

**MINNETONKA PLANNING COMMISSION
MINUTES**

MARCH 18, 2010

1. CALL TO ORDER

Acting Chair Adams called the meeting to order at 6:30 p.m.

2. ROLL CALL

Commissioners A. Thomas, Walker, Lehman, Sjeklocha, and Adams were present. Cheleen was absent.

Staff members present: Community Development Director Julie Wischnack, City Planner Loren Gordon, Principal Planner Susan Thomas, Planner Jeff Thomson, Planning Technician Stephanie Scott-Sims, City Attorney Desyl Peterson, and Assistant City Engineer Will Manchester.

3. APPROVAL OF AGENDA: The agenda was approved as submitted with additional information provided in the change memo dated March 18, 2010.

4. APPROVAL OF MINUTES: March 4, 2010

Sjeklocha moved, second by Walker, to approve the March 4, 2010, meeting minutes as submitted.

A. Thomas, Walker, Lehman, Sjeklocha, and Adams voted yes. Cheleen was absent. Motion carried.

5. REPORT FROM STAFF

Gordon announced that the next planning commission meeting will be April 1, 2010.

6. REPORT FROM PLANNING COMMISSION MEMBERS: None

7. PUBLIC HEARINGS: CONSENT AGENDA: None

8. PUBLIC HEARINGS

A. Amendment to the telecommunications ordinance. (97031.10a)

Acting Chair Adams introduced the proposal and called for the staff report.

Peterson reported. She recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Lehman asked if he understood correctly that the proposal would be a prelude to a broader revision of the right-of-way ordinance. Peterson clarified that the proposal would be a companion to another ordinance. The other ordinance would not amend anything related to land use regulations, so it would only be reviewed by the city council. It has been introduced by the city council. Staff has met with utility representatives that utilize Minnetonka's rights of way and received feedback which prompted changes. Utility representatives have been quite accepting of the ordinance because they realize it is modeled after Plymouth's ordinance.

In response to Lehman's question, Peterson found no reason for Lehman to recuse himself from participating in discussion and acting on the proposal.

A. Thomas asked what would happen if an applicant applies to locate ground-mounted equipment near a body of water. S. Thomas responded that the rules and regulations of the wetland and shoreland ordinances would apply. She recalled a project that occurred on Scenic Heights Drive several years ago with a monitoring station. It did need a wetland-setback variance. The wetland regulations have been applied to electrical/utility boxes.

Sjeklocha asked if businesses would be informed. S. Thomas explained that if an electrical company would like to install equipment in a city right of way, including ground equipment, the permit would be reviewed by staff and need staff approval. Public notice has not been provided in the past when a utility company is working in a utility easement. Sjeklocha was curious if calls are received at city hall from residents wondering what work is being done. S. Thomas answered affirmatively. The information is provided to residents as they phone in if staff has the information. In regard to the proposal, staff would be either issuing a permit, so staff would have that information, or notice of a public hearing would be mailed if ground-mounted equipment would be part of an application.

Peterson clarified that the electric, gas, and phone companies do not need to get permits to put a box in a right of way. Telecommunications companies, according to the proposed ordinance, would have to go through the public process in order to locate a box in a right of way.

Acting Chair Adams was surprised by the ordinance. He asked how common it is to locate a tower in a right of way. Peterson responded that it will potentially become more common. The city has an applicant currently who would provide

Wi-Fi broadband service. Unlike the traditional telecommunications providers, this would only provide broadband. More locations will be needed to provide that service. In Minnetonka, because it is primarily a residential community, it will be more difficult to find locations in nonresidential zones. It is likely that applicant would need one or two in a right of way. There may be more of that as the need and demand rises.

The public hearing was opened. No testimony was submitted and the hearing was closed.

Lehman moved, second by Sjeklocha, to recommend that the city council adopt the ordinance on pages A1– A7 of the staff report.

A. Thomas, Walker, Lehman, Sjeklocha, and Adams voted yes. Cheleen was absent. Motion carried.

B. Amendment of the existing conditional use permit to increase the maximum occupancy for Augustana Emerald Care at 13401 Lake Street Extension from 36 residents to 40 residents. (94031.10a)

Acting Chair Adams introduced the proposal and called for the staff report.

