

4854 France Avenue South
Edina, MN 55410-1756

Friday, November 12, 2021

Via email to Shanna.Sether@minneapolismn.gov

City of Minneapolis
ATTN: Shanna Sether
Community Planning and Economic Development
505 4th Avenue S, #320
Minneapolis, MN 55415

RE: Property Location: 4901, 4905, 4909, 4913, 4915, 4917, and 4921 France Ave S
("the JMS proposal")
Project Name: France 50 Mixed use Development
Applicant: France 50 LLC (JMS Companies, operating under the business
name France 50, LLC ("the Applicant"))
PLAN number: PLAN13238
Assigned Staff: Shanna Sether, Principal City Planner, (612) 673-2307
CPC Agenda Item #9: November 1, 2021

Dear City Council,

I. TO APPEAL THE PLANNING COMMISSION DECISION [SEE ALSO THE ADDENDUM FOR TWO CORRECTIONS TO THE RECORD OF THE PLANNING COMMISSION VOTE.]

1. I write this letter to appeal the Minneapolis Planning Commission's November 1, 2021 decision to approve the above-referenced commercial redevelopment proposal as specified in the Application. The Planning Commission voted to approve the staff recommendations for all five Application items, Items A-E, as described in the attached Meeting Minutes, Agenda Item #9. Item A is a rezoning request that is governed and restricted by Minnesota Statutes. The vote, and the hearing itself, were defective.

II. INTRODUCTION

2. In a succession of responsibility, actions by one party premise and can require further actions by others, and can thereby influence the type of actions that successive parties take in response. In certain situations, improper actions by one party, may lead a succession of parties to procedurally participate in the improper action and thereby advance the motives on which the impropriety was based. If a police officer, for example, were to file a false report, then it is at times possible, that such a false report could lead to a prosecution effort, and an innocent person could even be wrongfully convicted of a crime that they did not commit. And I think most people, those without a twisted, vested interest in a wrongful conviction, those without, for example, a direct profit motive, a job security concern, or aspiring to that feather in the cap for the next promotion, would hope that a wrongful conviction would be exposed as such and overturned, and, likewise, I am hopeful that you will overturn the decision of the Planning Commission.

3. During the past year and a half, there has been much discussion about the conduct of police. But what about other employees and government officials? Does their conduct not matter? Are they exempt from conforming to ordinance and law? What if the leaders of a unit of local government have created a climate of disregard for ordinance and statute, a culture that encourages staff toward impropriety, to evade and flout statute and ordinance, a culture that extends the tentacles of impropriety out into the community, encouraging developers to build upon a foundation of impropriety, for example, by additionally submitting false and misleading statements and images into the public record, in order to capitalize on the actions of staff and further advance their personal goals at the expense of neighbors, neighborhoods, and community? Do the lives of those in the community who are detrimentally impacted by such conduct, do their lives, their homes, and their neighborhoods, not matter, so long as it is not the police whose conduct is in question? Such is the problematic climate of conduct—or misconduct—within the City of Minneapolis, as related to its planning function.

4. The Plan as proposed, a commercial redevelopment, cannot be enabled without a rezoning. Minnesota Statutes apply to the subject site and require that a rezoning conform to comprehensive plan guidance--in this case, commercial, but which rezoning to commercial is not permitted unless written consent has been obtained from the owners of two-thirds of the properties located within 100 feet of the subject site ("Statutory Consent").

5. By accepting the Application as complete, the zoning administrator has erred: first, by approving the request to rezone to a residential zoning district in spite of a statutory requirement to rezone to commercial, and second, by processing the application in the absence of Statutory Consent.

6. Because the zoning administrator unlawfully accepted the application as complete, the City of Minneapolis has been unlawfully moving the application through the approval process, which most recently included the November 1, 2021 Planning Commission Public Hearing. And because the Planning Commission's decision was falsely premised on an unlawful representation that the Application is complete, the Planning Commission's decision to approve the Application was, therefore, obtained improperly, and the decision is defective.

III. ACTION REQUESTED OF CITY COUNCIL

7. In order to correct the defects of the present situation, and bring the City of Minneapolis into compliance with State Statutes, the City Council must overturn the Planning Commission decision, and must disqualify the Application from consideration.

IV. TABLE OF CONTENTS

I. TO APPEAL THE PLANNING COMMISSION DECISION [SEE ALSO THE ADDENDUM FOR TWO CORRECTIONS TO THE RECORD OF THE PLANNING COMMISSION VOTE.] 1

II. INTRODUCTION 1

III. ACTION REQUESTED OF CITY COUNCIL..... 2

IV. TABLE OF CONTENTS..... 3

V. THE APPLICATION, BRIEFLY 6

VI. SITE GOVERNANCE BY THE CITY OF MINNEAPOLIS 6

 A. The Previous Minneapolis Comprehensive Plan Guidance Supported The Existing Singles And Duplexes On The Subject Site (2030 Plan, Adopted 2009)..... 6

 B. Consistent With Existing Buildings, The Current Zoning Is Residential..... 6

 C. As Applicant was accumulating lots at Subject Site, Minneapolis Assigned Commercial Guidance To The Subject Site In Its New Comprehensive Plan, “Mpls 2040” (the 2040 Plan, Adopted 2019)..... 7

 i. See Mpls 2040, Appendix B, FIGURE 6: MINNEAPOLIS 2040 COMMERCIAL LAND USE COMPARISON 2010 VS. PROPOSED, on PDF Page 7 (Text Page is B-6.)..... 7

 ii. Link to Appendix B:
 https://minneapolis2040.com/media/1480/pdf_minneapolis2040-just-app-b.pdf 7

 iii. See screenshots, below, from Figure 6 (map). 7

VII. SITE GOVERNANCE BY THE STATE OF MINNESOTA 8

 A. Statutes Require A Rezoning To Conform To Comprehensive Plan Guidance (In This Case, Commercial). 8

 B. The State Legislature Placed Special Restrictions On The Rezoning To Commercial Of Sites Currently Zoned Residential, And Vests Proximal Property Owners With Certain Rights. 8

 i. Written consent required (Statutory Consent). 8

 ii. Commercial developments bring commercial levels of and types of activity that may be inconsistent with and incompatible with the surrounding area. 8

