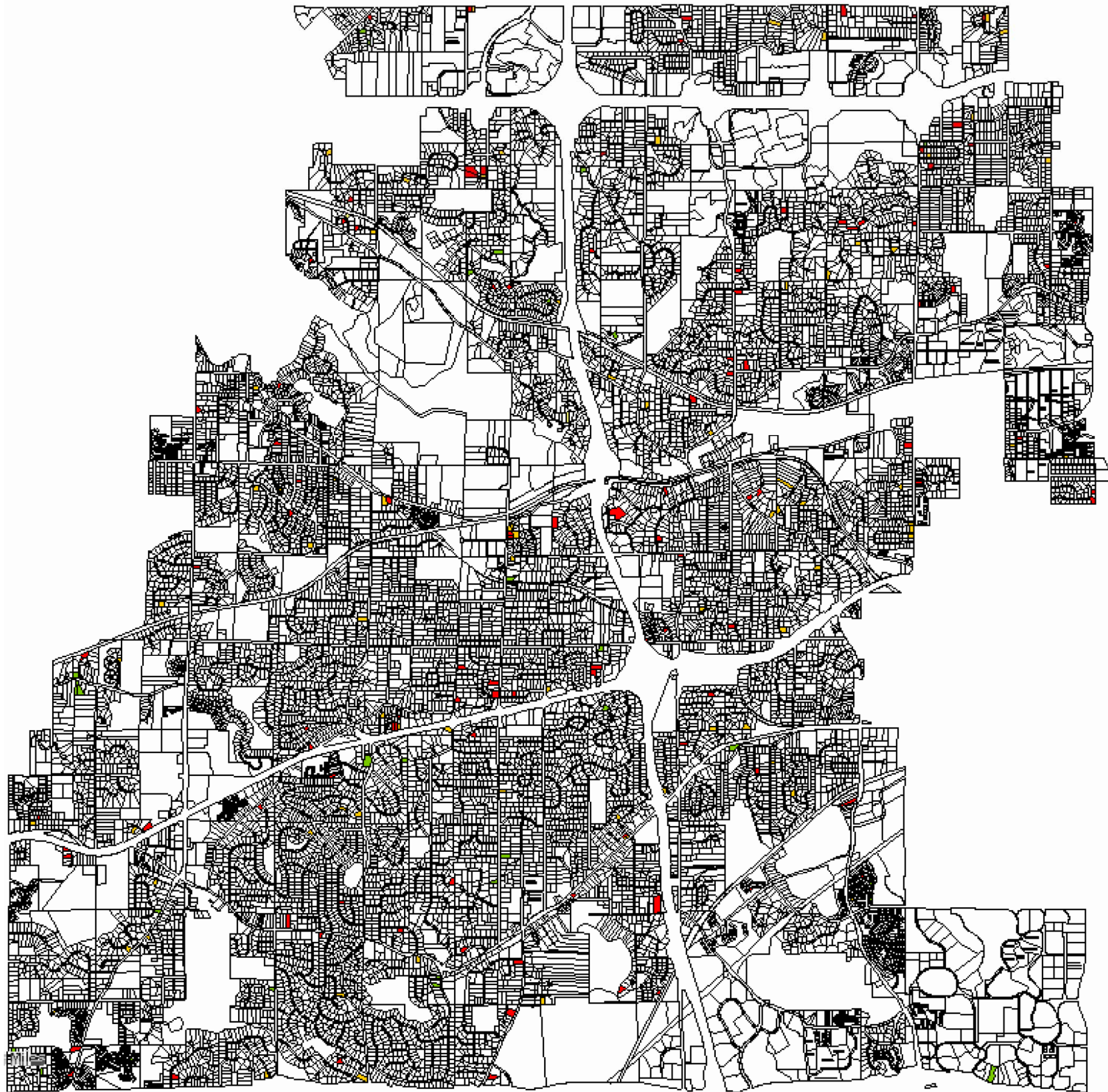


### Economic Development/Business

- No Update

### Other Projects

Project	Description	Status
Hopaca Hollow	5-lot subdivision on Wilson Street	Council approved 5/4/09
Terratonka	7-lot subdivision on Eldorado Trail	Council tabled 4/6/09
Hillside Senior Living	69-unit senior/assisted living on Williston	To Council in May
Holland Center	CUP for Pediatric rehab center on Rowland	Council approved 5/4/09
Eddie Merlots	Restaurant on old Cattle Company Site	Awaiting building permit
BMW Dealership	New car dealership on Wayzata Blvd	Under construction
Crest Ridge Corporate	New office--Building 1	Under construction
Co Rd 101/Mtka Blvd	Landscaping from road reconstruction	Starts week of 5/11/09
Shady Oak Road	Reconstruction from Bren Rd to Co Rd 3	Ongoing
Shady Oak Road	Reconstruction from Co Rd 3 to Hwy 7	No update



**FORECLOSURES**

- 2006
- 2007
- 2008
- 2009

# CROWN RIDGE ADVANTAGE CENTER

April, 2009

**Staffing Transition**-In early January the Advantage Program Manager, Karen Libra, left her position with CommonBond Communities to pursue a new area of Social Work. Temporarily, Mary Cordell, an Advantage Services Coordinator at a CommonBond senior community filled in. In March, the new Advantage Program Manager, Brenda Haugh, began her service at Crown Ridge. Brenda has her Masters of Education with an emphasis on Youth Development and has worked in several K-12 youth out of school programs in the West Metro. Brenda will spend the Spring meeting Crown Ridge families and community partners.