Sims reported. She recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Lehman asked what factors influenced restricting the number of residents to 36 patients in the first conditional use permit. Sims explained that related to the number of units available. There are 36 apartments in the 3 buildings. At that time, there was 1 person for each apartment. Residents are requesting to share a room to provide a more cost-effective alternative. The proposal would not require a change in the amount of required parking.

Walker asked if a state license is needed to allow four additional beds. Sims referred that question to the applicant.

Cathy Cobb, representing Augustana Emerald Care, applicant, thanked staff for the opportunity to speak. She felt Sims' report was a good overview. She was available to answer questions. She explained that the facility would not need an additional license to add four residents. The facility is registered with the State of Minnesota as a Class F homecare license as well as a boarding license.

Walker asked if the facility has plans to continue expansion within the next five years. Ms. Cobb stated that the property is land locked and would not accommodate an addition. As the market continues to change, the facility may change its configuration.

The public hearing was opened. No testimony was submitted and the hearing was closed.

Acting Chair Adams visited the site and found it to be the nicest memory care facility he has visited.

Walker supported the request. It is very reasonable. It would not impact parking. The facility is one of the best neighbors a resident could have.

Sjeklocha moved, second by Walker, to recommend that the city council adopt the resolution on pages A84-A87 of the staff report. This resolution approves an amendment to the conditional use permit for Emerald Crest of Minnetonka to increase its maximum occupancy from 36 residents to 40 residents. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) Prior to issuance of a building permit, record this resolution with the county. A copy of the recorded resolution must be returned to the city.
- 2) The development shall have a maximum occupancy of 40 residents and be limited to persons with Alzheimer's or other memory loss conditions.
- 3) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 4) Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
- 5) The applicant must agree to the above conditions in writing.

A. Thomas, Walker, Lehman, Sjeklocha, and Adams voted yes. Cheleen was absent. Motion carried.

C. Conditional use permit with variances for El Toro Mexican Restaurant at 12608 Wayzata Boulevard. (92026.10a)

Acting Chair Adams introduced the proposal and called for the staff report.

Thomson reported. He recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Lehman noted that the site meets parking requirements and exceeds them by almost 50 percent. Thomson added that the applicant has a parking agreement with Morrie's to allow employees and customers to park in the El Toro lot. Conditions of approval require the site to maintain 78 parking stalls dedicated for restaurant use and outside sales and/or storage would be prohibited.

Walker asked if the proposed signs would meet ordinance requirements. Thomson answered that no wall signs have been proposed at this time. The wall signs would need to meet ordinance requirements.

The public hearing was opened. No testimony was submitted and the hearing was closed.

Lehman moved, second by A. Thomas, to recommend that the city council adopt the resolution on pages A8-A13 of the staff report. This resolution approves a conditional use permit for 3,915-square-foot, freestanding, sit-down restaurant at 12608 Wayzata Boulevard with the following variances:

- Variance from the minimum seating capacity requirement from 150 to 138 seats.
- Variance from the conditional use permit standard requiring that a freestanding restaurant be part of an overall master development plan consisting of more than one structure.
- Variance from the conditional use permit standard requiring that a freestanding restaurant be consistent and compatible with other structures in a master development plan.

Approval is based on the following findings:

- 1) The proposal meets the required conditional use permit standards.
- 2) The proposal meets the required standards for a variance, because:

- a. **UNDUE HARDSHIP & UNIQUE CIRCUMSTANCE:** There is a practical difficulty due to the existing conditions of the site. There is very limited opportunity to incorporate the existing building into a master development plan. Doing so would require a significant redevelopment of the property and assemblage of additional property. This is not common to all similarly situated properties.
- b. **INTENT OF THE ORDINANCE:** The proposal would be consistent with the intent of the zoning ordinance. The intent of the ordinance is to limit the development of freestanding fast food-type restaurants in the I-394 corridor. The proposed restaurant would be a full service, sit down restaurant with on-sale liquor, which is similar to other restaurants in the corridor.
- c. **NEIGHBORHOOD CHARACTER:** The proposed restaurant would not have any adverse impacts on surrounding properties. The site is located with a commercial corridor and is adjacent to other commercial uses. The sit down restaurant would also be the same use that operated on the property for over 30 years prior to 2008.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit, record this resolution with the county. A copy of the recorded resolution must be returned to the city.
- 2) The property must maintain a minimum of 78 parking stalls dedicated for use by the restaurant. These stalls must not be encumbered by a cross-parking arrangement or other agreement.
- 3) Exterior display, sales or storage of merchandise, consumer goods or business related items is not permitted.
- 4) Exterior signage must comply with the approved sign plan for the property.
- 5) The restaurant must obtain all required liquor and food licenses from the city.
- 6) The conditional use permit shall expire if normal operation of the use has been discontinued for 12 or more months. Time shall be calculated as beginning on the day following the last day in which the use was in normal operation and shall run continuously thereafter.

- 7) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 8) Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
- 9) The applicant must agree to these conditions in writing.

A. Thomas, Walker, Lehman, Sjeklocha, and Adams voted yes. Cheleen was absent. Motion carried.

D. Items concerning United Health Group, Phase II, at 9703 Data Park Drive. (06060.09b)

Acting Chair Adams introduced the proposal and called for the staff report.

Sjeklocha recused herself from discussion and taking action on the item.

Gordon reported. He recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Lehman asked Gordon to define "vacation" when used in regard to land use. Gordon obliged. The city would retain easements on each property for drainage, utilities, and trails.

Lehman questioned the accuracy of the rendering. The site plan had a more noticeable jog. Gordon said that the rendering provides a fairly accurate representation of the scale and mass of the two buildings.

Lehman asked if Edina is contributing to the project. Gordon explained that the Interstate 169/Bren Road project is a Minnetonka project. The city has secured a variety of funding sources including state and local. Part of the local contribution of the project is coming from the trip generation model in Opus area ordinance. Minnetonka and Edina are coordinating construction efforts together but Edina has no financial contribution to the project because it is the Minnetonka trips that are necessitating the expansion. Wischnack added that the trip distribution shows that few Edina motorists travel over the bridge into Opus.

Walker asked if the south bound exit has two lanes. Gordon explained the traffic pattern. The overpass would take 9 months of construction. The bridge itself would be closed for 4 months.

Walker asked if the current storm sewer system is adequate for additional runoff. Gordon explained that the proposal is sized appropriately for the project and meets city standards.

Walker stated that the whole issue of vacating two blocks of roadway is unique. Gordon stated that, historically, Minnetonka has not given up rights of way very often. When there is a request, it must be for a good reason. There are benefits to vacating the right of way, mostly from a storm water standpoint because of the liability necessary for long-term maintenance. There is no ability to connect the site. The right of way is different from others in the city. Staff would not advocate for this too often, but under the circumstances it could make sense.

Acting Chair Adams mentioned that the city would retain rights to use the property for certain purposes. Gordon agreed that the drainage and utility easements would be maintained which is standard practice. A trail easement has also been included.

Acting Chair Adams' initial reaction was that there would be more parking stalls than necessary. He asked for help with interpretation of the percent of population number in the last column. He and Gordon reviewed the percent of stalls in use. Gordon noted that there is additional population anticipated for the 9900 and 9701 buildings.

Acting Chair Adams stated that only 96 of the commuters take a bus or carpool. Gordon said that the site does not have real frequent bus service and is not on a major line. A transfer from Hopkins is necessary to get there. It does not run on a regular schedule. Light rail is an opportunity in the future. Over time, he hoped that the amount of vehicle use would decrease.

Acting Chair Adams recalled a utility located on a hill. Gordon said that private easements allow access to the tower and the access for the utilities for the tower as well as the utilities that serve Comcast. There are revisions that will need to be made for some of the private easements.

Dennis Spalla, representing United Health Group (UHG), 9900 Bren Road East, applicant, stated that the proposal would look like Phase One. The buildings would function a little differently inside because the parking area would have a different impact on the Phase Two building. The project would seek LEED certification. In the future, he foresaw ordinances requiring LEED criteria. He could not presume to reach a particular level, but the applicant is determined to seek a high rating. The proposal is bound up in the city's infrastructure project.