 iii. Statutory Consent protects intact neighborhoods..... 9

VIII. CITY OF MINNEAPOLIS REQUIREMENTS IN RESPONSE TO STATUTES 9

 A. Zoning Code, Sect. 525.140 (B) (3): Application Required To Conform To Law..... 9

B.	Zoning Code, Sect. 525.260 (1): Application Required To Conform To Statutory Consent. (Quoted.)	9
C.	“Zoning Application, Petitions And Affidavits Packet” Contains Forms For Statutory Consent.	9
i.	Link: https://www2.minneapolismn.gov/media/content-assets/www2-documents/business/Zoning-Application-Petitions-and-Affidavits-Packet.pdf	9
ii.	Instructions on Page 1, (4) (b): No rezoning, no public hearing, without Statutory Consent (Quoted text below.)	9
iii.	Page 3 of packet is devoted to the matter of Statutory Consent. (See screenshot of partial page, highlighting added to table.)	10
iv.	On Page 3, Minneapolis classifies zoning districts in response to MS 462.357, differentiating Residential, Commercial, and Industrial zoning (Quoted.)	10
IX.	DOES EVASION ACTUALLY DEFEAT MN STATUTES? DESIGN OF MINNEAPOLIS ZONING CODE ENABLES COMMERCIAL DEVELOPMENT IN DISTRICT CATEGORIZED AS “RESIDENTIAL” (OR2-HIGH DENSITY OFFICE RESIDENCE DISTRICT), THUS ENABLING THE EVASION OF STATUTORY CONSENT.	11
A.	How Is The JMS Proposal For 4901-21 France Not Commercial? It Would Be Nearly Identical In Size And Scope To Nolan Mains In Edina On A Per Acre Basis.	11
i.	Nolan Mains 3925 Market St:	11
ii.	The JMS proposal for 4901-4921 France Ave S is nearly the same!.....	11
B.	How Is The JMS Proposal For 4901-21 France Not Commercial? It Would Have A Nearly 50% Greater Housing Unit Density Than 5011-15 France, And Less Than 1% Difference In Commercial Density.	12
i.	5011-5015 France:.....	12
ii.	The JMS Proposal for 4901-4921 France:.....	12
C.	How Is The JMS Proposal For 4901-21 France Not Commercial? 4601-4621 Minnehaha Has 3.5x The Housing Unit Density, But, Regardless, Both Have Commercial Numbers Of Dwelling Units, And 4901-4921 France Has Nearly 3x The Commercial Density, And They Are Nearly The Same Height.	12
i.	4601+4617+4621 Minnehaha: City Attorney’s Office stated that Statutory Consent was satisfied for rezoning from Residential (R2B) to Commercial (C3A).	12
ii.	The JMS Proposal for 4901-4921 France:.....	13
X.	LAUNDERING A COMMERCIAL REZONING THROUGH A RESIDENTIAL DISTRICT TO EVADE STATUTORY CONSENT, WAS ONLY PARTIALLY AND EUPHEMISTICALLY DESCRIBED AT JUNE 17, 2021 PLANNING COMMISSION COMMITTEE OF THE WHOLE MEETING.....	13
A.	Staff Report: Prepared By Principal Planner Shanna Sether.	13

- i. p.3, final paragraph: Commercial zoning requirement described euphemistically as: “supportable”. Statutory Consent inferred to be unwanted consequence of commercial zoning. 13
 - ii. p.4, Item 1, at top of page: Petition to rezone from R2B Residential to “the OR2 High-Density Office Residence District”. The implication of the choice of OR2 zoning, in relation to Statutory Consent, was omitted..... 14
 - B. Euphemism In Presentation By Kimberly Holien, The Land Use, Design, And Preservation Section Manager (Planner Sether’s Supervisor)..... 14
 - ii. 15.19 on meeting video. Reason for evading Statutory Consent is because it can be “robust” and “difficult”. Link: <https://youtu.be/Obr6JCIEzqE?list=PLcNuebgSUruA-D1D-WK-KD2FvCTm3nmhJ&t=919>..... 14
- XI. WINKY-WINKY! WE’RE GOING TO GET AWAY WITH IT! EVASION OF STATUTES, ORDINANCES, AND NEIGHBORS’ STATUTORY RIGHTS, BY THE INSTITUTION AND THE DEVELOPERS WHO FOLLOW THE INSTITUTION’S LEAD 15
 - A. Once You Understand What’s Going On, It Is So Much Easier To Read Between The Lines. Applicant Narrative, Revised Submittal Dated 9-9-2021, P.2, Under Final Heading..... 15
 - i. Actual Applicant narrative:..... 15
 - ii. To paraphrase:..... 15
 - B. Applicant Narrative, Revised Submittal Dated 9-9-2021, P.6, Item (5) Position Statement On Conditional Use Permit Findings. 15
 - i. The Item (5) finding to be satisfied is that: “The conditional use is consistent with the applicable policies of the comprehensive plan.” 15
 - ii. The Applicant euphemistically stated that commercial zoning of the site would be “similar” to its comprehensive plan guidance (instead of reporting that it would be exactly what was required): 15
- XII. PLANNING COMMISSION NOV. 1, 2021 PUBLIC HEARING: FOLLOWING MY TESTIMONY CONCERNING STATUTORY REQUIREMENTS, COMMISSIONER’S QUESTION ABOUT LAW WAS NOT ANSWERED, AND INSTEAD, PLANNER SETHER FALSELY INSINUATED THAT THE PROCEEDINGS WERE LAWFUL..... 16
- XIII. IS WARD PRIVILEGE INVOLVED HERE, AND, IF SO, WILL COUNCIL MEMBERS YIELD TO WARD PRIVILEGE AT THE EXPENSE OF THE STATUTES, AND AT THE EXPENSE OF THE NEIGHBORS AND THE STATUTORY RIGHTS OF THE NEIGHBORS? 17
- XIV. in closing..... 17
- XV. Addendum: THERE WERE TWO ERRORS IN THE ATTACHED PLANNING COMMISSION MEETING MINUTES, WITH REGARD TO THE VOTING. Below ARE CORRECTIONS WITH LINKS and SCREENSHOTS: 18

V. THE APPLICATION, BRIEFLY

8. The Applicant proposes a commercial redevelopment of the subject site, to construct a building 70 feet tall and about 227 feet long, summarized on Page 1 of the Staff Report as:

“a new five-story, mixed-use building with 45 dwelling units and 15,878 square feet of commercial space.”

9. In order to enable the project, a rezoning must be approved. The Applicant proposes rezoning the subject site to an ostensibly residential zoning district, specifically, OR2 High Density Office Residence District OR2, a district that, in spite of how Minneapolis categorizes it, would not only enable a commercial redevelopment, but would enable a development of the proposed magnitude of the JMS proposal.

