



City Council Agendas

Monday, March 23, 2009

5:30 p.m. Closed Executive Session

6:00 p.m. Regular Meeting

City Council Chambers

(Times are Approximate)

- 5:30 p.m. **1. Roll Call**
Voting & Seating Order for March: Pust, Ihlan, Johnson, Roe and Klausing
- 5:32 p.m. **Closed Executive Session** Attorney-Client Privilege and Confidential Appraisal Information
1. Discuss Litigation Strategy Related to the Centre Pointe Redevelopment Agreement
 2. Receive Appraisal Information Related to Acquisition of portions of property located at 2690, 2700, 2770-2800, and 2814 Cleveland Avenue; 1947 County Road C, 2680-2690 Prior Avenue, and 2785 Fairview Avenue, City of Roseville, for road and construction purposes
- 6:00 p.m. **2. Approve Agenda**
- 6:05 p.m. **3. Public Comment**
- 6:10 p.m. **4. Council Communications, Reports, Announcements and Housing and Redevelopment Authority Report**
- 6:15 p.m. **5. Recognitions, Donations, Communications**
- 6:20p.m. **6. Approve Minutes**
- a. Approve Minutes of March 9, 2009 Meeting
- 6:25 p.m. **7. Approve Consent Agenda**
- a. Approve Payments
 - b. Approve Business Licenses
 - c. Adopt a Resolution to reaffirm authorization to submit a grant application to DEED for Twin Lakes Parkway and Accept DEED Redevelopment Grant Award of \$528,846
 - d. Authorize Legal Proceedings pursuant to the Centre Pointe

Redevelopment Agreement with Ryan Companies

- e. Approve Amended Eureka Recycling Contract to cover increased Liability Insurance Requirement
- f. Approve Contract with Waste Management for Operation of Clean up Day
- g. Authorize City Manager to Contact Roseville's Legislative Delegation to Oppose two bills that would Allow Schools to Open before Labor Day
- h. Approve General Purchases or Sale of Surplus Items Exceeding \$5,000
- i. Adopt Resolution Authorizing Application and Acceptance of a Grant for 2009 Underage Drinking Enforcement
- j. Authorize Police Department to Apply for a 2009 COPS UHP Grant

6:30 p.m. **8. Consider Items Removed from Consent**

9. General Ordinances for Adoption

10. Presentations

11. Public Hearings

6:35p.m. a. Public Hearing regarding On Sale Wine and 3.2% Liquor License for Key's Café, 1682 Lexington Avenue

12. Business Items (Action Items)

6:40 p.m. a. Approve On Sale Wine and 3.2% Liquor License application for Key's Café, 1682 Lexington Avenue

6:45 p.m. b. Adopt Resolution regarding Early Voting and Vote by Mail Options

6:55 p.m. c. Appoint Members to Advisory Commissions

7:10 p.m. d. Rezone parcels at 1126 Sandhurst and 2167 Lexington Avenue to PUD and Approve the General Concept PUD for Wellington Management

7:30 p.m. e. Consider Non-Compliance Penalty for Centennial Gardens Apartments

8:15 p.m. f. Consider Acquisition of portions of property located at 2690, 2700, 2770-2800, and 2814 Cleveland Avenue; 1947 County Road C, 2680-2690 Prior Avenue, and 2785 Fairview Ave, for Road and Construction purposes

13. Business Items – Presentations/Discussions

- 8:25 p.m. a. Discuss 2009 Utility Rates
8:45 p.m. b. Discuss 2009 Budget Adjustments
9:05 p.m. c. 2030 Comprehensive Plan Status and Next Steps
9:20 p.m. d. Twin Lakes Property Maintenance Code Enforcement

9:35 p.m. **14. City Manager Future Agenda Review**

9:40 p.m. **15. Councilmember Initiated Items for Future Meetings**

16. Adjourn

Some Upcoming Public Meetings.....

Tuesday	Mar 24	6:30 p.m.	Public Works, Environment & Transportation Commission
Monday	Mar 30	6:00 p.m.	City Council Meeting
Tuesday	Mar 31	6:00 p.m.	Housing & Redevelopment Authority
Tuesday	Apr 7	6:30 p.m.	Parks & Recreation Commission
Wednesday	Apr 8	6:30 p.m.	Planning Commission
Monday	Apr 13	6:00 p.m.	City Council Meeting
Tuesday	Apr 14	7:00 p.m.	Human Rights Commission
Monday	Apr 20	6:00 p.m.	City Council Meeting
Tuesday	Apr 21	6:00 p.m.	Housing & Redevelopment Authority
Monday	Apr 27	6:00 p.m.	City Council Meeting

All meetings at Roseville City Hall, 2660 Civic Center Drive, Roseville, MN unless otherwise noted.

Date: 3/23/09
Item: 6.a
Minutes of 3/09/09

No Attachment

REQUEST FOR COUNCIL ACTION

Date: 3/23/2009
Item No.: 7.a

Department Approval

Christopher K. Miller

Acting City Manager Approval

Christopher K. Miller

Item Description: Approval of Payments

BACKGROUND

State Statute requires the City Council to approve all payment of claims. The following summary of claims has been submitted to the City for payment.

Check Series #	Amount
ACH Payments	\$2,255,814.54
54562-54643	\$210,487.11
Total	\$2,466,301.65

A detailed report of the claims is attached. City Staff has reviewed the claims and considers them to be appropriate for the goods and services received.

POLICY OBJECTIVE

Under Mn State Statute, all claims are required to be paid within 35 days of receipt.

FINANCIAL IMPACTS

All expenditures listed above have been funded by the current budget, from donated monies, or from cash reserves.

STAFF RECOMMENDATION

Staff recommends approval of all payment of claims.

REQUESTED COUNCIL ACTION

Motion to approve the payment of claims as submitted

Prepared by: Chris Miller, Finance Director
Attachments: A: Checks for Approval Report