UHG plans on beginning its project in 2010 before the bridge project begins construction. The bridge would be open before the completion of Phase Two. An occupancy permit would not be given to UHG without completion of the bridge. Each piece of each project would be bound together. This is a good time to build, create jobs, add tax value, and enhance the public and private environment. The result would be an excellent public and private partnership. That has been the case so far and he expects the positive relationship to continue.

Bill Blanski, design partner and vice president of HGA, Minneapolis, representing UHG, stated that it has been a delight working with staff. He provided a model to help answer foreground and setback questions. He was available for design and/or technical questions. He reviewed the differences between Phase One and Phase Two.

Acting Chair Adams appreciated the design doing a good job of taking into account the commissioners' concerns.

Walker asked Mr. Blanski to address the shadow study. Mr. Blanski explained the shadows that would be created by the proposal during typical conditions. Extreme conditions would last for a half hour in the morning and half hour in late afternoon. Walker saw a considerable shadow on the north side of the façade, walkway, and driveway during the winter solstice. Walker questioned how ice would be handled. Mr. Blanski said that precautions would be taken with design intentions that would be similar to Phase One. Phase One has not had issues with ice buildup or concern on the north terrace. It is a good question, but the site would be in good shape.

A. Thomas asked Mr. Blanski to comment on the green roof. Mr. Blanski explained that in order to increase open space and reduce the amount of hard surface on the site, one of the advantages of the modification would be that much of the parking underground would extend to the north of the footprint of the primary mass of the office building. There would be soil and structural capacity to be able to have shrubs, grass, and small trees. That is an amenity of the design. It would help with the goal to be in concert with the land on that side of the property. A. Thomas felt it would be a good idea and trusts the engineers to figure out the drainage and other issues. Mr. Blanski offered a tour when the project would be done.

Acting Chair Adams asked if special vegetation would be planted there. Mr. Blanski responded that the tree in the rendering is in the distance. There are select species of trees that would be planted.

Acting Chair Adams asked if the walkway would be ground level or elevated. Mr. Blanski stated that the plan currently has the walkway at grade with a cover.

Walker was confused by the schedule. The building would begin construction in 2010. He would like a timeline for both the building and bridge. Staging and parking could become an issue for UHG during that time. The velocity of traffic and orientation of trucks should be considered. He has an office in Opus. It would be good to understand for the commuters who work in Opus what to expect, especially if the projects would overlap. Wischnack explained that staff will meet with Opus property owners in April. The purpose of that meeting is to go over the issues Walker is addressing. Major excavation work would be done prior to the bridge being closed. That would be a big advantage. The staggered start time is going to help. The detour plans need to be finalized before the meeting takes place.

Acting Chair Adams asked how Opus would have access once the bridge closed. Wischnack explained the traffic pattern from Interstate 169. The entrance ramp would still be open during peak times.

The public hearing was opened.

Carolyn Peterson, 6960 Landford Court, Edina, stated that she appreciated the architect's efforts to minimize the shadow impact, but she and her neighbors would still be affected. When she wakes up and looks out her kitchen and living room windows, she sees the Phase One tower, parking ramp, and parking lot. The new construction would be a larger version. She requested steps be taken to mitigate light pollution. All of the buildings and parking structures are lit 24 hours every day. It is a nuisance. The noise during construction lasted from 5 a.m. to 9 p.m. or 10 p.m. six days a week. She requested the number of construction hours be minimized and a complaint line provided that can be used to contact someone regarding noise.

Gordon stated that the construction management plan would set the construction time from 7 a.m. to 10 p.m. The city's lighting code requires minimum levels at the property lines. Internal lighting usually does not cause regulation violations. Site lighting of driveways and such could be in violation.

Wischnack provided that when construction has been close to residential homes in the past and there are issues, the construction management plan has been posted on the city's website so neighbors are able to read the requirements. It would also list contacts for the city and UHG. That was not utilized for Phase One.