VI. SITE GOVERNANCE BY THE CITY OF MINNEAPOLIS

A. The Previous Minneapolis Comprehensive Plan Guidance Supported The Existing Singles And Duplexes On The Subject Site (2030 Plan, Adopted 2009).

10. During the previous decade’s comprehensive plan (the 2030 Plan, final adoption in 2009), the subject site was guided under the land use category of “Urban Neighborhood”. The closing statement of the description summarized the Urban Neighborhood category as:

“Not generally intended to accommodate significant new growth, other than replacement of existing buildings with those of similar density.”

B. Consistent With Existing Buildings, The Current Zoning Is Residential.

11. The Subject Site is currently zoned Residential (R2B). The existing two singles (constructed 1917, 1922)* and four duplexes (constructed 1940s)* on the Subject Site comport with the existing low-density Residential zoning, providing a harmonious transition between the single-family homes and the commercial district.

*Per Hennepin County Property Database.

12. The previous Comprehensive Plan guidance (the 2030 Plan) was consistent with the current zoning and the existing use.

C. As Applicant was accumulating lots at Subject Site, Minneapolis Assigned Commercial Guidance To The Subject Site In Its New Comprehensive Plan, “Mpls 2040” (the 2040 Plan, Adopted 2019).

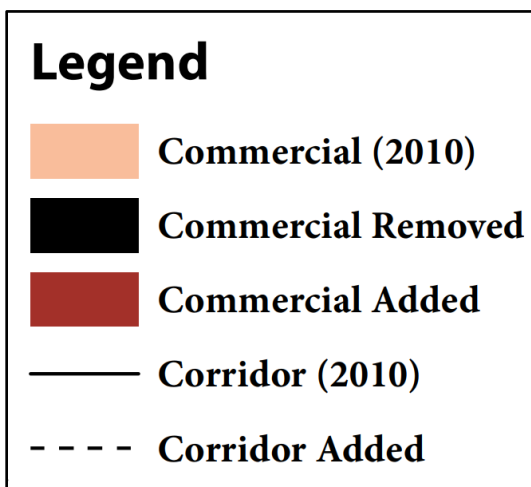
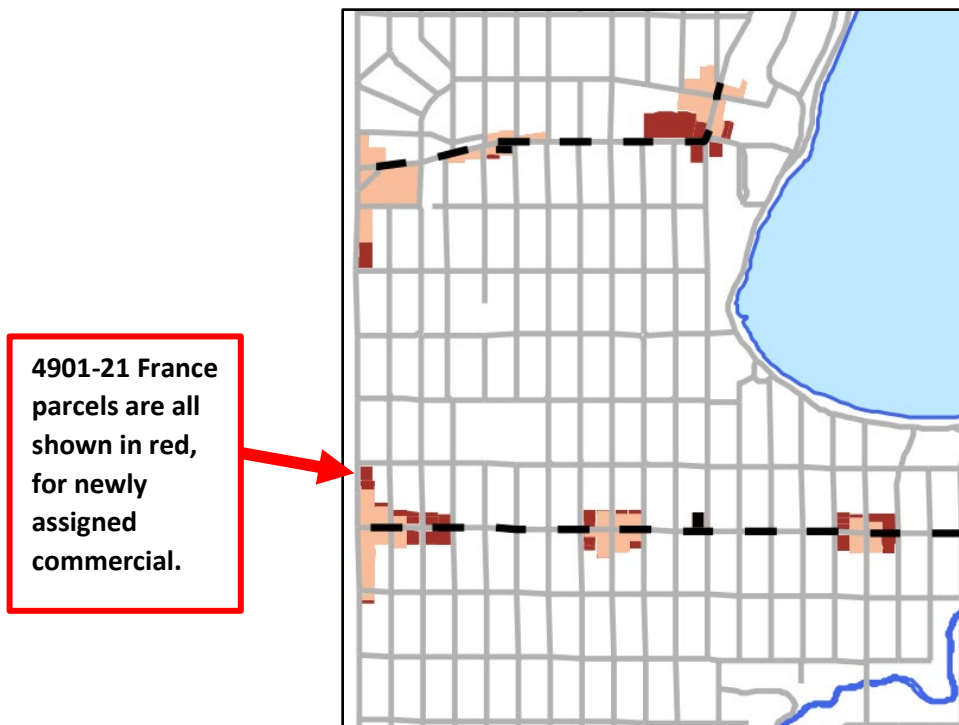
13. The 2040 Plan was formally adopted by the City Council on October 25, 2019. In the 2040 Plan, the City of Minneapolis assigned commercial guidance to the subject site, changing the guiding land use category from Urban Neighborhood to “Community Mixed Use”.

i. See Mpls 2040, Appendix B, FIGURE 6: MINNEAPOLIS 2040 COMMERCIAL LAND USE COMPARISON 2010 VS. PROPOSED, on PDF Page 7 (Text Page is B-6.)

ii. Link to Appendix B:

https://minneapolis2040.com/media/1480/pdf_minneapolis2040-just-app-b.pdf

iii. See screenshots, below, from Figure 6 (map).



VII. SITE GOVERNANCE BY THE STATE OF MINNESOTA

A. Statutes Require A Rezoning To Conform To Comprehensive Plan Guidance (In This Case, Commercial).

14. The Subject Site is currently zoned for residential, R2B, which supports the existing low-density singles and duplexes. MS 473.858, Subd.1 requires that a rezoning conform to comprehensive plan guidance. Because the current comprehensive plan guidance of the subject site is commercial, if a rezoning is to occur, then the site must be rezoned to commercial.

B. The State Legislature Placed Special Restrictions On The Rezoning To Commercial Of Sites Currently Zoned Residential, And Vests Proximal Property Owners With Certain Rights.

i. Written consent required (Statutory Consent).

15. MS 462.357, Subd.5, prohibits rezoning a property from residential to commercial, unless written consent has been obtained from the owners of 2/3 of the properties located within 100 feet of the Subject Site.

“Subd. 5. Amendment; certain cities of the first class. The provisions of this subdivision apply to the adoption or amendment of any portion of a zoning ordinance which changes all or part of the existing classification of a zoning district from residential to either commercial...amendments to a zoning ordinance shall be made in conformance with this section but only after there shall have been filed in the office of the city clerk a written consent of the owners of two-thirds of the several descriptions of real estate situate within 100 feet of the total contiguous descriptions of real estate held by the same owner...”

ii. Commercial developments bring commercial levels of and types of activity that may be inconsistent with and incompatible with the surrounding area.