Accounts Payable

Checks for Approval

User: mjenson

Printed: 03/17/2009 - 9:25 AM

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Description	Amount
0	03/04/2009	General Fund	Memberships & Subscriptions	Intl Assn of Fire Chiefs-ACH	2009 Membership	215.00
0	03/04/2009	License Center	Office Supplies	Staples-ACH	Office Supplies	29.64
0	03/04/2009	Housing & Redevelopment	Advertising	Quality Logo Products, Inc-ACH	Tape Measure Key Chains	915.90
0	03/04/2009	Housing & Redevelopment	Use Tax Payable	Quality Logo Products, Inc-ACH	Sales/Use Tax	-55.90
0	03/04/2009	Water Fund	Clothing	Gander Mountain-ACH	Boots Per Union Contract	59.47
0	03/04/2009	General Fund	Vehicle Supplies	PTS Tool Supply-ACH	Adapter, Blow Gun	49.11
0	03/04/2009	General Fund	Vehicle Supplies	MN State Patrol-ACH	Decal	45.00
0	03/04/2009	General Fund	Training	NWTC Web Registration-ACH	Taser Training-Rosand	125.00
0	03/04/2009	Water Fund	Water Meters	Suburban Ace Hardware-ACH	Meter Van Supplies	12.80
0	03/04/2009	Water Fund	Water Meters	Suburban Ace Hardware-ACH	Meter Van Supplies	45.67
0	03/04/2009	Recreation Fund	Office Supplies	Office Depot- ACH	Office Supplies	147.20
0	03/04/2009	General Fund	Training	SOTA-ACH	Tactical Training Conference	320.00
0	03/04/2009	General Fund	Operating Supplies	Peavey corporation - ACH	Tools	96.85
0	03/04/2009	General Fund	Memberships & Subscriptions	MN Government-ACH	MN GFOA-2009 Renewal	180.00
0	03/04/2009	General Fund	Operating Supplies	Grainger-ACH	Thermostat	143.85
0	03/04/2009	P & R Contract Maintenance	Operating Supplies	North Hgts Hardware Hank-ACH	Shop Supplies	45.55
0	03/04/2009	P & R Contract Maintenance	Operating Supplies	North Hgts Hardware Hank-ACH	Shop Supplies	197.90
0	03/04/2009	Community Development	Operating Supplies	Office Depot- ACH	File Folders	76.82
0	03/04/2009	Recreation Fund	Operating Supplies	Best Buy- ACH	Equipment for Senior WII Program	107.79
0	03/04/2009	General Fund	Operating Supplies	Fed Ex Kinko's-ACH	Forms	135.03
0	03/04/2009	Water Fund	Contract Maintenance	PayPal-ACH	UB Verisign Renewal	18.03
0	03/04/2009	Storm Drainage	Contract Maintenance	PayPal-ACH	UB Verisign Renewal	18.03
0	03/04/2009	Sanitary Sewer	Contract Maintenance	PayPal-ACH	UB Verisign Renewal	18.04
0	03/04/2009	Water Fund	Operating Supplies	Mills Fleet Farm-ACH	Meter Supplies	5.33
0	03/04/2009	P & R Contract Maintenance	Operating Supplies	Certified Laboratories-ACH	Clearcen Aerosol	183.07
0	03/04/2009	General Fund	Operating Supplies	Petco-ACH	Gift Card to St. Paul PD-Watched Major	50.00
0	03/04/2009	General Fund	Operating Supplies	Circuit City-ACH	Flash Drive	53.36
0	03/04/2009	General Fund	Training	Boston Market-ACH	Food During Training	48.42
0	03/04/2009	Recreation Fund	Operating Supplies	PetSmart-ACH	Animal Supplies	50.94
0	03/04/2009	Recreation Fund	Operating Supplies	Joann Fabric-ACH	Preschool Supplies	18.45
0	03/04/2009	General Fund	Conferences	PayPal-ACH	IAWP Conference	525.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Description	Amount
0	03/04/2009	Information Technology	Operating Supplies	Crucial.Com-ACH	Compaq Upgrade	362.93
0	03/04/2009	General Fund	Vehicle Supplies	Martor USA-ACH	Seat Belt Cutters	56.04
0	03/04/2009	Golf Course	Memberships & Subscriptions	MN Dept of Agriculture-ACH	License	10.20
0	03/04/2009	General Fund	Training	FDIC, Corp-ACH	Annual Conference	1,365.00
0	03/04/2009	General Fund	Training	Great Mats.Com-ACH	Folding Mats	1,215.12
0	03/04/2009	Recreation Fund	Operating Supplies	Target- ACH	Summer Spec Supplies	45.00
0	03/04/2009	Recreation Fund	Operating Supplies	Target- ACH	Summer Spec Supplies	20.00
0	03/04/2009	Recreation Fund	Operating Supplies	Target- ACH	Summer Spec Supplies	30.00
0	03/04/2009	Recreation Fund	Operating Supplies	Target- ACH	Summer Spec Supplies	44.02
0	03/04/2009	Recreation Fund	Operating Supplies	Cub Foods- ACH	Supplies for AARP Driving	30.18
0	03/04/2009	Recreation Fund	Operating Supplies	Snyders Drug-ACH	Return Postage for Dance Costumes	16.56
0	03/04/2009	Community Development	Training	International Code Council-ACH	Accessibility Code	46.70
0	03/04/2009	Recreation Fund	Operating Supplies	Weissman's Design-ACH	Dance Costumes	361.44
0	03/04/2009	General Fund	Operating Supplies	Green Mill- ACH	Food	22.76
0	03/04/2009	General Fund	Memberships & Subscriptions	Intl Assn of Chief of Police -	2009 Dues	120.00
0	03/04/2009	General Fund	Training	Calibre Press, LLC-ACH	Street Survival Seminar-Mooney	215.00
0	03/04/2009	General Fund	Worksession Expenses	Byerly's- ACH	Bakery Items	34.99
0	03/04/2009	P & R Contract Maintenance	Operating Supplies	North Hgts Hardware Hank-ACH	Hardware Items for City Hall	25.58
0	03/04/2009	General Fund	Training	Superamerica-ACH	Fire Chief's Assoc. Meeting Supplies	27.95
0	03/04/2009	Recreation Fund	Operating Supplies	Internet Lightbulbs-ACH	LED Exit Signs	122.63
0	03/04/2009	Police Forfeiture Fund	Professional Services	Cub Foods- ACH	Bakery Items	50.57
0	03/04/2009	General Fund	Operating Supplies	Simonson Market-ACH	Fuel	34.57
0	03/04/2009	Storm Drainage	Office Supplies	Target- ACH	NCF Wireless	21.23
Check Total:						8,159.82
0	03/11/2009	North Suburban Access Corp	Miscellaneous Expense	North Suburban Access-ACH	Remit Funds	50,000.00
0	03/11/2009	General Fund	Motor Fuel	MN Dept of Revenue-ACH	Fuel Tax-Jan 09	275.91
0	03/11/2009	General Fund	211000 - Deferered Comp.	Great West- ACH	Payroll Deduction for 2/10 Payroll	11,424.73
0	03/11/2009	General Fund	210300 - State Income Tax W/H	MN Dept of Revenue-ACH	State Tax Deposit for 2/10 Payroll	18,259.24
0	03/11/2009	General Fund	210400 - PERA Employee Ded.	PERA-ACH	Payroll Deduction for 2/24 Payroll	28,881.25
0	03/11/2009	General Fund	210400 - PERA Employee Ded.	PERA-ACH	Payroll Deduction for 2/10 Payroll	30,171.57
0	03/11/2009	General Fund	211600 - PERA Employers Share	PERA-ACH	Payroll Deduction for 2/10 Payroll	39,403.25
0	03/11/2009	General Fund	210800 - FICA Employee Ded.	IRS EFTPS- ACH	Federal Tax Deposit-Halinen	23.89
0	03/11/2009	General Fund	210200 - Federal Income Tax	IRS EFTPS- ACH	Federal Tax Deposit for 2/10 Payroll	46,326.35
0	03/11/2009	General Fund	211700 - FICA Employers Share	IRS EFTPS- ACH	Federal Tax Deposit-Halinen	23.89
0	03/11/2009	General Fund	210800 - FICA Employee Ded.	IRS EFTPS- ACH	Federal Tax Deposit for 2/10 Payroll	24,290.28
0	03/11/2009	General Fund	211700 - FICA Employers Share	IRS EFTPS- ACH	Federal Tax Deposit for 2/10 Payroll	24,290.28
0	03/11/2009	Water Fund	Water - Roseville	City of Roseville- ACH	February Water	1,285.98
0	03/11/2009	Recreation Fund	Credit Card Fees	US Bank-ACH	January Card Terminal Charges	193.39
0	03/11/2009	Sanitary Sewer	Credit Card Service Fees	US Bank-ACH	January Card Terminal Charges	579.95
0	03/11/2009	Sanitary Sewer	Credit Card Service Fees	US Bank-ACH	January Card Terminal Charges	387.51
0	03/11/2009	Internal Service - Interest	Investment Income	RVA- ACH	January Interest	662.20
0	03/11/2009	General Fund	209000 - Sales Tax Payable	MN Dept of Revenue-ACH	Sales/Use Tax Feb 09	314.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Description	Amount
0	03/11/2009	General Fund	Use Tax Payable	MN Dept of Revenue-ACH	Sales/Use Tax Feb 09	399.70
0	03/11/2009	Information Technology	Use Tax Payable	MN Dept of Revenue-ACH	Sales/Use Tax Feb 09	51.90
0	03/11/2009	Telecommunications	Use Tax Payable	MN Dept of Revenue-ACH	Sales/Use Tax Feb 09	264.89
0	03/11/2009	Recreation Fund	Sales Tax Payable	MN Dept of Revenue-ACH	Sales/Use Tax Feb 09	7,295.97
0	03/11/2009	Recreation Fund	Use Tax Payable	MN Dept of Revenue-ACH	Sales/Use Tax Feb 09	463.80
0	03/11/2009	P & R Contract Maintenance	Sales Tax	MN Dept of Revenue-ACH	Sales/Use Tax Feb 09	71.60
0	03/11/2009	P & R Contract Maintenance	Use Tax Payable	MN Dept of Revenue-ACH	Sales/Use Tax Feb 09	3.90
0	03/11/2009	Community Development	Use Tax Payable	MN Dept of Revenue-ACH	Sales/Use Tax Feb 09	6.50
0	03/11/2009	License Center	Sales Tax Payable	MN Dept of Revenue-ACH	Sales/Use Tax Feb 09	1,164.78
0	03/11/2009	License Center	Use Tax Payable	MN Dept of Revenue-ACH	Sales/Use Tax Feb 09	136.50
0	03/11/2009	Police Forfeiture Fund	Use Tax Payable	MN Dept of Revenue-ACH	Sales/Use Tax Feb 09	78.50
0	03/11/2009	Recreation Improvements	Use Tax Payable	MN Dept of Revenue-ACH	Sales/Use Tax Feb 09	197.70
0	03/11/2009	Sanitary Sewer	Sales Tax Payable	MN Dept of Revenue-ACH	Sales/Use Tax Feb 09	12.77
0	03/11/2009	Sanitary Sewer	Use Tax Payable	MN Dept of Revenue-ACH	Sales/Use Tax Feb 09	90.60
0	03/11/2009	Water Fund	State Sales Tax Payable	MN Dept of Revenue-ACH	Sales/Use Tax Feb 09	7,924.00
0	03/11/2009	Water Fund	Use Tax Payable	MN Dept of Revenue-ACH	Sales/Use Tax Feb 09	14.00
0	03/11/2009	Golf Course	State Sales Tax Payable	MN Dept of Revenue-ACH	Sales/Use Tax Feb 09	318.70
0	03/11/2009	Storm Drainage	Sales Tax Payable	MN Dept of Revenue-ACH	Sales/Use Tax Feb 09	17.19
0	03/11/2009	Housing & Redevelopment	Use Tax Payable	MN Dept of Revenue-ACH	Sales/Use Tax Feb 09	13.00
0	03/11/2009	General Fund	210300 - State Income Tax W/H	Wisconsin Dept of Rev-ACH	WI State Income Tax for Jan 09	1,113.97
0	03/11/2009	General Fund	210300 - State Income Tax W/H	Wisconsin Dept of Rev-ACH	WI State Income Tax for Feb 09	996.92
0	03/11/2009	General Fund	210300 - State Income Tax W/H	MN Dept of Revenue-ACH	State Tax Deposit for 2/24 Payroll	17,884.03
0	03/11/2009	General Fund	211600 - PERA Employers Share	PERA-ACH	Payroll Deduction for 2/24 Payroll	37,691.16
0	03/11/2009	General Fund	211000 - Deferred Comp.	Great West- ACH	Payroll Deduction for 2/24 Payroll	8,153.13
0	03/11/2009	General Fund	210200 - Federal Income Tax	IRS EFTPS- ACH	Federal Tax Deposit for 2/24 Payroll	45,348.54
0	03/11/2009	General Fund	210800 - FICA Employee Ded.	IRS EFTPS- ACH	Federal Tax Deposit for 2/24 Payroll	23,659.87
0	03/11/2009	General Fund	211700 - FICA Employers Share	IRS EFTPS- ACH	Federal Tax Deposit for 2/24 Payroll	23,659.87
0	03/11/2009	General Fund	Postage	Pitney Bowes - Monthly ACH	February Postage	3,000.00
0	03/11/2009	G.O. Bond Issue #23 (97 & 0	Interest Expense	Depository Trust Agency- ACH	Debt Service Payment	12,756.25
0	03/11/2009	G.O. Bond Issue #23 (97 & 0	Bond Principal Payments	Depository Trust Agency- ACH	Debt Service Payment	225,000.00
0	03/11/2009	G.O. Bond Issue # 25 (1999)	Bond Interest Payment	Depository Trust Agency- ACH	Debt Service Payment	26,160.00
0	03/11/2009	G.O. Bond Issue # 25 (1999)	Bond Principal Payments	Depository Trust Agency- ACH	Debt Service Payment	180,000.00
0	03/11/2009	GO Bonds #27 (2003)	Bond Interest Payment	Depository Trust Agency- ACH	Debt Service Payment	147,173.13
0	03/11/2009	GO Bonds #27 (2003)	Bond Principal Payments	Depository Trust Agency- ACH	Debt Service Payment	580,000.00
0	03/11/2009	Workers Compensation	Parks & Recreation Claims	Berkley Risk- ACH	Work Com. Claims-Feb 09	2,217.99
0	03/11/2009	Workers Compensation	Police Patrol Claims	Berkley Risk- ACH	Work Com. Claims-Feb 09	13,201.88
0	03/11/2009	Workers Compensation	Street Department Claims	Berkley Risk- ACH	Work Com. Claims-Feb 09	88.66
0	03/11/2009	General Fund	Salaries - Regular	Berkley Risk- ACH	Work Com. Claims-Feb 09	410.80
0	03/11/2009	General Fund	Salaries - Regular	Berkley Risk- ACH	Work Com. Claims-Feb 09	3,400.00
Check Total:						1,647,235.87
0	03/05/2009	Sanitary Sewer	Metro Waste Control Board	Metropolitan Council	Wastewater Flow March 2009	190,650.93
0	03/05/2009	Telephone	Telephone	FSH Communications-LLC	Payphone Advantage	63.90