Mr. Spalla will check to see if it is necessary to keep lights on all the time at the Phase One building. The company that manages the building has specific key performance indicators that require them to show how they save energy and money. That is a key facility. He would look into it and advise staff what can and will be done.

Mr. Spalla noted that the 9701 building will be full by the end of the year. He did not see an issue with Phase Two reaching its capacity within a couple years due to a new block of business. He explained how tenants would be moved around to different floors. The shuttle culture has helped minimize traffic movement.

Acting Chair Adams' main concern is that the percent of the population driving to work all alone in a car is pretty high. He encouraged UHG to provide incentives for commuters to take alternate means of transportation. Mr. Spalla said that the traffic demand management plan has been presented to staff. The plan utilizes 15 or 18 methods to try to reduce rush hour traffic. The new building would have 88 bike stalls.

No additional testimony was submitted and the hearing was closed.

Lehman asked what the construction window would be regarding staging or bringing trucks in advance of the start time of construction. Gordon explained that the construction management plan would deal with activities on the site. Deliveries would be scheduled during non-peak times. Idling of trucks happens with every construction project. It is an inconvenient occurrence. Lehman wanted it on record that if truck idling occurred before 7 a.m. that a complaint should be made.

Walker moved, second by A. Thomas, to recommend that the city council approve the following with items included in the change memo dated March 4, 2010:

**MASTER DEVELOPMENT PLAN AMENDMENT
SITE AND BUILDING PLAN**

Amendment of the master development plan approving final site and building plans for United Health Group Data Park Expansion Phase II at 9703 Data Park Drive (See pages A133-A141 of the staff report). Approval includes the following variances:

- 1) a building setback variance to the north property line from 100 feet to 35 feet;
- 2) a building setback variance to the east property line from 100 feet to 9 feet;
- 3) a building setback variance to the west property line from 100 feet to 35 feet for the main building and 0 feet for the enclosed walkway connection; and
- 4) a floor area ratio variance from 100% to 154%.

Approval is based on the following findings:

- 1) The proposal would meet all ordinances and standards for a site and building plan approval.
- 2) The proposal would meet the required standards for a variance, because:
 - a. **UNDUE HARDSHIP:** The variances allow the development of a cohesive campus master plan for the Data Park Expansion. Without the granting of the variances, the campus master plan would not include many project innovations.
 - b. **UNIQUE CIRCUMSTANCE:** The north building setback variance would be to a property occupied by the applicant which is part of the overall campus. The buildings on that parcel to the north exceed the minimum setback requirements. The east building setback is adjacent to the TH 169 right-of-way which acts as a buffer to properties directly east of the site. The east building setback variance is internal to the Data Park campus which is recognized in the master plan. Comprehensively, the building setback variances allow the reorientation of the building along an east-west axis which provides an increased opportunity for daylight and solar gain reducing the building's overall energy demands.

The floor to area ratio variance is mitigated by the roadway improvements and impervious surface coverage which is below the maximum allowed by city code. Incorporation of underground parking further minimizes setback variances and increases overall green space in the site.

- c. NEIGHBORHOOD CHARACTER: The proposed variances would not negatively impact neighborhood character. The setback variances allow the building to be located in a more harmonious position in relation to the Phase I building which positively impacts the overall character of the neighborhood.

Approval of the site and building plans is subject to the following conditions:

- 1) Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - Site plan date-stamped March 4, 2010
 - Grading plan date-stamped March 4, 2010
 - Landscaping plan date-stamped March 4, 2010
 - Building elevations date-stamped March 4, 2010

- 2) A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit application has been submitted, reviewed by staff, and approved.
 - a. The following must be submitted for the grading permit to be considered complete.
 - (1) Final site, grading, drainage, utility and erosion control plans must be submitted for staff approval. Revised plans must be submitted for approval after the issues below have been addressed prior to construction of the site improvements. All sheets must be signed by a professional engineer or architect as applicable, licensed in the state of Minnesota. Based on the plans received, the following was noted:
 - C100- Existing Conditions
 - Show all existing easements.