16. Commercial developments bring commercial levels and types of commercial activity generally, and varying with the intensity of the development, which can include for example but not limited to noise, vehicular and pedestrian and other forms of traffic, all-night building illumination and other additions of commercial lighting, commercial service vehicles, commercial schedules, and other types of intrusions, such as plunging nearby properties into heavy shadows, elimination or near elimination of natural landscaping, and where once the proximal homeowners enjoyed the sun’s rise or its setting, and welcomed sunshine in their windows on a bright winter’s day, and could see the moon and the night sky, they one day find their view filled with walls of windows lit up at night, and balconies positioning apartment dwellers to look down upon adjacent homeowners, and find that their once-private homes and backyards have been irreparably degraded, as though they now exist as monkeys in the pit of an outdoor zoo exhibit.

iii. Statutory Consent protects intact neighborhoods.

17. Facing an intact neighborhood of predominantly homesteaded homes, Statutory Consent empowers those of us in closest proximity to the Subject Site, to defeat exactly the kind of massively inappropriate commercial incursion that the current proposal represents, and our neighbors near and far rely on our statutory right to protect them from injurious impacts, as well, and protect the general well-being of our neighborhoods and the essential character of our neighborhoods.

VIII. CITY OF MINNEAPOLIS REQUIREMENTS IN RESPONSE TO STATUTES

A. Zoning Code, Sect. 525.140 (B) (3): Application Required To Conform To Law.

18. The city zoning administrator is responsible for ensuring completeness of the Application. The law is not ignored in the Minneapolis Zoning Code, wherein “completeness” is defined, among other things, to include:

“(3) Submittal of all supporting information required by city ordinance, the zoning administrator, the planning director, the application forms, or by law.”

B. Zoning Code, Sect. 525.260 (1): Application Required To Conform To Statutory Consent. (Quoted.)

19. Quoted text below:

“Amendments initiated by petition. An application for an amendment to the zoning classification of a particular property shall be filed with the zoning administrator on such form and accompanied by such information as required by the zoning administrator, as specified in section 525.140, and in the manner provided in Minnesota Statutes, Section 462.357.”

C. “Zoning Application, Petitions And Affidavits Packet” Contains Forms For Statutory Consent.

- i. **Link: <https://www2.minneapolismn.gov/media/content-assets/www2-documents/business/Zoning-Application-Petitions-and-Affidavits-Packet.pdf>**
- ii. **Instructions on Page 1, (4) (b): No rezoning, no public hearing, without Statutory Consent (Quoted text below.)**

20. Quoted text below:

“The rezoning cannot proceed and no public hearing on the rezoning petition may be held, unless the owners of 2/3rds of the descriptions of real estate within the 100-foot boundary consent to the rezoning by signing the petition.”

iii. Page 3 of packet is devoted to the matter of Statutory Consent. (See screenshot of partial page, highlighting added to table.)

TABLE 1 - STATUTORY REQUIREMENTS FOR AMENDMENT TO ZONING DISTRICT CLASSIFICATIONS IN MINNEAPOLIS
 Minn. Stat. § 462.357, effective May 30, 2001

Statutory consent requirement for rezoning in cities of the first class: Minn. Stat. §462.357, subd. 5, requires that written consent of the owners of two-thirds of the properties within 100 feet of the property to be rezoned be obtained when the proposed amendment to the zoning ordinance would change “all or part of the existing classification of a zoning district from residential to either commercial or industrial,” unless the amendment is based on a survey by the City of not less than 40 acres and the Planning Commission determines that the number of properties affected by the proposed amendment renders the obtaining of such written consent impractical.

If the owner of the property to be rezoned currently owns or sold within the past year property that is contiguous to that to be rezoned, the consent area is all property within 100 feet of the property to be rezoned and such contiguous property.

Voting requirement for rezoning: Pursuant to the provisions of Minn. Stat. §462.357, subs. 2 and 5, in the City of Minneapolis amendments to the zoning district classification of a property may be made by a majority vote of the City Council, except that a two-thirds majority vote is required to amend a residential classification to either a commercial or industrial classification where that amendment is based upon a survey of not less than 40 acres and for which obtaining consents was found to be impractical.

CURRENT ZONING CLASSIFICATION	PROPOSED ZONING CLASSIFICATION	DOES CONSENT REQUIREMENT APPLY?		VOTING REQUIREMENT
Residential	Another Residential district	No, consent signatures are <i>not</i> required.		majority
		If not based on 40-acre survey	Yes, consent signatures are required.	majority
Residential	Commercial or Industrial	If based on 40-acre survey	If finding is made by the Planning Commission that obtaining consents is impractical, then consent signatures are <i>not</i> required.	two-thirds
			If obtaining consents is not impractical, then consent signatures are required, even if rezoning recommendation is based on a 40-acre survey.	majority

iv. On Page 3, Minneapolis classifies zoning districts in response to MS 462.357, differentiating Residential, Commercial, and Industrial zoning (Quoted.)

21. Quoted text below (highlighting added):

“Residential, Commercial and Industrial zoning district classifications. For purposes of applying the provisions of Minn. Stat. §462.357 to changes, the primary and overlay zoning districts in the Minneapolis Zoning Code fall into the statutory zoning categories as outlined below.

- **“Residential” includes:** All Residence Districts (R1 – R6); all Office Residence Districts (OR1 – OR3).
- **“Commercial or Industrial” includes:** All Commercial Districts (C1 – C4); Downtown Districts (B4, B4S B4C, B4N); Industrial Districts (I1, I2, I3); Transitional Parking Overlay District

- *The other overlay districts in the Zoning Code do not implicate a change in the residential or non-residential nature of the zoning district and can be assessed based on the current and proposed primary zoning classification alone.”*

IX. DOES EVASION ACTUALLY DEFEAT MN STATUTES? DESIGN OF MINNEAPOLIS ZONING CODE ENABLES COMMERCIAL DEVELOPMENT IN DISTRICT CATEGORIZED AS “RESIDENTIAL” (OR2-HIGH DENSITY OFFICE RESIDENCE DISTRICT), THUS ENABLING THE EVASION OF STATUTORY CONSENT.

A. How Is The JMS Proposal For 4901-21 France Not Commercial? It Would Be Nearly Identical In Size And Scope To Nolan Mains In Edina On A Per Acre Basis.