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Description	Amount
0	03/05/2009	General Fund	Professional Services	Ratwik, Roszak & Maloney, PA	Legal Services Jan 2009	10,000.00
0	03/05/2009	Solid Waste Recycle	Memberships	Association of Recycling Mgrs	2009 Membership	20.00
0	03/05/2009	General Fund	211403 - Day Care Expense Ded.		Dependent Care Reimbursement	166.15
0	03/05/2009	General Fund	211402 - HCMA - Medical Exp.		Flexible Benefit Reimbursement	45.59
0	03/05/2009	General Fund	211402 - HCMA - Medical Exp.		Flexible Benefit Reimbursement	275.08
0	03/05/2009	Housing & Redevelopment A	Professional Services	Brandon Griffin	HRA Home & Garden Fair	77.50
0	03/05/2009	Housing & Redevelopment A	Professional Services	Kalsey Larson	HRA Home & Garden Fair	75.00
0	03/05/2009	General Fund	211402 - HCMA - Medical Exp.		Flexible Benefit Reimbursement	300.00
0	03/05/2009	General Fund	211403 - Day Care Expense Ded.		Dependent Care Reimbursement	576.93
0	03/05/2009	General Fund	Vehicle Supplies	Catco Parts & Service Inc	Chrome Fan	29.29
0	03/05/2009	General Fund	Vehicle Supplies	Catco Parts & Service Inc	Lamp	16.91
0	03/05/2009	Workers Compensation	Professional Services	SFM Risk Solutions	Work Comp	828.00
0	03/05/2009	Water Fund	St. Paul Water	City of St. Paul	Water Usage 12/31/08-1/30/09	258,330.80
0	03/05/2009	Information Technology	Operating Supplies	Crescent Electric Supply Co	RG6 Quad SH	461.15
0	03/05/2009	General Fund	Operating Supplies	North Heights Hardware Hank	Reflector Bowls	19.77
0	03/05/2009	General Fund	Operating Supplies	North Heights Hardware Hank	Twine	4.46
0	03/05/2009	General Fund	Contract Maintenance	Metro Garage Door Co, Inc.	Service Call	160.53
0	03/05/2009	General Fund	Use Tax Payable	Metro Garage Door Co, Inc.	Sales/Use Tax	-0.58
0	03/05/2009	General Fund	Operating Supplies City Garage	AmSan Brissman-Kennedy, Inc.	Super Finish	100.71
0	03/05/2009	General Fund	Vehicle Supplies	MacQueen Equipment	Parts for Elgin Sweeper	2,299.12
0	03/05/2009	General Fund	Vehicle Supplies	MacQueen Equipment	Seal Kits, Roller	315.37
0	03/05/2009	General Fund	Vehicle Supplies	MacQueen Equipment	Hose, Gasket	486.90
0	03/05/2009	General Fund	Vehicle Supplies	MacQueen Equipment	Roll Pin, Bearings, Seal	513.31
0	03/05/2009	General Fund	Motor Fuel	Kath Fuel Oil Service, Inc.	2009 Blanket PO for Fuel	6,386.50
0	03/05/2009	General Fund	Operating Supplies	Metro Fire	Brackets, Mountings	134.42
0	03/05/2009	Solid Waste Recycle	Professional Services	Eureka Recycling	Curbside Recycling	33,336.56
0	03/05/2009	General Fund	Vehicle Supplies	Factory Motor Parts	Brake Pad	63.01
0	03/05/2009	General Fund	Employer Insurance	Delta Dental Plan of Minnesota	Dental Insurance Premium-Feb 2009	31.00
0	03/05/2009	General Fund	Employer Insurance	Delta Dental Plan of Minnesota	Dental Insurance Premium-Feb 2009	31.00
0	03/05/2009	Information Technology	Employer Insurance	Delta Dental Plan of Minnesota	Dental Insurance Premium-Feb 2009	62.00
0	03/05/2009	General Fund	Employer Insurance	Delta Dental Plan of Minnesota	Dental Insurance Premium-Feb 2009	61.67
0	03/05/2009	General Fund	Employer Insurance	Delta Dental Plan of Minnesota	Dental Insurance Premium-Feb 2009	682.00
0	03/05/2009	General Fund	Employer Insurance	Delta Dental Plan of Minnesota	Dental Insurance Premium-Feb 2009	31.00
0	03/05/2009	General Fund	Employer Insurance	Delta Dental Plan of Minnesota	Dental Insurance Premium-Feb 2009	31.00
0	03/05/2009	General Fund	Employer Insurance	Delta Dental Plan of Minnesota	Dental Insurance Premium-Feb 2009	62.00
0	03/05/2009	General Fund	Employer Insurance	Delta Dental Plan of Minnesota	Dental Insurance Premium-Feb 2009	93.00
0	03/05/2009	General Fund	Employer Insurance	Delta Dental Plan of Minnesota	Dental Insurance Premium-Feb 2009	31.00
0	03/05/2009	Recreation Fund	Employer Insurance	Delta Dental Plan of Minnesota	Dental Insurance Premium-Feb 2009	62.00
0	03/05/2009	P & R Contract Maintenance	Employer Insurance	Delta Dental Plan of Minnesota	Dental Insurance Premium-Feb 2009	93.00
0	03/05/2009	General Fund	Employer Insurance	Delta Dental Plan of Minnesota	Dental Insurance Premium-Feb 2009	31.00
0	03/05/2009	Community Development	Employer Insurance	Delta Dental Plan of Minnesota	Dental Insurance Premium-Feb 2009	31.00
0	03/05/2009	Community Development	Employer Insurance	Delta Dental Plan of Minnesota	Dental Insurance Premium-Feb 2009	31.00
0	03/05/2009	License Center	Employer Insurance	Delta Dental Plan of Minnesota	Dental Insurance Premium-Feb 2009	123.67
0	03/05/2009	Sanitary Sewer	Employer Insurance	Delta Dental Plan of Minnesota	Dental Insurance Premium-Feb 2009	62.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Description	Amount
0	03/05/2009	Water Fund	Employer Insurance	Delta Dental Plan of Minnesota	Dental Insurance Premium-Feb 2009	93.00
0	03/05/2009	Storm Drainage	Employer Insurance	Delta Dental Plan of Minnesota	Dental Insurance Premium-Feb 2009	61.67
0	03/05/2009	Risk Management	Employer Insurance	Delta Dental Plan of Minnesota	Dental Insurance Premium-Feb 2009	-1,704.01
0	03/05/2009	Risk Management	Employer Insurance	Delta Dental Plan of Minnesota	Dental Insurance Premium-Feb 2009	4,118.37
0	03/05/2009	General Fund	Office Supplies	Unisource Worldwide-No Central	Copy Paper	558.37
0	03/05/2009	Sanitary Sewer	Operating Supplies	USA BlueBook	Submersible Level Transmitter	584.98
0	03/05/2009	Sanitary Sewer	Use Tax Payable	USA BlueBook	Sales/Use Tax	-35.70
0	03/05/2009	General Fund	Contract Maintenance	Ancom Communications, Inc.	Replaced Defective Radio Parts	16.50
0	03/05/2009	General Fund	Contract Maintenance	Ancom Communications, Inc.	Repair Radio	16.50
0	03/05/2009	General Fund	Vehicle Supplies	Grainger Inc	Tape, Batteries	60.89
0	03/05/2009	General Fund	Vehicle Supplies	Grainger Inc	Socket	8.54
0	03/05/2009	General Fund	Vehicle Supplies	Grainger Inc	Sockets	16.12
0	03/05/2009	General Fund	Vehicle Supplies	Grainger Inc	Batteries, Nitrile Gloves	91.17
0	03/05/2009	General Fund	Op Supplies - City Hall	Grainger Inc	Batteries, Nitrile Gloves	22.76
0	03/05/2009	General Fund	Op Supplies - City Hall	Grainger Inc	Pump, Circulator	254.73
0	03/05/2009	Information Technology	Computer Equipment	Software House Int'l Inc	Office 2007-Microsoft License	4,021.44
0	03/05/2009	General Fund	Contract Maint. - City Garage	Green View Inc.	Cleaning-Public Works	1,035.57
0	03/05/2009	General Fund	Use Tax Payable	Green View Inc.	Sales/Use Tax	-63.20
0	03/05/2009	Water Fund	Operating Supplies	Northern Water Works Supply	Lug Repair Clamps	1,007.40
0	03/05/2009	Water Fund	Operating Supplies	Northern Water Works Supply	Lugs, Clamps, Hydrant Markers	2,127.04
Check Total:						519,578.79
0	03/12/2009	Recreation Fund	Vehicle Supplies	R & R Specialties Inc	Hydraulic Cylinder	496.64
0	03/12/2009	General Fund	Contract Maint. - City Hall	Davis Lock & Safe Inc	Clean & Lube	10.00
0	03/12/2009	General Fund	Contract Maint. - City Hall	Davis Lock & Safe Inc	Cut and Stamp Keys	10.12
0	03/12/2009	Recreation Fund	Professional Services	Carole Gernes	Preschool Programs	90.00
0	03/12/2009	Recreation Fund	Professional Services	Carole Gernes	Preschool Programs	90.00
0	03/12/2009	Recreation Fund	Professional Services	Caitlin Bean	Assistant Dance Instructor	26.00
0	03/12/2009	Recreation Fund	Professional Services	Julie Risinger	Assistant Dance Instructor	16.00
0	03/12/2009	Recreation Fund	Professional Services	Rebecca Fandrich	Assistant Dance Instructor	7.00
0	03/12/2009	Recreation Fund	Professional Services	Alaina Bean	Assistant Dance Instructor	52.00
0	03/12/2009	Municipal Jazz Band	Professional Services	Glen Newton	Big Band Director-Feb 09	225.00
0	03/12/2009	P & R Contract Maintenance	Training	Patti Sullivan	Low Voltage Irrigation Class	129.00
0	03/12/2009	Internal Service - Interest	Investment Income	M&I Marshall & Ilsley Bank	Safekeeping Charges-Feb 09	497.25
0	03/12/2009	Community Development	Electrical Inspections	Tokle Inspections, Inc.	Electrical Inspections-Feb 09	5,128.00
0	03/12/2009	Recreation Fund	Professional Services	Francisco Silva	Kids Cooking School Instruction	245.00
0	03/12/2009	General Fund	211403 - Day Care Expense Ded.		Dependent Care Reimbursement	166.15
0	03/12/2009	General Fund	211000 - Deferred Comp.	ICMA Retirement Trust 457-3002	Payroll Deduction for 3/10 Payroll	5,529.18
0	03/12/2009	General Fund	211402 - HCMA - Medical Exp.		Flexible Benefit Reimbursement	20.00
0	03/12/2009	General Fund	210600 - Union Dues Deduction	Local Teamsters #320	Payroll Deduction for 3/10 Payroll	578.24
0	03/12/2009	Community Development	Professional Services	Thomas Paschke	Planning Commission Recognition Items	29.87
0	03/12/2009	General Fund	Transportation	Eldona Bacon	Mileage Reimbursement	63.80