 - C200 – Site Demolition Plan
 - “Demolition Note 5” appears to call out a previous version of the Temporary Traffic Control Zone Layouts Field Manual. Revise.

 - C300 – Site Layout Plan
 - Provide detail/standard plate for curb and gutter type.

- Provide additional information for “General Notes for Layout” note (e).
- Provide plan for any proposed signage or striping revisions to Data Park Drive and site areas.

C401 – Erosion Control Plan

- Confirm all erosion control meets current NPDES and regulatory agency requirements.
- “Keynotes” on the plans reference city details. All applicable city details must be included in the plan set.
- Provide datum used on plan.
- An estimate of the volume of material being moved within the site, onto the site, and away from the site should be included in the SWPPP. The SWPPP does state that the entire site will be disturbed; however the volume of material to be moved should be included in the SWPPP.
- Provide soil stockpile locations on the plan.
- The Erosion Control Plan note #12 states that temporary vegetative cover will be placed within 14 days as required by the city’s ordinance. The SWPPP states that areas not worked for 21 days will be stabilized within 14 days. The SWPPP should be updated to agree with the Erosion Control Plan, and state that any areas not worked for 14 days will be stabilized.

C500 – Site Utility Plan

- Gate valves must be installed on Blue Circle Drive at Data Park Drive and approximately 700-ft south of Data Park Drive to separate city water lines from private water lines created from the vacation of Data Park Drive.
- As discussed previously, an alternative to bypass the existing storm sewer system along the east side of the property, extending south through the Comcast property, must be explored. Provide alternative plan for review.
- Core drill must be provided on connections to all existing sanitary manholes.

- Provide invert elevation for the proposed 8-inch sanitary sewer service. Confirm 8-inch service line capacity is adequate for proposed demands.
- Confirm all proposed watermain crossings do not conflict with existing or proposed storm sewer.
- City of Minnetonka Fire Department must confirm hydrant placement and fire protection is adequate.
- Label all storm sewer casting types.
- Consider drain tile at low point catch basins.

Stormwater Management

The stormwater review was based on the UHG Data Park Expansion Phase II Plans revised March 4, 2010, the UHG Data Park Expansion Phase II Stormwater Management Plan revised March 4, 2010, and the UHG Data Park Expansion Phase I Storm Water Management Calculations dated November 20, 2006.

- Runoff rates and volumes need to be restricted to the pre-development conditions. The Phase II Stormwater Management Plan (March 4, 2010) shows that rates and volumes increase with the construction of Phase II when compared to Phase I, however it is noted in the Plan that the overall rates and volumes decrease with the construction of Phases I and II when compared to predevelopment conditions. The rates and volumes calculated in the Phase I Storm Water Management Plan (November 20, 2006) for predevelopment conditions are based on a 12.94 acre watershed and the rates and volumes for proposed conditions are based on a 10.02 acre watershed. If the 2.92 acres has been diverted to the west instead of the south, provide calculations showing that the rates and volumes leaving the site to the west have not increased with Phase I and Phase II construction.
 - Provide detailed maintenance plan for all stormwater management including tank operations. Submittal must include irrigation plan and tank connections to full irrigation system.
- (2) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to comply with grading

permit, landscaping requirements, and to restore the site. The developer may submit one itemized letter of credit, if approved by staff. The city will not release or reduce the letters of credit or cash escrow until work has been completed according to the plans approved by the city.

- (3) A construction management plan. The plan must be in a city approved format and must outline minimum site management practices and penalties for non-compliance.

b. Prior to issuance of a grading permit:

- (1) Submit an electronic PDF copy of the plans and specifications.
- (2) Submit two full size and three 11x17 sets of construction drawings and three sets of project specifications.
- (3) Submit all required administration and engineering fees.
- (4) Submit a SWPPP.
- (5) Install a temporary rock driveway, erosion control, tree and wetland protection fencing for staff inspection. These items must be maintained throughout the course of construction.
- (6) Permits may be required from other outside agencies including, but not limited to Hennepin County, the Nine Mile Creek Watershed District, and the MPCA. It is the applicant's and/or property owner's responsibility to obtain any necessary permits. Copies of all required permits must be submitted to the city.