22. Nolan Mains is a mixed-use, commercial development (apartments and commercial spaces) in Edina, at 3925 Market St. in the 50th & France commercial district, but, in contrast to the 4901-21 France proposal, Nolan Mains is located entirely within the commercial boundaries, surrounded by commercial and a municipal parking ramp, and is not adjacent to any houses. Even though Nolan Mains is under the City of Edina’s jurisdiction, it is worth comparing the two due to their striking similarity.

23. Comparison of some stats for Nolan Mains vs. the JMS proposal for 4901-21 France:

i. Nolan Mains 3925 Market St:

- 6 stories.
- Approved at 73 feet tall.
- 100 leased dwelling units on 1.5 acres, for a housing unit density of 67 dwelling units per acre (“du/acre”).
- Net increase of 16,000 square feet (“SF”) of ground level commercial space on Market Street.

ii. The JMS proposal for 4901-4921 France Ave S is nearly the same!

- 5 stories.
- Requesting 70 feet tall.
- 45 leased dwelling units on 0.74 acre, for a housing unit density of 61 du/acre.
- 15,878 SF of ground level commercial space.

B. How Is The JMS Proposal For 4901-21 France Not Commercial? It Would Have A Nearly 50% Greater Housing Unit Density Than 5011-15 France, And Less Than 1% Difference In Commercial Density.

24. 5011-5015 France Ave. S. was approved by the Minneapolis Planning Commission in July, 2021.

i. **5011-5015 France:**

- Entirely within a commercial district.
- Existing primary zoning was already commercial: C1 Neighborhood Commercial District.
- Built Form Overlay District (additional layer of zoning): Corridor 4.
- 6 stories.
- Approved at 82 feet, 9 inches tall.
- 16 dwelling units on 0.39 acres, **for a housing unit density of 41 du/acre.**
- 8,450 SF of ground level commercial space on 0.39 acres, **for a rate of 21,667 commercial SF/acre.**

ii. **The JMS Proposal for 4901-4921 France:**

- Within 100 feet of a dozen houses, and abutting most of them.
- Request change to primary zoning, from R2B Low Density Residential (up to 3 units), to OR2 High Density Office Residence District.
- Built Form Overlay District (additional layer of zoning): Corridor 4.
- 5 stories.
- Requesting 70 feet tall.
- 45 leased dwelling units on 0.74 acre, **for a housing unit density of 61 du/acre.**
- 15,878 SF of ground level commercial space on 0.74 acres, **for a rate of 21,457 commercial SF/acre.**

C. How Is The JMS Proposal For 4901-21 France Not Commercial? 4601-4621 Minnehaha Has 3.5x The Housing Unit Density, But, Regardless, Both Have Commercial Numbers Of Dwelling Units, And 4901-4921 France Has Nearly 3x The Commercial Density, And They Are Nearly The Same Height.

25. 4601+4617+4621 Minnehaha was approved by the Minneapolis Planning Commission in January, 2021.

i. **4601+4617+4621 Minnehaha: City Attorney's Office stated that Statutory Consent was satisfied for rezoning from Residential (R2B) to Commercial (C3A).**

- Existing primary zoning for 4601 Minnehaha was already Commercial: C1 Neighborhood Commercial District, and was rezoned (upzoned) to C3A Community Activity Center District.
- Written Consent was sought for 4617+4621, and these two parcels were then rezoned from Residential (R2B) to Commercial (C3A).
- Built Form Overlay District (additional layer of zoning): **Corridor 6.**
- 6 stories.
- **Approved Height: 67 feet, 2 inches.**
- 123 dwelling units on 0.57 acres, **for a housing unit density of 215 du/acre.**
- 4,255 SF of ground level commercial space on 0.57 acres, **for a commercial density of 7,464 SF/acre.**

ii. The JMS Proposal for 4901-4921 France:

- Within 100 feet of a dozen houses, and abutting most of them.
- Approved: change to primary zoning, from R2B Low Density Residential (up to 3 units), to OR2 High Density Office Residence District.
- Built Form Overlay District (additional layer of zoning): Corridor 4.
- 5 stories.
- **Approved Height: 70 feet tall.**
- 45 leased dwelling units on 0.74 acre, **for a housing unit density of 61 du/acre.**
- 15,878 SF of ground level commercial space on 0.74 acres, **for a commercial density of 21,457 SF/acre.**

X. LAUNDERING A COMMERCIAL REZONING THROUGH A RESIDENTIAL DISTRICT TO EVADE STATUTORY CONSENT, WAS ONLY PARTIALLY AND EUPHEMISTICALLY DESCRIBED AT JUNE 17, 2021 PLANNING COMMISSION COMMITTEE OF THE WHOLE MEETING

A. Staff Report: Prepared By Principal Planner Shanna Sether.

- i. **p.3, final paragraph: Commercial zoning requirement described euphemistically as: “supportable”. Statutory Consent inferred to be unwanted consequence of commercial zoning.**

“Community Mixed Use... designation supports large-scale, mixed-use development with commercial uses fronting along major streets... Additionally, commercial zoning is supportable, however, consent signatures are required to rezone the property from residential to commercial.”

- ii. p.4, Item 1, at top of page: Petition to rezone from R2B Residential to “the OR2 High-Density Office Residence District”. The implication of the choice of OR2 zoning, in relation to Statutory Consent, was omitted.

“Based on staff’s preliminary review, the following land use applications have been identified:

1. Petition to rezone the properties located at 4901-4921 France Ave S from the R2B Multiple-Family District to the OR2 High-Density Office Residence District.”

B. Euphemism In Presentation By Kimberly Holien, The Land Use, Design, And Preservation Section Manager (Planner Sether’s Supervisor).

- i. 13.08 on meeting video. Commercial rezoning “would be supported”. Reason for OR2 zoning is partially revealed and left to inference. Link: <https://youtu.be/Obr6JCIEzqE?list=PLcNuebgSUruA-D1D-WK-KD2FvCTm3nmhJ&t=788>

“The existing zoning of the site is R2B, and the applicant is requesting to rezone the site to OR2 as part of the project. If this were rezoned to a commercial site, that would be supported by the existing adopted policy for this location. But consent signatures are required to go to a commercial district here. So, with that, the applicant is proposing OR2 zoning...”

- ii. 15.19 on meeting video. Reason for evading Statutory Consent is because it can be “robust” and “difficult”. Link: <https://youtu.be/Obr6JCIEzqE?list=PLcNuebgSUruA-D1D-WK-KD2FvCTm3nmhJ&t=919>

“So, this property is Community Mixed-Use in terms of the Future Land Use Map. As I noted, commercial zoning would be supported here. There is commercial zoning directly adjacent to the site. But, the rezoning signatures, um, can be, fairly, uh, robust, and it can be, um, you know, a difficult process, so the applicant is proposing OR2 here.”