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Description	Amount
0	03/12/2009	General Fund	211402 - HCMA - Medical Exp.		Flexible Benefit Reimbursement	282.26
0	03/12/2009	General Fund	211402 - HCMA - Medical Exp.		Flexible Benefit Reimbursement	75.00
0	03/12/2009	General Fund	Vehicle Supplies	Catco Parts & Service Inc	Parts	264.40
0	03/12/2009	Recreation Fund	Operating Supplies	Lubrication Technologies Inc	Lubriplate Grease	78.76
0	03/12/2009	Recreation Fund	Professional Services	Roseville Area Senior Program	Facility Rental	30.00
0	03/12/2009	Recreation Fund	Professional Services	Metro Volleyball Officials	Volleyball Officiating	662.50
0	03/12/2009	General Fund	Vehicle Supplies	Factory Motor Parts	Super Duty Pads	53.38
0	03/12/2009	Solid Waste Recycle	Professional Services	Eureka Recycling	Curbside Recycling	33,339.11
0	03/12/2009	General Fund	Operating Supplies	3D Specialties	150 1.75" x 10' Telespar 14 ga \$2085.00	4,876.18
0	03/12/2009	General Fund	Utilities	Xcel Energy	Fire #3	1,847.70
0	03/12/2009	General Fund	Utilities - City Hall	Xcel Energy	City Hall Building	9,726.64
0	03/12/2009	General Fund	Utilities - City Garage	Xcel Energy	Garage/PW Building-	13,281.48
0	03/12/2009	Recreation Fund	Utilities	Xcel Energy	Nature Center	782.50
0	03/12/2009	License Center	Utilities	Xcel Energy	Motor Vehicle	580.88
0	03/12/2009	Water Fund	Utilities	Xcel Energy	2501 Fairview/Water Tower	227.96
0	03/12/2009	General Fund	Utilities	Xcel Energy	Traffic Signal	26.95
0	03/12/2009	General Fund	Utilities	Xcel Energy	Traffic Signal	25.35
0	03/12/2009	General Fund	Utilities	Xcel Energy	Traffic Signal	15.84
0	03/12/2009	General Fund	Utilities	Xcel Energy	Traffic Signal	15.75
0	03/12/2009	General Fund	Utilities	Xcel Energy	Traffic Signal	128.07
0	03/12/2009	General Fund	Utilities	Xcel Energy	Traffic Signal	32.02
0	03/12/2009	General Fund	Utilities	Xcel Energy	Traffic Signal	30.91
0	03/12/2009	General Fund	Professional Services	Total Tool	C & H Inspections	173.75
0	03/12/2009	P & R Contract Maintenance	Professional Services	Total Tool	C & H Inspections	87.18
0	03/12/2009	Recreation Fund	Operating Supplies	Grainger Inc	Battery	14.67
0	03/12/2009	Recreation Fund	Operating Supplies	Grainger Inc	Electronic Ballast	37.91
0	03/12/2009	Recreation Fund	Operating Supplies	Grainger Inc	Lamp	22.30
0	03/12/2009	General Fund	Op Supplies - City Hall	Grainger Inc	HVAC Police Garage	143.19
0	03/12/2009	Recreation Fund	Operating Supplies	Eagle Clan Enterprises, Inc	Roll Towels, Can Liners, Soap	568.17
Check Total:						80,840.06
54562	03/03/2009	Sanitary Sewer	Professional Services	Pipe Services Inc	Televise Sewer Mainline	25,702.61
54562	03/03/2009	Storm Drainage	Contract Maintenance	Pipe Services Inc	Televise Sewer Mainline	1,171.68
Check Total:						26,874.29
54563	03/03/2009	Recreation Fund	Postage	Postmaster- Cashier Window #5	Spring/Summer Brochure-Acct. 2437	1,000.00
Check Total:						1,000.00
54565	03/05/2009	General Fund	Clothing	Aspen Mills Inc.	Jackets	166.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Description	Amount
54565	03/05/2009	General Fund	Clothing	Aspen Mills Inc.	Jacket	83.00
54565	03/05/2009	General Fund	Clothing	Aspen Mills Inc.	Pants	89.90
Check Total:						338.90
54566	03/05/2009	General Fund	Vehicle Supplies	Baldwin Supply Company	Commercial Grade Rubber	38.81
54566	03/05/2009	General Fund	Use Tax Payable	Baldwin Supply Company	Sales/Use Tax	-2.36
Check Total:						36.45
54567	03/05/2009	Equipment Replacement	FunRental - Copier Machines	Banc of America Leasing	Copier Lease	2,875.06
Check Total:						2,875.06
54568	03/05/2009	General Fund	211403 - Day Care Expense Ded.		Dependent Care Reimbursement	107.68
54568	03/05/2009	General Fund	211402 - HCMA - Medical Exp.		Flexible Benefit Reimbursement	347.64
Check Total:						455.32
54569	03/05/2009	General Fund	Contract Maintenance Vehicles	Clarey's Safety Equipment Inc	Step Valve	264.98
54569	03/05/2009	General Fund	Contract Maintenance Vehicles	Clarey's Safety Equipment Inc	Handrail, Gasket	105.01
Check Total:						369.99
54570	03/05/2009	Golf Course	Advertising	Dex Media East LLC	Advertising	39.00
54570	03/05/2009	Recreation Fund	Advertising	Dex Media East LLC	Advertising	39.00
Check Total:						78.00
54571	03/05/2009	General Fund	Professional Services	ESRI	Engineering (2 single use/ 1 concurrent	300.00
54571	03/05/2009	Storm Drainage	Professional Services	ESRI	Engineering (2 single use/1 concurrent	259.92
54571	03/05/2009	Sanitary Sewer	Professional Services	ESRI	u Engineering (2 single use/1 concurrent	259.94
54571	03/05/2009	General Fund	Professional Services	ESRI	U Police Dept (2 concurrent use licenses)	290.58
54571	03/05/2009	Community Development	Memberships & Subscriptions	ESRI	Comm Development (1 single use/2	627.87
54571	03/05/2009	Recreation Improvements	Other Improvements	ESRI	concurr Parks (1 single use license)	337.29
Check Total:						2,075.60
54572	03/05/2009	General Fund	Professional Services	FedEx	GFOA Award	11.72

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Description	Amount
54572	03/05/2009	General Fund	Professional Services	FedEx	Account Charges	13.00
54572	03/05/2009	Housing & Redevelopment	APrinting	FedEx	Home & Garden Brochures	21.61
Check Total:						46.33
54573	03/05/2009	General Fund	Clothing	Ted Fish	Safety Footwear Reimbursement	125.00
Check Total:						125.00
54574	03/05/2009	Boulevard Landscaping	Operating Supplies	Harmon Inc.	Furnish and install clear laminated safe	641.00
Check Total:						641.00
54575	03/05/2009	General Fund	Contract Maintenance	HealthEast Transportation	Vehicle Conversion	459.79
Check Total:						459.79
54576	03/05/2009	Sanitary Sewer	Accounts Payable	KATHLEEN KYLE	Refund check	14.18
54576	03/05/2009	Water Fund	Accounts Payable	KATHLEEN KYLE	Refund check	20.37
Check Total:						34.55
54577	03/05/2009	Sanitary Sewer	Accounts Payable	LORRAINE LEIER	Refund check	14.07
54577	03/05/2009	Water Fund	Accounts Payable	LORRAINE LEIER	Refund check	5.62
Check Total:						19.69
54578	03/05/2009	Community Development	Deposits	Maertens Brenny Construction	Construction Deposit Refund	3,700.00
Check Total:						3,700.00
54579	03/05/2009	General Fund	Employer Insurance	Medica	Health Insurance Premium for March 09	2,344.42
54579	03/05/2009	General Fund	Employer Insurance	Medica	Health Insurance Premium for March 09	3,468.33
54579	03/05/2009	Information Technology	Employer Insurance	Medica	Health Insurance Premium for March 09	2,614.99
54579	03/05/2009	General Fund	Employer Insurance	Medica	Health Insurance Premium for March 09	782.66
54579	03/05/2009	General Fund	Employer Insurance	Medica	Health Insurance Premium for March 09	23,074.78