## **Winter Programs**

- **Study Buddy Program** has 19 youth meeting weekly with adult mentors. The program year is going great and we are pleased to be able to serve more youth than in years past.
- **Campfire Youth Club** is held in Apt 107 on Wednesday afternoons and is staffed by the CampFire Program. Youth from Kindergarten to 8<sup>th</sup> grade attend and participate in games, outdoor activities and crafts.
- **Oak Knoll Pre-School** continues to provide scholarships to Crown Ridge youth. Late this Fall a new youth began the program making a total of 5 youth attending from Crown Ridge.

## **Adult Programs**

- **Career Advantage/Assisted Placement** – CommonBond’s employment program offers their program at two main locations, one in Minneapolis and one in Saint Paul. Crown Ridge residents are encouraged to join the program and receive bus fare to travel to the Minneapolis location. On site support is available on work readiness tasks and job search between trips to the main Minneapolis location as well as to those residents who do not wish to participate in Career Advantage.
- **Individual Services** — The Advantage Program Manager assists residents with housing advocacy, short term counseling to address personal and neighbor issues, community resource referrals to other agencies (food, emergency assistance).
- **Monthly Newsletter and Calendar**

## Residents

	<u>January 2009</u>	<u>April 2009</u>
# of families	43	41
# of total residents	132	130
# of youth	60	58
Ages 0-5	29	28
Ages 6-12	22	22
Ages 13-18	9	8

\$25, 992average income

## Partners

Camp Fire USA	Minnetonka Parks and Rec
NW YMCA	Minnetonka Police and Fire Departments
City of Minnetonka	Pohlad Scholarships
First Book	Reading is Fundamental
Hopkins Family Resource Center	Ridgedale Library
Hopkins School District	Second Harvest Food Bank
ICA Food Shelf	Tanglen Elementary

# Crown Ridge Occupancy

As of April, 2009

<b>Total Units</b>	Hollman	Home	Tax Credit	Market	
1 Bedroom	N/A	3	4	5	
2 Bedroom	3	7	15	11	
3 Bedroom	3	4	6	3	
	6	14	25	19	64

<b>Occupied Units</b>	Hollman	Home	Tax Credit	Market	
1 Bedroom	N/A	3	4	5	
2 Bedroom	2	4	13	7	
3 Bedroom	3	5	5	2	
	5	12	22	14	53

<b>Units Occupied with Vouchers</b>	Hollman	Home	Tax Credit	Market	
1 Bedroom	N/A	2	2	1	
2 Bedroom	1	2	1	2	
3 Bedroom	0	1	3	0	
	1	5	6	3	15

<b>Hollman Units:</b>	Pay 30% of their income for rent		
<b>Home Units:</b>	Income is 50 or 60% of median income and rent is considerably lower than		
<b>Tax Credit Units:</b>	Income is 50 or 60% of median income and rent is lower than market, but		
<b>Market Units:</b>	Pay a market rent comparable to other complexes in the area.		

We are currently occupied at 88%

LaToya Owens, Property Manger  
Pam Schmidt, Regional Manger

**NOTES:**  
•New property manager as of February 2009



## Chasing the American Dream: What does it mean today?

**NOTE: NEW LOCATION FOR MAY & JUNE PROGRAMS ONLY**

**Program Date: May 27, 2009**

The American Dream initially meant that " ... life should be better and richer and fuller for everyone, with opportunity for each according to ability or achievement." (James Truslow Adams, 1931) After World War II, the meaning of the Dream began shifting away from something to work toward to an entitlement that also includes owning your own home.

Over the past two years, many Americans have lost their homes and that trend is expected to continue for some time. What does this mean for the American Dream as we have come to know it - does it remain the same or do we redefine it for the 21st century?

Join the Sensible Land Use Coalition as we look at:

- The historical background of housing policy, from the top down
- The impact of housing policy on housing tenure over time
- The crash of the housing bubble and why it happened
- The long term economic impact of our current housing patterns
- The future of housing need and how we get there.



**Caren Dewar**  
Executive Director,  
Urban Land Institute  
Minnesota



**John Adams**  
University of Minnesota



**Barbara Senness**  
Planning Manager,  
City of Plymouth

[Read their bios](#)

Program date: May 27, 2009

Registration begins: 11:15 am

Luncheon: 11:30 am - 1:30 pm  
Cost: \$25/full-time student  
\$38/member  
\$48/nonmember  
\$10 additional at the door  
Location: [Park Plaza Hotel Bloomington](#)  
Continuing education: 1.0 hour CRE and 1.0 hour AICP CM applied for

[Register now](#) online and pay with Visa or Mastercard.

[Download](#) registration form at [www.sensibleland.org](http://www.sensibleland.org) mail to:  
PO Box 284, Excelsior, MN 55331

### PROGRAM OBJECTIVE

This program will examine housing policy and its correlation to the loss of housing ownership over the last few years. The presenters will explore the government's role in housing policy. The program will include housing tenure including an historical background of housing policy over time. The presenters will review the crash of the housing bubble and the long term impact of our current housing patterns. Finally an analysis of what will housing in our cities look like in the future?

**Deadline for registration is Tuesday, May 26, 2009**

**Questions? Call Pat Arnst at 952.474.3302 or e-mail [admin@sensibleland.org](mailto:admin@sensibleland.org)**

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