XI. WINKY-WINKY! WE'RE GOING TO GET AWAY WITH IT! EVASION OF STATUTES, ORDINANCES, AND NEIGHBORS' STATUTORY RIGHTS, BY THE INSTITUTION AND THE DEVELOPERS WHO FOLLOW THE INSTITUTION'S LEAD

A. Once You Understand What's Going On, It Is So Much Easier To Read Between The Lines. Applicant Narrative, Revised Submittal Dated 9-9-2021, P.2, Under Final Heading.

i. Actual Applicant narrative:

"The site is currently zoned R2B with commercial zoning intended as a part of the Minneapolis 2040 plan. The development seeks to rezone to OR2 (Office Residential)...

...We are seeking a conditional use permit for a planned unit development (PUD) in order to develop this site in a manner consistent with long-range planning guidelines for the city and neighborhood."

ii. To paraphrase:

'Commercial zoning is intended, and we will achieve a commercial development, but to get there, we will evade Statutory Consent by processing the project approvals through an ostensibly residential district.'

B. Applicant Narrative, Revised Submittal Dated 9-9-2021, P.6, Item (5) Position Statement On Conditional Use Permit Findings.

- i. The Item (5) finding to be satisfied is that: "The conditional use is consistent with the applicable policies of the comprehensive plan."**
- ii. The Applicant euphemistically stated that commercial zoning of the site would be "similar" to its comprehensive plan guidance (instead of reporting that it would be exactly what was required):**

"Yes. The comprehensive plan has identified this property as future commercial zoning, similar to Community Mixed Use."

XII. PLANNING COMMISSION NOV. 1, 2021 PUBLIC HEARING: FOLLOWING MY TESTIMONY CONCERNING STATUTORY REQUIREMENTS, COMMISSIONER'S QUESTION ABOUT LAW WAS NOT ANSWERED, AND INSTEAD, PLANNER SETHER FALSELY INSINUATED THAT THE PROCEEDINGS WERE LAWFUL.

26. After the public hearing was closed, Commissioner Meyer asked about my testimony, specifically, would a rezoning to commercial be required (by statute). Planner Sether did not provide an answer to his question, but instead walked down a slightly scrambled, indirect path, through the strategy of evasion, and at the end of the path inferred that the correct procedures were being followed, that is, correct within the logical framework of the strategy of evasion.

27. But again, does laundering a commercial zoning through an ostensibly residential zoning district actually defeat the Statutory Consent requirement? Does a pattern and practice of evasion exempt the City of Minneapolis from complying with the Statutes?

28. Below is an excerpted transcript of the exchange between PC Chris Meyer and Mpls Principal City Planner Shanna Sether.

2.04.58 <https://youtu.be/luar8igDSaM?list=PLcNuebgSUruA-D1D-WK-KD2FvCTm3nmhJ&t=7498>

Co-Chair Olson: Up next is Commissioner Meyer.

PC Meyer: Thank you. Um.

So, during the hearing, someone claimed that there's a requirement that in order to do this, it would have to be rezoned to commercial.

Can staff speak to the accuracy of that?

2.06.03 <https://youtu.be/luar8igDSaM?list=PLcNuebgSUruA-D1D-WK-KD2FvCTm3nmhJ&t=7563>

Planner Shanna: * So, as you can see from, um.

The excerpt here is from the Minneapolis 2040 Plan, our comprehensive plan.

The site has a future land use designation of Community Mixed Use, which supports large-scale mixed-use development. Um.

The pro/ The proposed project is, um, seeking a rezoning to OR2.

The OR2 district allows for multiple-family dwellings.

It also allows for a handful of neighborhood-serving retail uses. um...

**i.e. uses
“...that would be
consistent with
the
comprehensive
plan’s”
commercial
guidance.**

...The OR2 is not a commercial zoning district, um, but does allow for a, a mix of uses that would be consistent with the comprehensive plan.

Because the rezoning is not to a commercial district, consent signatures are not required.

XIII. IS WARD PRIVILEGE INVOLVED HERE, AND, IF SO, WILL COUNCIL MEMBERS YIELD TO WARD PRIVILEGE AT THE EXPENSE OF THE STATUTES, AND AT THE EXPENSE OF THE NEIGHBORS AND THE STATUTORY RIGHTS OF THE NEIGHBORS?

29. It was quite clear during a meeting of neighbors with Ward 13 Council member Linea Palmisano, that she supported the project.

30. I reflect upon the situation 20 years ago, when then-Council member Brian Herron admitted to taking money, taking bribes. Then-Ward 2 Council candidate Paul Zerby wrote an opinion piece in the Minnesota Daily, a few excerpts that I would like to share, as an expression of my concern:

“Herron's admissions call into question all of his City Council votes. We have tolerated and in some ways demanded a system of privilege for council members whereby the city council defers to the judgment of the local member concerning issues in his or her ward. How often did Herron vote to support council members on issues outside of his ward in order to maintain a system of privilege for him within his ward?”...

“Simple laziness can also play a part - there is no need to examine issues in another ward if you always just “go along” with that ward's council member.”...

“Political support for re-election and fund raising is a more likely payoff in a system of ward privilege. Board memberships, business opportunities, small perks and gratuities, favoring relatives, rewarding friends and punishing enemies and the pleasure of holding the power to get things done - these are more likely benefits from a system of ward privilege.”

People holding political power are not naturally inclined to reform where reform means lessening of their power. Reform generally comes from the outside.”

The Minnesota Daily • September 6, 2001 •

<https://mndaily.com/215298/uncategorized/corruptionshould-not-distract-city-governance/>

XIV. IN CLOSING

31. Regardless of who is responsible for this flouting of statutes and statutory rights held by certain property owners, I hope that the City Council will at least bring about the corrections that I am seeking.

Thank you.