3) Prior to issuance of a building permit:

a. Submit the following items for staff review and approval:

- (1) A landscaping and tree mitigation plan. The plan must meet minimum landscaping and mitigation requirements as outlined in ordinance. However, at the sole discretion of natural resources staff, mitigation may be decreased based on any of the following: the health of trees removed; the

ability to appropriately install trees and other shrubbery given existing vegetation and/or topography.

- (2) A letter of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost of all required landscaping.
- (3) An illumination plan for staff approval.
- (4) All required hook-up fees.
- (5) Evidence of the release of the obsolete access easements to 9705 Data Park Drive (Comcast site) and a copy of a deed for a new access easement to 9705 Data Park Drive for the relocated access drive.
- (6) Payment for public and on-site traffic signs and installation, as required by the city engineer.
- (7) Record this ordinance with the county.
- (8) The project architect must verify the required volume of water for the building and ensure that there will be adequate fire flow to the building.
- (9) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for non-compliance. If the builder is the same entity doing grading work on the site, the construction management plan submitted at the time of grading permit may fulfill this requirement.
- (10) Cash escrow in an amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge:
 - The property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and

- If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.
- (11) Payment of fees as calculated under the Opus Area Overlay Ordinance.
 - (12) The following conditions must be completed before occupancy of the Phase II building.
 - a) Bren Road West must be expanded to three westbound lanes from the Highway 169 interchange to Green Oak Drive.
 - b) The Highway 169 bridge over Bren Road must be widened and improved, as required by the city and MnDOT, including the addition of a free-right-turn lane from eastbound Bren Road to southbound Highway 169.
 - c) Addition of a third lane on Bren Road East, from Green Oak Drive to Data Park Drive, including widening the one-lane drive that connects Bren Road East to Data Park Drive.
 - (13) The north-south storm sewer easement must be vacated, subject to city council approval.
 - (14) Implementation of an alternative storm water system design if feasible and agreeable to United Health Group, Comcast Cable, and the city.
 - (15) Vacation of Data Park Drive subject to the following conditions:
 - a) The city will retain easements over the vacated right-of-way for drainage, utilities and trail purposes.
 - (16) An electronic CAD file or certified as-built drawings in microstation or DXF and PDF format.

- 4) The property owner is responsible for replacing any required landscaping that dies.
- 5) All rooftop and ground-mounted mechanical equipment, and exterior trash and recycling storage areas, must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.
- 6) Construction must begin by December 31, 2011, unless the planning commission grants a time extension.

CONDITIONAL USE PERMIT

Recommend that the city council approve the resolution on pages A142–A144 of the staff report. This resolution approves a conditional use permit for Phase II UHG Data Park Expansion at 9703 Data Park Drive. Approval is based on the following findings:

- 1) The proposal would meet the general conditional use permit standards as outlined in city code.
- 2) The proposal would meet minimum engineering requirements.

RIGHT-OF-WAY VACATION OF DATA PARK DRIVE

Recommend that the city council approve the right-of-way vacation of Data Park Drive as described in Exhibit A.

Approval is based on the following findings:

- 1) Data Park Drive does provide a benefit to the general public for transportation purposes.
- 2) Data Park Drive is designed to public street standards. Vacation of public use would not diminish the ability for adjoining properties to be provided with continued access with the recording of cross-easement documents.
- 3) Vacation of the Data Park Drive would allow the city to vacate a connected public storm water system which predominantly serves private development.

VACATION OF EXISTING PUBLIC UTILITY EASEMENTS

Recommend that the city council approve the vacation of existing public storm sewer utility easement as described in Exhibit A.

A. Thomas, Walker, Lehman, and Adams voted yes. Sjeklocha recused herself. Cheleen was absent. Motion carried.

Gordon noted that the items are tentatively scheduled to be reviewed by the city council at its meeting on April 5, 2010.

9. ADJOURNMENT

Sjeklocha moved, second by A. Thomas, to adjourn the meeting at 8:25 p.m. Motion carried unanimously.

By: _____
Lois T. Mason
Planning Secretary