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Description	Amount
54579	03/05/2009	General Fund	Employer Insurance	Medica	Health Insurance Premium for March 09	2,712.00
54579	03/05/2009	General Fund	Employer Insurance	Medica	Health Insurance Premium for March 09	1,223.33
54579	03/05/2009	General Fund	Employer Insurance	Medica	Health Insurance Premium for March 09	1,194.99
54579	03/05/2009	General Fund	Employer Insurance	Medica	Health Insurance Premium for March 09	2,600.99
54579	03/05/2009	General Fund	Employer Insurance	Medica	Health Insurance Premium for March 09	5,078.33
54579	03/05/2009	General Fund	Employer Insurance	Medica	Health Insurance Premium for March 09	825.00
54579	03/05/2009	Telecommunications	Employer Insurance	Medica	Health Insurance Premium for March 09	1,062.00
54579	03/05/2009	Recreation Fund	Employer Insurance	Medica	Health Insurance Premium for March 09	3,238.33
54579	03/05/2009	Recreation Fund	Employer Insurance	Medica	Health Insurance Premium for March 09	398.33
54579	03/05/2009	P & R Contract Maintenance	Employer Insurance	Medica	Health Insurance Premium for March 09	3,391.99
54579	03/05/2009	Recreation Fund	Employer Insurance	Medica	Health Insurance Premium for March 09	2,157.33
54579	03/05/2009	General Fund	Employer Insurance	Medica	Health Insurance Premium for March 09	959.33
54579	03/05/2009	Community Development	Employer Insurance	Medica	Health Insurance Premium for March 09	993.33
54579	03/05/2009	Community Development	Employer Insurance	Medica	Health Insurance Premium for March 09	398.33
54579	03/05/2009	Community Development	Employer Insurance	Medica	Health Insurance Premium for March 09	595.00
54579	03/05/2009	Community Development	Employer Insurance	Medica	Health Insurance Premium for March 09	384.33
54579	03/05/2009	License Center	Employer Insurance	Medica	Health Insurance Premium for March 09	4,742.66
54579	03/05/2009	Sanitary Sewer	Employer Insurance	Medica	Health Insurance Premium for March 09	595.00
54579	03/05/2009	Water Fund	Employer Insurance	Medica	Health Insurance Premium for March 09	993.33
54579	03/05/2009	Golf Course	Employer Insurance	Medica	Health Insurance Premium for March 09	805.00
54579	03/05/2009	Storm Drainage	Employer Insurance	Medica	Health Insurance Premium for March 09	782.66
54579	03/05/2009	General Fund	211400 - HCMA Insurance Ded.	Medica	Health Insurance Premium for March 09	9,372.60

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Description	Amount
54579	03/05/2009	General Fund	211400 - HCMA Insurance Ded.	Medica	Health Insurance Premium for March 09	16,287.53
Check Total:						93,076.90
54580	03/05/2009	Recreation Fund	Memberships & Subscriptions	Minnesota Recreation & Park As	Annual Membership	20.00
54580	03/05/2009	P & R Contract Maintenance	Memberships & Subscriptions	Minnesota Recreation & Park As	Annual Membership	20.00
54580	03/05/2009	Recreation Fund	Memberships & Subscriptions	Minnesota Recreation & Park As	Annual Membership	60.00
54580	03/05/2009	Recreation Fund	Memberships & Subscriptions	Minnesota Recreation & Park As	Volleyball & Basketball Team Reg.	1,326.00
54580	03/05/2009	Recreation Fund	Memberships & Subscriptions	Minnesota Recreation & Park As	Volleyball & Basketball Team Reg.	561.00
Check Total:						1,987.00
54581	03/05/2009	General Fund	Training	Mn Fire Service Certification	Recertification-Doug Johnson	20.00
Check Total:						20.00
54582	03/05/2009	Telecommunications	Postage	Postmaster- Cashier Window #5	Newsletter Postage -Acct. 2437	2,500.00
Check Total:						2,500.00
54583	03/05/2009	General Fund	Capital Outlay	Pro-Tec Design, Inc.	Work of Fire Dept. Access System	3,385.31
Check Total:						3,385.31
54584	03/05/2009	Telephone	St. Anthony Telephone	Qwest	Telephone	119.39
54584	03/05/2009	Telephone	Telephone	Qwest	Telephone	56.19
Check Total:						175.58
54585	03/05/2009	Telephone	Telephone	Qwest Communications	Telephone	169.32
Check Total:						169.32
54586	03/05/2009	Housing & Redevelopment A	Advertising	RAHS/Raider Grafix	Code Enforcement Brochures	1,065.00
54586	03/05/2009	Housing & Redevelopment A	Use Tax Payable	RAHS/Raider Grafix	Sales/Use Tax	-65.00
Check Total:						1,000.00
54587	03/05/2009	General Fund	Operating Supplies City Garage	Ramsey County	Hazardous Waste Generator License	70.60

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Description	Amount
Check Total:						70.60
54588	03/05/2009	Golf Course	Operating Supplies	Sam's Club	Annual Membership, Gift Card	270.00
54588	03/05/2009	Golf Course	Merchandise For Sale	Sam's Club	Annual Membership, Gift Card	800.00
Check Total:						1,070.00
54589	03/05/2009	General Fund	Telephone	Sprint	Cell Phones	35.39
54589	03/05/2009	General Fund	Telephone	Sprint	Cell Phones	104.99
54589	03/05/2009	Information Technology	Telephone	Sprint	Cell Phones	241.95
54589	03/05/2009	Recreation Fund	Telephone	Sprint	Cell Phones	104.57
54589	03/05/2009	General Fund	Telephone	Sprint	Cell Phones	35.28
54589	03/05/2009	Community Development	Telephone	Sprint	Cell Phones	35.07
54589	03/05/2009	General Fund	Telephone	Sprint	Cell Phones	48.56
54589	03/05/2009	General Fund	Telephone	Sprint	Cell Phones	412.48
54589	03/05/2009	General Fund	Telephone	Sprint	Cell Phones	382.31
Check Total:						1,400.60
54590	03/05/2009	General Fund	Operating Supplies	Staples Business Advantage	Printer Cartridge	149.07
Check Total:						149.07
54591	03/05/2009	Water Fund	Water - Roseville	James Stepnick	Overpayment on Closed Account	56.59
Check Total:						56.59
54592	03/05/2009	General Fund	Business Licenses	Laura Storkamp	Massage License Refund	75.00
Check Total:						75.00
54593	03/05/2009	General Fund	Professional Services	Sheila Stowell	City Council Meeting Minutes	218.50
54593	03/05/2009	General Fund	Professional Services	Sheila Stowell	Milcage Reimbursement	9.58
54593	03/05/2009	Housing & Redevelopment A	Professional Services	Sheila Stowell	Agenda Packet Review, Minutes Typing	143.75
Check Total:						371.83
54594	03/05/2009	General Fund	Vehicle Supplies	Suburban Tire Wholesale, Inc.	Tires	1,344.54

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Description	Amount
Check Total:						1,344.54
54595	03/05/2009	Recreation Fund	Professional Services	The Active Network, Inc.	Registration Software	7,500.00
Check Total:						7,500.00
54596	03/05/2009	General Fund	Vehicle Supplies	Tousley Ford Inc	Handle	24.47
54596	03/05/2009	General Fund	Vehicle Supplies	Tousley Ford Inc	Mirror	96.91
Check Total:						121.38
54597	03/05/2009	General Fund	211402 - HCMA - Medical Exp.		Flexible Benefit Reimbursement	2,395.00
Check Total:						2,395.00
54598	03/05/2009	Water Fund	Professional Services	Valley-Rich Co., Inc.	Tractors, Lowboys	3,244.50
54598	03/05/2009	Water Fund	Professional Services	Valley-Rich Co., Inc.	Tractors, Lowboys	1,499.00
54598	03/05/2009	Water Fund	Professional Services	Valley-Rich Co., Inc.	Tractors	1,258.00
54598	03/05/2009	Water Fund	Professional Services	Valley-Rich Co., Inc.	Tractor, Lowboy	1,028.00
54598	03/05/2009	Water Fund	Professional Services	Valley-Rich Co., Inc.	Tractor, Lowboy	1,091.50
Check Total:						8,121.00
54600	03/12/2009	Recreation Fund	Professional Services	AAHC Audiology Assoc. Hearing	Audiometric Testing	64.00
54600	03/12/2009	General Fund	Professional Services	AAHC Audiology Assoc. Hearing	Audiometric Testing	96.00
54600	03/12/2009	General Fund	Professional Services	AAHC Audiology Assoc. Hearing	Audiometric Testing	96.00
54600	03/12/2009	General Fund	Professional Services	AAHC Audiology Assoc. Hearing	Audiometric Testing	160.00
54600	03/12/2009	P & R Contract Maintenance	Professional Services	AAHC Audiology Assoc. Hearing	Audiometric Testing	192.00
54600	03/12/2009	Sanitary Sewer	Professional Services	AAHC Audiology Assoc. Hearing	Audiometric Testing	192.00
54600	03/12/2009	Water Fund	Professional Services	AAHC Audiology Assoc. Hearing	Audiometric Testing	128.00
54600	03/12/2009	Community Development	Professional Services	AAHC Audiology Assoc. Hearing	Audiometric Testing	64.00
Check Total:						992.00
54601	03/12/2009	Recreation Fund	Professional Services	Angela Benes	Tap for Seniors Instructor Jan/Feb 09	240.00
Check Total:						240.00
54602	03/12/2009	Sanitary Sewer	Infiltration & Inflow	Bonestroo	Inflow Analysis	1,411.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Description	Amount
					Check Total:	1,411.00
54603	03/12/2009	Telephone	Equipment Reserve Fund	CDW Government, Inc.	Phone Equipment	579.34
					Check Total:	579.34
54604	03/12/2009	General Fund	211403 - Day Care Expense Ded.		Dependent Care Reimbursement	76.92
					Check Total:	76.92
54605	03/12/2009	Golf Course	Merchandise For Sale	Coca Cola Bottling Company	Beverages for Sale	760.47
					Check Total:	760.47
54606	03/12/2009	General Fund	Operating Supplies	Coffee Mill, Inc.	Coffee Supplies	371.75
					Check Total:	371.75
54607	03/12/2009	General Fund	Contract Maintenance	Comcast Cable	Cable TV	4.69
					Check Total:	4.69
54608	03/12/2009	General Fund	211402 - HCMA - Medical Exp.		Flexible Benefit Reimbursement	180.00
					Check Total:	180.00
54609	03/12/2009	Recreation Improvements	Auto Cad Upgrades	DLT SOLUTIONS, INC.	AutoCAD Subscription	2,836.64
54609	03/12/2009	Recreation Improvements	Use Tax Payable	DLT SOLUTIONS, INC.	Sales/Use Tax	-173.12
					Check Total:	2,663.52
54610	03/12/2009	General Fund	Vehicle Supplies	GCR Truck Tire Centers	Tires	428.11
					Check Total:	428.11
54611	03/12/2009	Recreation Fund	Operating Supplies	Groth Music, Inc.	Big Band Music	38.34
54611	03/12/2009	Recreation Fund	Operating Supplies	Groth Music, Inc.	Big Band Music	55.59
					Check Total:	93.93