XV. ADDENDUM: THERE WERE TWO ERRORS IN THE ATTACHED PLANNING COMMISSION MEETING MINUTES, WITH REGARD TO THE VOTING. BELOW ARE CORRECTIONS WITH LINKS AND SCREENSHOTS:

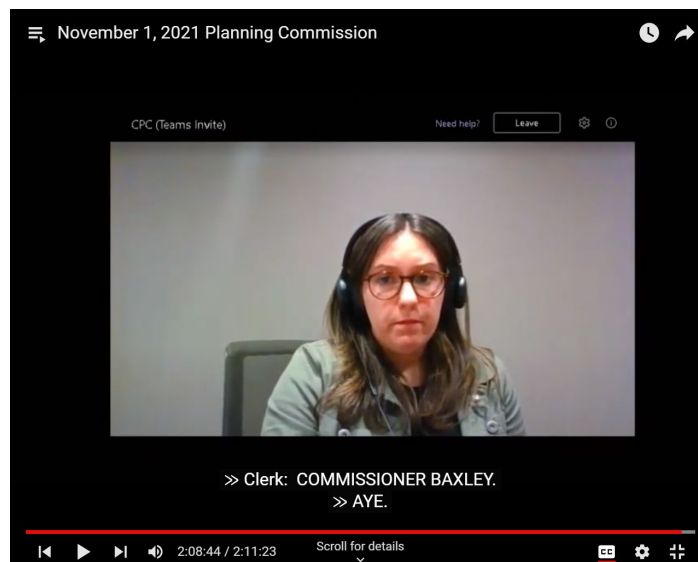
32. To note, the commissioners covered all 5 requests (Items A-E) in a single vote. Therefore, the errors identified below are distributed in the Minutes under each of the 5 requests.

- **Error #1:** Commissioner Caprini, while present earlier, was absent during the vote for the Plan.



2.08.50 <https://youtu.be/luar8igDSaM?list=PLcNuebgSUrUA-D1D-WK-KD2FvCTm3nmhJ&t=7730>

- **Error #2:** Commissioner Baxley voted “Aye” to approve all 5 requested items during the single vote. Thus, the voting result was a unanimous approval by the six commissioners who were present at the time of the vote.



2.08.44 <https://youtu.be/luar8igDSaM?list=PLcNuebgSUrUA-D1D-WK-KD2FvCTm3nmhJ&t=7724>

Return To: [Table of Contents](#)

Planning Commission Minutes

Regular Meeting

November 1, 2021 - 4:30 pm

Online Meeting

Members Present: Raya Esmaeili (President), Alyssa Olson (Vice-President), , Bill Baxley, Kimberly Caprini, Keith Ford, Chloe McGuire, Chris Meyer, and Amy Sweasy (Quorum: 5)

Members Absent: Aneesha Marwah (Secretary), Jeremy Schroeder

Staff : Rachel Blanford

Call To Order

1. Roll Call.

Quorum Present

2. Adoption of the agenda.

Action Taken: Adopted

3. Acceptance of minutes

[Oct 18, 2021 Planning Commission](#)

Action Taken: Accepted

Public Hearing

4. **3101, 3111, and 3113 Minnehaha Ave, Ward 2**
City Staff: [Shanna Sether](#), PLAN13446

The City Planning Commission adopted staff findings for the application by Downtown Longfellow, LLC.

A. Minor subdivision.

Action: **Approved** the minor subdivision, subject to the following condition:

1. All structure encroachments shall be removed prior to the issuance of the subdivision resolution.

[3101-13 Minnehaha Ave](#)

Approved on consent.

5. **1111 W River Pkwy, Ward 3**
City Staff: [Peter Crandall](#), PLAN13457

The City Planning Commission adopted staff findings for the application by Chad Lockwood.

A. Preliminary and final registered land survey.

Action: **Approved** the application for a preliminary and final registered land survey, subject to the following conditions:

1. This RLS creates tracts that, if separately redeveloped, would not meet the requirements of the zoning and subdivision ordinances for lot area and width and the prohibition against lots with more than five sides at ground level. Approval of this RLS does not constitute approval for the separate redevelopment of any tract if such tract does not comply with applicable zoning and subdivision ordinances.
2. This action of the Planning Commission shall be recorded with Hennepin County at or prior to such time as the signed RLS is presented for recording with Hennepin County.

[1111 W River Pkwy](#)

Approved on consent.

6. **35 Groveland Terrace, Ward 7**
City Staff: [Mei-Ling Smith](#), PLAN13439

The City Planning Commission adopted staff findings for the application by Craig Martin.

A. Variance.

Action: **Approved** the variance to increase the maximum lot area for a residential use with more than four units from 14,000 sq. ft. to 16,756 sq. ft.

B. Site plan review.

Action: **Approved** the site plan review for a new, two-story residential building with four dwelling units, subject to the following conditions:

1. All site improvements shall be completed by November 1, 2023, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.
2. CPED staff shall review and approve the final site, elevation, landscaping, and lighting plans before building permits may be issued.
3. All signs shall comply with Chapter 543 of the zoning code. All signage requires a separate permit from CPED.
4. All mechanical equipment shall be screened to comply with section 535.70 of the zoning code.

[35 Groveland Terrace](#)

Approved on consent.

7. **1319 and 1349 Penn Ave N, 2200 Plymouth Ave N, Ward 5**
City Staff: [Shanna Sether](#), PLAN13236

Continued from the October 18, 2021 meeting.

A. Variance.

Action: **Returned** the variance to increase the maximum height of a monument sign from eight feet to nine feet eight inches.

Yea: Baxley, Caprini, Ford, Meyer, Olson, Sweasy, Esmaili

Nay: none

Absent: Marwah, McGuire, Schroeder

B. Variance.

Action: **Returned** the variance increase to the maximum height for two monument signs from eight feet to eight feet three inches.

Yea: Baxley, Caprini, Ford, Meyer, Olson, Sweasy, Esmaili

Nay: none

Absent: Marwah, McGuire, Schroeder

C. Variance.

Action: **Denied** the variance to increase the maximum height of a wall sign facing Penn Ave N from 20 feet to 27 feet seven inches.

Yea: Baxley, Caprini, Ford, Meyer, Olson, Sweasy, Esmaili

Nay: none

Absent: Marwah, McGuire, Schroeder

D. Variance.

Action: **Approved** the variance to increase the maximum height of a wall sign facing 14th Ave N from 20 feet to 30 feet.

[1319 and 1349 Penn Ave N](#)

Yea: Baxley, Caprini, Ford, Meyer, Olson, Sweasy, Esmaili

Nay: none

Absent: Marwah, McGuire, Schroeder

8. **401 Main St NE, Ward 3**
City Staff: [Peter Crandall](#), PLAN13078

A. Rezoning.

Action: **Approved** the petition to rezone the property from the R1A Multiple Family District to the R3 Multiple Family District.

Yea: Caprini, Ford, McGuire, Meyer, Olson, Sweasy

Nay: Baxley

Absent: Marwah, Schroeder, Esmaili

B. Variance.

Action: **Approved** the variance to reduce the front yard setback from the established 35 feet to 33 feet 2 inches for a transformer, 20 feet 2 inches for the building wall, and 16 feet 2 inches for balconies.

Yea: Caprini, Ford, McGuire, Meyer, Olson, Sweasy

Nay: Baxley

Absent: Marwah, Schroeder, Esmaili

C. Variance.

Action: Notwithstanding staff recommendation, the City Planning Commission **approved** the variance to reduce the minimum interior side yard along the south property line from 7 feet to 3 feet for a ground level patio, from 7 feet to 4 feet 6 inches for balconies and the building wall, and from 5 feet to 3 feet 8 inches for a transformer based on the following findings:

- It is consistent with the comprehensive plan.
- Balconies and ground level patios activate spaces and create more eyes on the street.
- Property is unique in that it is boxed in from the property line easement.

Yea: Caprini, Ford, McGuire, Meyer, Olson, Sweasy

Nay: Baxley

Absent: Marwah, Schroeder, Esmaili

D. Variance.

Action: Notwithstanding staff recommendation, the City Planning Commission **approved** the variance to reduce the interior side yard along the north property line from 7 feet to 5 feet 1 inch for balconies and ground level patios, based on the following findings:

- It is consistent with the comprehensive plan.
- Balconies and ground level patios activate spaces and create more eyes on the street.
- Property is unique in that it is boxed in from the property line easement.

Yea: Caprini, Ford, McGuire, Meyer, Olson, Sweasy

Nay: Baxley

Absent: Marwah, Schroeder, Esmaeili

E. Site plan review.

Action: **Approved** the site plan review for a new three-story residential building with 31 dwelling units, subject to the following conditions:

1. All site improvements shall be completed by November 1, 2023, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.
2. CPED staff shall review and approve the final site, elevation, landscaping, and lighting plans before building permits may be issued.
3. All signs shall comply with Chapter 543 of the zoning code. All signage requires a separate permit from CPED.
4. Except as allowed by the affordable housing premium, all premiums shall be maintained for the life of the principal structure. The length of compliance with the affordable housing premium shall be as required by the Unified Housing Policy.
5. The applicant shall screen all exterior mechanical equipment to meet the standards of Chapter 53
6. The applicant shall revise plans to show compliance with minimum setback requirements for the building wall, balconies and ground level patios in the required interior side yards.
7. The applicant shall provide a final photometric lighting plan that shows compliance with chapters 530 and 535 of the zoning code.

Yea: Caprini, Ford, McGuire, Meyer, Olson, Sweasy

Nay: Baxley

Absent: Marwah, Schroeder, Esmaeili

[401 in St NE](#)

9. **4901, 4905, 4909, 4913, 4915, 4917, and 4921 France Ave S, Ward 13**

City Staff: [Shanna Sether](#), PLAN13238

The City Planning Commission adopted staff findings for the application by France 50 LLC.

A. Rezoning.

Action: The City Planning Commission recommended that the City Council **approve** the petition to rezone 4901, 4905, 4909, 4913, 4915, 4917, and 4921 France Ave S from the R2B Multiple-family District to the OR2 High Density Office Residence District, retaining the BFC4 Corridor 4 Built Form Overlay District and SH Shoreland Overlay District.

Yea: Caprini, Ford, McGuire, Meyer, Olson, Sweasy

Nay: Baxley

Absent: Marwah, Schroeder, Esmaeili

B. Conditional use permit.

Action: **Approved** the conditional use permit to allow a mixed-use Planned Unit Development with 45 dwelling units, subject to the following conditions:

1. The conditional use permit shall be recorded with Hennepin County as required by Minn. Stat. 462.3595, subd. 4 before building permits may be issued or before the use or activity requiring a conditional use permit may commence. Unless extended by the zoning administrator, the conditional use permit shall expire if it is not recorded within two years of approval.
2. As required by section 527.120 of the zoning code, the development shall comply with the standards for some combination of the following amenities from Table 527-1, Amenities and those proposed by the applicant totaling a minimum of 20 points: underground parking, plaza, pervious and decorative pavers and driveways, art feature, decorative fencing, enhanced lighting, enhanced landscaping, enhanced stormwater management, recycling storage area and water feature.

Yea: Caprini, Ford, McGuire, Meyer, Olson, Sweasy

Nay: Baxley

Absent: Marwah, Schroeder, Esmaeili

C. Conditional use permit.

Action: **Approved** the conditional use permit to increase the maximum height in the SH Shoreland Overlay District from two and one-half stories or 35 feet, whichever is less, to five stories, 70 feet, subject to the following condition:

1. The conditional use permit shall be recorded with Hennepin County as required by Minn. Stat. 462.3595, subd. 4 before building permits may be issued or before the use or activity requiring a conditional use permit may commence. Unless extended by the zoning administrator, the conditional use permit shall expire if it is not recorded within two years of approval.

Yea: Caprini, Ford, McGuire, Meyer, Olson, Sweasy

Nay: Baxley

Absent: Marwah, Schroeder, Esmaeili

D. Site plan review.

Action: **Approved** the site plan review for a new five-story, mixed-use building with 45 dwelling units, subject to the following conditions:

1. All site improvements shall be completed by December 10, 2023, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.
2. CPED staff shall review and approve the final site, elevation, landscaping, and lighting plans before building permits may be issued.
3. The applicant shall submit the tax parcel division, combination, or lot line adjustment request form to CPED and submit proof of the filing with Hennepin County.
4. All signs shall comply with Chapter 543 of the zoning code. All signage requires a separate permit from CPED.

5. All mechanical equipment shall be screened in accordance with section 5370 of the zoning code.
6. The proposed transformers shall comply with the minimum south interior side yard and rear yard setbacks.
7. All premiums shall be maintained for the life of the principal structure.

Yea: Caprini, Ford, McGuire, Meyer, Olson, Sweasy

Nay: Baxley

Absent: Marwah, Schroeder, Esmaili

E. Preliminary plat.

Action: **Approved** the application for a preliminary plat.

[France Fifty](#)

Yea: Caprini, Ford, McGuire, Meyer, Olson, Sweasy

Nay: Baxley

Absent: Marwah, Schroeder, Esmaili

Announcements

10. Updates by CPED staff

Action Taken: Received and filed

Adjournment

The meeting adjourned at 7:33pm.