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Description	Amount
54612	03/12/2009	General Fund	Professional Services	Hildi, Inc	GASB 45 Compliance Report	400.00
Check Total:						400.00
54613	03/12/2009	General Fund	211600 - PERA Employers Share	ICMA Retirement Trust 401-1099	401a William Malinen-Employer Portion	309.50
Check Total:						309.50
54614	03/12/2009	General Fund	Employer Insurance	ING ReliaStar	High Deductable Savings-March 09	620.00
54614	03/12/2009	Information Technology	Employer Insurance	ING ReliaStar	High Deductable Savings-March 09	725.00
54614	03/12/2009	General Fund	Employer Insurance	ING ReliaStar	High Deductable Savings-March 09	200.00
54614	03/12/2009	General Fund	Employer Insurance	ING ReliaStar	High Deductable Savings-March 09	4,325.00
54614	03/12/2009	General Fund	Employer Insurance	ING ReliaStar	High Deductable Savings-March 09	333.00
54614	03/12/2009	General Fund	Employer Insurance	ING ReliaStar	High Deductable Savings-March 09	200.00
54614	03/12/2009	General Fund	Employer Insurance	ING ReliaStar	High Deductable Savings-March 09	600.00
54614	03/12/2009	General Fund	Employer Insurance	ING ReliaStar	High Deductable Savings-March 09	525.00
54614	03/12/2009	General Fund	Employer Insurance	ING ReliaStar	High Deductable Savings-March 09	265.00
54614	03/12/2009	General Fund	Employer Insurance	ING ReliaStar	High Deductable Savings-March 09	125.00
54614	03/12/2009	Telecommunications	Employer Insurance	ING ReliaStar	High Deductable Savings-March 09	253.00
54614	03/12/2009	Recreation Fund	Employer Insurance	ING ReliaStar	High Deductable Savings-March 09	495.00
54614	03/12/2009	Recreation Fund	Employer Insurance	ING ReliaStar	High Deductable Savings-March 09	200.00
54614	03/12/2009	P & R Contract Maintenance	Employer Insurance	ING ReliaStar	High Deductable Savings-March 09	415.00
54614	03/12/2009	Recreation Fund	Employer Insurance	ING ReliaStar	High Deductable Savings-March 09	491.00
54614	03/12/2009	General Fund	Employer Insurance	ING ReliaStar	High Deductable Savings-March 09	90.00
54614	03/12/2009	Community Development	Employer Insurance	ING ReliaStar	High Deductable Savings-March 09	370.00
54614	03/12/2009	Community Development	Employer Insurance	ING ReliaStar	High Deductable Savings-March 09	200.00
54614	03/12/2009	License Center	Employer Insurance	ING ReliaStar	High Deductable Savings-March 09	990.00
54614	03/12/2009	Sanitary Sewer	Employer Insurance	ING ReliaStar	High Deductable Savings-March 09	170.00
54614	03/12/2009	Water Fund	Employer Insurance	ING ReliaStar	High Deductable Savings-March 09	370.00
54614	03/12/2009	Golf Course	Employer Insurance	ING ReliaStar	High Deductable Savings-March 09	70.00
54614	03/12/2009	Storm Drainage	Employer Insurance	ING ReliaStar	High Deductable Savings-March 09	200.00
Check Total:						12,232.00
54615	03/12/2009	Recreation Fund	Operating Supplies	Steve Johnson	Reimbursement for Rock Climbing Supplies	63.55
Check Total:						63.55
54616	03/12/2009	General Fund	211402 - HCMA - Medical Exp.		Flexible Benefit Reimbursement	2,611.79

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Description	Amount
Check Total:						2,611.79
54617	03/12/2009	Recreation Fund	Professional Services	Jessica Kohs	Assistant Dance Instructor	34.00
Check Total:						34.00
54618	03/12/2009	Equipment Replacement	FunRental - Copier Machines	Konica Minolta Business Soluti	Copy Charges	2,455.02
54618	03/12/2009	Equipment Replacement	FunRental - Copier Machines	Konica Minolta Business Soluti	Copy Charges	59.31
Check Total:						2,514.33
54619	03/12/2009	General Fund	210600 - Union Dues Deduction	LELS	Payroll Deduction for 3/10 Payroll	1,596.00
Check Total:						1,596.00
54620	03/12/2009	Community Development	Advertising	Lillie Suburban Newspaper Inc	Public Notice	12.00
54620	03/12/2009	General Fund	Advertising	Lillie Suburban Newspaper Inc	Public Notice	15.00
Check Total:						27.00
54621	03/12/2009	General Fund	210600 - Union Dues Deduction	Local Union 49	Payroll Deduction for 3/10 Payroll	762.50
Check Total:						762.50
54622	03/12/2009	Sanitary Sewer	Professional Services	Lone Oak Companies, Inc.	Folding, inserting, mailing, utility sta	142.69
54622	03/12/2009	Water Fund	Professional Services	Lone Oak Companies, Inc.	Folding, inserting, mailing, utility sta	142.69
54622	03/12/2009	Storm Drainage	Professional Services	Lone Oak Companies, Inc.	Folding, inserting, mailing, utility sta	142.69
54622	03/12/2009	Community Development	Printing	Lone Oak Companies, Inc.	Folding, inserting, mailing, utility sta	59.00
Check Total:						487.07
54623	03/12/2009	Recreation Fund	Professional Services	Nick Madryga	Floor Hockey Instruction	102.00
Check Total:						102.00
54624	03/12/2009	Telecommunications	Memberships & Subscriptions	MAGC	Communication Contest	110.00
Check Total:						110.00
54625	03/12/2009	Recreation Fund	Professional Services	Megan Miner	Assistant Dance Instructor	48.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Description	Amount
Check Total:						48.00
54626	03/12/2009	General Fund	211200 - Financial Support	MN Child Support Payment Cntr	Payroll Deduction for 3/10 Payroll	587.50
Check Total:						587.50
54627	03/12/2009	Community Development	Building Surcharge	MN Dept of Labor and Industry	Building Permit Surcharges	432.44
54627	03/12/2009	Community Development	Miscellaneous Revenue	MN Dept of Labor and Industry	Building Permit Surcharges-Retention	-25.00
Check Total:						407.44
54628	03/12/2009	General Fund	MN State Retirement	MN State Retirement System	Payroll Deduction for 3/10 Payroll	4,149.16
Check Total:						4,149.16
54629	03/12/2009	Recreation Fund	Non Fee Program Revenue	North Heights Lutheran Church	Refund for Two Absent Students	9.00
Check Total:						9.00
54630	03/12/2009	Recreation Fund	Operating Supplies	On Site Sanitation, Inc.	Regular Service	40.47
Check Total:						40.47
54631	03/12/2009	General Fund	211403 - Day Care Expense Ded.		Dependent Care Reimbursement	369.24
Check Total:						369.24
54632	03/12/2009	General Fund	Operating Supplies	Police Unity Tour	Police Unity Tour	1,000.00
Check Total:						1,000.00
54633	03/12/2009	General Fund	Employer Insurance	Premier Bank	HSA-March 10, 09	996.90
54633	03/12/2009	General Fund	Employer Insurance	Premier Bank	HSA-March 10, 09	297.16
54633	03/12/2009	General Fund	Employer Insurance	Premier Bank	HSA-March 10, 09	284.17
54633	03/12/2009	P & R Contract Maintenance	Employer Insurance	Premier Bank	HSA-March 10, 09	240.63
54633	03/12/2009	License Center	Employer Insurance	Premier Bank	HSA-March 10, 09	226.88
54633	03/12/2009	General Fund	Employer Insurance	Premier Bank	HSA-March 10, 09	169.59
54633	03/12/2009	Recreation Fund	Employer Insurance	Premier Bank	HSA-March 10, 09	135.21
54633	03/12/2009	General Fund	Employer Insurance	Premier Bank	HSA-March 10, 09	91.67
54633	03/12/2009	General Fund	Employer Insurance	Premier Bank	HSA-March 10, 09	91.67
54633	03/12/2009	Community Development	Employer Insurance	Premier Bank	HSA-March 10, 09	91.67

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Description	Amount
54633	03/12/2009	Water Fund	Employer Insurance	Premier Bank	HSA-March 10, 09	91.67
54633	03/12/2009	Information Technology	Employer Insurance	Premier Bank	HSA-March 10, 09	77.92
54633	03/12/2009	General Fund	Employer Insurance	Premier Bank	HSA-March 10, 09	77.92
54633	03/12/2009	Community Development	Employer Insurance	Premier Bank	HSA-March 10, 09	77.92
54633	03/12/2009	General Fund	Employer Insurance	Premier Bank	HSA-March 10, 09	57.29
54633	03/12/2009	General Fund	Employer Insurance	Premier Bank	HSA-March 10, 09	57.29
54633	03/12/2009	General Fund	211402 - HCMA - Medical Exp.	Premier Bank	HSA-March 10, 09-EE Cont	1,116.42
Check Total:						4,181.98
54634	03/12/2009	General Fund	211200 - Financial Support	Rausch Sturm Israel & Hornik	Case # CV074555	351.16
Check Total:						351.16
54635	03/12/2009	Singles Program	Operating Supplies	Ron Rieschl	Single Supplies Reimbursement	20.00
Check Total:						20.00
54636	03/12/2009	Recreation Fund	Training	Rockhurst University	Management Skills Class-D. Cash	179.00
Check Total:						179.00
54637	03/12/2009	Recreation Fund	Professional Services	Myra Smisek	Preschool Programs	71.00
54637	03/12/2009	Recreation Fund	Professional Services	Myra Smisek	Preschool Programs	26.00
Check Total:						97.00
54638	03/12/2009	General Fund	Operating Supplies	Staples Business Advantage	Toner	362.21
Check Total:						362.21
54639	03/12/2009	Recreation Fund	Professional Services	State of MN-DNR	Firearms Safety Class-Jan/Feb 09	157.50
Check Total:						157.50
54640	03/12/2009	Recreation Improvements	Other Improvements	Stonewear, Inc.	Floor Plates	1,575.66
54640	03/12/2009	Recreation Improvements	Use Tax Payable	Stonewear, Inc.	Sales/Use Tax	-96.16
Check Total:						1,479.50
54641	03/12/2009	General Fund	Memberships & Subscriptions	Suburban Rate Authority	First Half Dues-2009	1,400.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Description	Amount
					Check Total:	<u>1,400.00</u>
54642	03/12/2009	Recreation Fund	Printing	Tandem Printing Inc	Skate Tags (2000 per color, 10 colors)	<u>1,803.05</u>
					Check Total:	<u>1,803.05</u>
54643	03/13/2009	General Fund	210000 - Direct Deposit	Donna Koontz	Payroll Payment	<u>673.74</u>
					Check Total:	<u>673.74</u>
						<u><u> </u></u>
					Report Total:	<u><u>2,466,301.65</u></u>

ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: 03-23-09
Item No.: 7.b

Department Approval

Christopher K. Miller

Acting City Manager Approval

Christopher K. Miller

Item Description: Approval of 2009 Business Licenses

BACKGROUND

Chapter 301 of the City Code requires all applications for business licenses to be submitted to the City Council for approval. The following application(s) is (are) submitted for consideration

Massage Therapist License

Louise Peters

@ Hamline Health & Wellness

2151 Hamline Avenue N #111

Roseville MN 55113

Massage Therapist License

Louise Peters

@ Lifetime Fitness

2480 Fairview Avenue N

Roseville MN 55113

POLICY OBJECTIVE

Required by City Code

FINANCIAL IMPACTS

The correct fees were paid to the City at the time the application(s) were made.

STAFF RECOMMENDATION

Staff has reviewed the application(s) and has determined that the applicant(s) meet all City requirements.

REQUESTED COUNCIL ACTION

Motion to approve the business license application(s) as submitted.

Prepared by: Chris Miller, Finance Director
Attachments: A: Applications

Massage Therapist License

Make checks payable to City of Roseville



AVEDA INSTITUTE
MINNEAPOLIS

AVEDA™

Institute 

Day Spa Certificate of Completion

Having the skills, knowledge and experience necessary to receive this certificate, The Aveda
Institute-Minneapolis certifies that

Louise Peters

has successfully completed 600 hours in the science of

Massage Therapy and Spa Esthetics

Signed: Genine Hanson-Fillmore Date: December 22, 2005
Genine Hanson-Fillmore
Registrar

Notary Public



Notary Public Signature: Alvera A. Jaquinto

School Seal



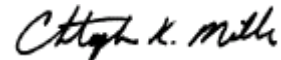
ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: 03/23/2009
Item No.: 7.c

Department Approval



Acting City Manager Approval



Item Description: Reaffirm Grant Resolution for Awarded DEED Redevelopment Grant and Approve Contract

1.0 BACKGROUND

- 1.1. On August 1, 2008, the City applied for funds from the Department of Employment and Economic Development to assist with the construction of the initial phase of infrastructure within the Twin Lakes Redevelopment Area.
- 1.2. During the agency review of the grant application, DEED staff identified a technical error with the City's adopted Resolution of Application (Resolution 10643, adopted on July 21, 2008). The State requires that statutory cities authorize both their mayor and city clerk to apply for the grant—Roseville's resolution only identified the mayor. DEED staff alerted city staff to this error and determined that if the City was to receive a grant award, they would need to reaffirm the resolution to remedy this error.
- 1.3. On September 12, 2008, DEED awarded the City \$528,846. Staff has prepared a revised resolution correcting the identified omission (Attachment A) and has received a grant agreement from DEED to accept the award.

2.0 POLICY OBJECTIVE

- 2.1. By accepting the DEED Redevelopment Grant Funds, the City is taking a proactive step to leverage external funds to assist with the acquisition of right-of-way and construction of the public roadways and utilities.

3.0 FINANCIAL IMPACTS

- 3.1. If the City accepts this grant, it is obligating itself to provide matching funds. As identified in the contract (Attachment B), the total eligible project costs are \$2.618 million of which the DEED grant will pay for up to \$528,846 in costs and the City is responsible for the \$2,089,154 in costs. Of those remaining costs, DEED is allowing the City to attribute \$453,577 of the infrastructure monies put forward by Metro Transit. The City is responsible for the outstanding \$1,635,577. These are TIF-eligible expenses and there are sufficient balances within existing districts to offset these costs.

4.0 STAFF RECOMMENDATION

- 4.1 Staff recommends that the City Council approve the amended Resolution of Application. The only difference between the original resolution and this amendment is the addition of the the words

“and the City Manager, which can be found in lines 11 and 32 of Attachment A: Amended Resolution. Without this correction, the City’s application will become invalid.

4.2 Staff also recommends that the City Council accept the \$528,846 DEED Redevelopment Grant award. These funds will help defray the costs of the initial phase of infrastructure improvements within the Twin Lakes Redevelopment Area. As part of the intergovernmental agreement between the City and the Metro Transit, the City has committed to constructing these improvements.

5.0 REQUESTED COUNCIL ACTION

5.1 By resolution, reaffirm the decision to allow the City to submit a grant application to DEED’s Redevelopment Grant Program for the acquisition of right-of-way, construction of a segment of Twin Lakes Parkway, Mount Ridge Road and associated utilities, and improvements to the intersection of Cleveland Avenue and Twin Lakes Parkway.

5.2 By motion, enter into the agreement with DEED to accept the \$528,846 DEED Redevelopment Grant award.

Prepared by: Jamie Radel, Economic Development Associate

Attachments: A: Amended Resolution
B: DEED Redevelopment Grant Agreement

1 **EXTRACT OF MINUTES OF MEETING**
2 **OF THE**
3 **CITY COUNCIL OF THE CITY OF ROSEVILLE**

4
5 * * * * *

6
Pursuant to due call and notice thereof, a regular meeting of the City of Roseville, County of Ramsey, Minnesota, was duly called and held at the City Hall on Monday, the 23rd day of March 2009 at 6:00 p.m.

The following members were present;;

and the following were absent: .

Councilmember introduced the following resolution and moved its adoption:

7 **RESOLUTION NO. XXXXX**
8 **RESOLUTION OF APPLICANT**

9 BE IT RESOLVED that the City of Roseville acts as the legal sponsor for the Twin
10 Lakes project contained in the Redevelopment Grant Program to be submitted on August
11 1, 2008, and that Mayor and City Manager are hereby authorized to apply to the
12 Department of Employment and Economic Development for funding of this project on
13 behalf of the City of Roseville.

14
15 BE IT FURTHER RESOLVED that the City of Roseville has the legal authority to apply
16 for financial assistance, and the institutional, managerial, and financial capability to
17 ensure adequate project administration.

18
19 BE IT FURTHER RESOLVED that the sources and amounts of the local match
20 identified in the application are committed to the project identified.

21
22 BE IT FURTHER RESOLVED that the City of Roseville has not violated any Federal,
23 State or local laws pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of
24 interest or other unlawful or corrupt practice.

25
26 BE IT FURTHER RESOLVED that upon approval of its application by the state,
27

28 The City of Roseville may enter into an agreement with the State of Minnesota for the
29 above referenced project, and that City of Roseville certifies that it will comply with all
30 applicable laws and regulation as stated in all contract agreements.

31

32 NOW, THEREFORE BE IT RESOLVED that the Mayor and City Manager are hereby
33 authorized to execute such agreements as are necessary to implement the project on
34 behalf of the applicant.

35

The motion for the adoption of the foregoing resolution was duly seconded by
Councilmember , and upon vote being taken thereon, the following voted in favor:.

and voted against: .

WHEREUPON said resolution was declared duly passed and adopted.

General Obligation Bond Proceeds

Grant Agreement - Construction Grant
for the
Twin Lakes Redevelopment
Project
under the
Redevelopment Grant
Program
RDGP-08-0029-o-FY09

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General Obligation Bond Proceeds
Grant Agreement – Construction Grant
for the
Twin Lakes Redevelopment
Project
under the
Redevelopment Grant
Program

THIS AGREEMENT shall be effective as of September 12, 2008 and is between the city of Roseville, a statutory city (the “Public Entity”), and the Minnesota Department of Employment and Economic Development (the “State Entity”).

RECITALS

A. The State Entity has created and is operating a Redevelopment Grant Program (the “State Program”) under the authority granted by Minn. Stat. §§ 116J.571 to 116J.575 and all rules related to such legislation (the “State Program Enabling Legislation”).

B. Under the State Program, the State Entity is authorized to provide grants that are funded with proceeds of state general obligation bonds authorized to be issued under Article XI, § 5(a) of the Minnesota Constitution.

C. Under the State Program the recipients of a grant must use such funds to perform those functions delineated in the State Program Enabling Legislation.

D. The Public Entity submitted, if applicable, a grant application to the State Entity in which the Public Entity requests a grant from the State Program the proceeds of which will be used for the purposes delineated in such grant application.

E. The Public Entity has applied to and been selected by the State Entity for a receipt of a grant from the State Program in an amount of \$528,846 (FIVE HUNDRED TWENTY-EIGHT THOUSAND EIGHT HUNDRED FORTY-SIX DOLLARS) (the “Program Grant”), the proceeds must be used by the Public Entity to perform those functions and activities imposed by the State Entity under the State Program.

F. Under the provisions contained in § 412.221, subd. 6 and § 160, the Public Entity has been given the authority to perform those functions and activities required of it under the State Program.

G. The Public Entity’s receipt and use of the Program Grant to acquire and/or improve real property (the “Real Property”) and, if applicable, structures situated thereon (the “Facility”) will cause all of such real property and structures to become “state bond financed property”, as such term is used in Minn. Stat. § 16A.695 (the “G.O. Compliance Legislation”) and in that

certain “Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property” executed by the Commissioner of Finance on July 20, 1995 (the “Commissioner’s Order”), even though such funds are being used to acquire and/or improve only a portion thereof.

I. The Public Entity and the State Entity desire to set forth herein the provisions relating to the granting and disbursement of the proceeds of the Program Grant to the Public Entity and the operation of the Real Property and, if applicable, Facility.

IN CONSIDERATION of the grant described and other provisions in this Agreement, the parties to this Agreement agree as follows.

Article I DEFINITIONS

Section 1.01 **Defined Terms.** As used in this Agreement, the following terms shall have the meanings set out respectively after each such term (the meanings to be equally applicable to both the singular and plural forms of the terms defined), unless the context specifically indicates otherwise:

“Disbursement(s)” – means a disbursement made or to be made by the State Entity to the Public Entity and disbursed in accordance with the provisions contained in Article VI hereof.

“Agreement” - means this General Obligation Bond Proceeds Grant Agreement - Construction Grant for the Twin Lakes Redevelopment Project under the Redevelopment Grant Program.

“Approved Debt” – means public or private debt that is consented to and approved, in writing, by the Commissioner, the proceeds of which were or will be used to acquire an ownership interest in or improve the Real Property and, if applicable, Facility, other than the debt on the G.O. Bonds. Approved Debt includes, but is not limited to, all debt delineated in **Attachment III** to this Agreement; provided, however, the Commissioner is not bound by any amounts delineated in such attachment unless he/she has consented, in writing, to such amounts.

“Architect”, if any – means Not Applicable, which will administer the Construction Contract Documents on behalf of the Public Entity.

“Code” - means the Internal Revenue Code of 1986, as amended from time to time, and all treasury regulations, revenue procedures and revenue rulings issued pursuant thereto.

“Commissioner” - means the commissioner of the Minnesota Department Finance, and any designated representatives thereof.

“Commissioner’s Order” - means that certain “Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property” executed by the then Commissioner of Finance on July 20, 1995.

“Completion Date” – means December 31, 2012 or the date of projected completion of the Project, whichever is earlier.

“Contractor” - means any person engaged to work on or to furnish materials and supplies for the Construction Items including, if applicable, a general contractor.

“Construction Contract Documents” - means the document or documents, in form and substance acceptable to the State Entity, including but not limited to any construction plans and specifications and any exhibits, amendments, change orders, modifications thereof or supplements thereto, which collectively form the contract between the Public Entity and the Contractor or Contractors for the completion of the Construction Items on or before the Completion Date for either a fixed price or a guaranteed maximum price.

“Construction Items” – means the work to be performed under the Construction Contract Documents.

“Counterparty” - means any entity with which the Public Entity contracts under a Use Contract. *This definition is only needed and only applies if the Public Entity enters into an agreement with another party under which such other party will operate the Real Property, and if applicable, Facility. For all other circumstances this definition is not needed and should be ignored and treated as if were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“Declaration” - means a declaration, or declarations, in the form contained in **Attachment I** to this Agreement and all amendments thereto, indicating that the Public Entity’s interest in the Real Property and, if applicable, Facility is bond financed property within the meaning of the G.O. Compliance Legislation and is subject to certain restrictions imposed thereby.

“Payment Request” - means a payment request that the Public Entity, or its designee, submits to the State Entity when a Disbursement is requested, as referred to in Section 6.02.

“Event of Default” - means one or more of those events delineated in Section 2.07.

“Facility”, if applicable, - means Not Applicable, which is located, or will be constructed and located, on the Real Property and all equipment that is a part thereof that was purchased with the proceeds of the Program Grant.

“Fair Market Value” – means either (i) the price that would be paid by a willing and qualified buyer to a willing and qualified seller as determined by an appraisal that assumes that all liens and encumbrances on the property being sold that negatively affect the value of such property, will be paid and released, or (ii) the price bid by a purchaser under a

public bid procedure after reasonable public notice, with the proviso that all liens and encumbrances on the property being sold that negatively affect the value of such property, will be paid and released at the time of acquisition by the purchaser.

“G.O. Bonds” - means that portion of the state general obligation bonds issued under the authority granted in Article XI, § 5(a) of the Minnesota Constitution the proceeds of which are used to fund the Program Grant and any bonds issued to refund or replace such bonds.

“G.O. Compliance Legislation” - means Minn. Stat. § 16A.695 as such may be subsequently be amended, modified or replaced from time to time unless such amendment, modification or replacement imposes an unconstitutional impairment of a contract right.

“Grant Application” – means that certain grant application that the Public Entity submitted to the State Entity on August 1, 2008, which is incorporated into this grant agreement. *This definition is only needed and only applies if the Public Entity submitted a grant application to the State Entity. If the Public Entity did not submit a grant application to the State Entity, then this definition is not needed and should be ignored and treated as if were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“Initial Acquisition and Betterment Costs” – means the cost to acquire the Public Entity’s ownership interest in Real Property and, if applicable, Facility if the Public Entity does not already possess the required ownership interest, and the costs of betterments of the Real Property and, if applicable, Facility; provided, however, the Commissioner is not bound by any specific amount of such alleged costs unless he/she has consented, in writing, to such amount.

“Inspecting Engineer”, if any - means the State Entity's construction inspector, or its designated consulting engineer.

“Leased Premises” - means the real estate and structures, if any, that are leased to the Public Entity under a Real Property/Facility Lease. *This definition is only needed and only applies if the Public Entity’s ownership interest in the Real Property, the Facility, if applicable, or both is by way of a leasehold interest under a Real Property/Facility Lease. For all other circumstances this definition is not needed and should be ignored and treated as if were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“Lessor” – means the fee owner/lessor of the Leased Premises. *This definition is only needed and only applies if the Public Entity’s ownership interest in the Real Property, the Facility, if applicable, or both, is by way of a leasehold interest under a Real Property/Facility Lease. For all other circumstances this definition is not needed and should be ignored and treated as if were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“Outstanding Balance of the Program Grant” – means the portion of the Program Grant that has been disbursed to or on behalf of the Public Entity minus any amounts received by the Commissioner under Section 2.08.B.

“Ownership Value”, if any – means the value of the Public Entity’s ownership interest, if any, in the Real Property and, if applicable, Facility that existed concurrent with the Public Entity’s execution of this Agreement. Such value shall be established by way of an appraisal or by such other manner as may be acceptable to the State Entity and the Commissioner. The parties hereto agree and acknowledge that such value is \$ _____ or ____ Not Applicable; provided, however, the Commissioner is not bound by any inserted dollar amount unless he/she has consented, in writing, to such amount. If no dollar amount is inserted and the blank “Not Applicable” is not checked, a rebuttable presumption that the Ownership Value is \$0.00 shall be created. *(The blank “Not Applicable” should only be selected and checked when a portion of the funds delineated in **Attachment III** attached hereto are to be used to acquire the Public Entity’s ownership interest in the Real Property and, if applicable, Facility, and in such event the value of such ownership interest should be shown in **Attachment III** and not in this definition for Ownership Value).*

“Program Grant” - means a grant of monies from the State Entity to the Public Entity in the amount identified as the “Program Grant” in Recital E to this Agreement, as the amount thereof may be modified under the provisions contained in Section 2.11 and 6.01.

“Project” - means the Public Entity’s acquisition, if applicable, of the ownership interests in the Real Property and, if applicable, Facility denoted in Section 2.02 along with the performance of activities denoted in Section 2.03 herein. *(If the Public Entity is not using any portion of the Program Grant to acquire the ownership interest denoted in Section 2.02, then this definition for Project shall not include the acquisition of such ownership interest, and the value of such ownership interest shall not be included in **Attachment III** hereto and instead shall be included in the definition for Ownership Value under this Section 1.01.)*

“Public Entity” - means the entity identified as the “Public Entity” in the lead-in paragraph of this Agreement.

“Real Property” - means the real property located in the County of Ramsey, State of Minnesota, legally described in **Attachment II** to this Agreement.

“Real Property/Facility Lease” - means a long term lease of the Real Property, the Facility, if applicable, or both by the Public Entity as lessee thereunder. *This definition is only needed and only applies if the Public Entity’s ownership interest in the Real Property, the Facility, if applicable, or both is a leasehold interest under a lease. For all other circumstances this definition is not needed and should be ignored and treated as if were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“State Entity” - means the entity identified as the “State Entity” in the lead-in paragraph of this Agreement.

“State Program” – means the program delineated in the State Program Enabling Legislation.

“State Program Enabling Legislation” – means the legislation contained in the Minnesota statute(s) delineated in Recital A and all rules related to such legislation.

“Subsequent Betterment Costs” – means the costs of betterments of the Real Property and, if applicable, Facility that occur subsequent to the date of this Agreement, are not part of the Project, would qualify as a public improvement of a capital nature (as such term in used in Minn. Constitution Art. XI, §5(a) of the Minnesota Constitution), and the cost of which has been established by way of written documentation that is acceptable to and approved, in writing, by the State Entity and the Commissioner.

“Use Contract” - means a lease, management contract or other similar contract between the Public Entity and any other entity that involves or relates to any part of the Real Property and/or, if applicable, Facility. *This definition is only needed and only applies if the Public Entity enters into an agreement with another party under which such other party will operate the Real Property and/or, if applicable, Facility. For all other circumstances this definition is not needed and should be ignored and treated as if were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“Useful Life of the Real Estate and, if applicable, Facility” – means (i) 30 years for Real Property that has no structure situated thereon or if any structures situated thereon will be removed, and no new structures will be constructed thereon, (ii) the remaining useful life of the Facility as of the effective date of this Agreement for Facilities that are situated on the Real Property as of the date of this Agreement, that will remain on the Real Property, and that will not be bettered, or (iii) the useful life of the Facility after the completion of the construction or betterments delineated in Attachment III attached hereto for Facilities that are to be constructed or bettered.

Article II

GRANT

Section 2.01 **Grant of Monies.** The State Entity shall make and issue the Program Grant to the Public Entity, and disburse the proceeds in accordance with the provisions of this Agreement. The Program Grant is not intended to be a loan even though the portion thereof that is disbursed may need to be returned to the State Entity or the Commissioner under certain circumstances.

Section 2.02 **Public Ownership.** The Public Entity acknowledges and agrees that the Program Grant is being funded with the proceeds of G.O. Bonds, and as a result thereof all of the Real Estate and, if applicable, Facility must be owned by one or more public entities. In order to establish that this public ownership requirement is satisfied, the Public Entity represents and

warrants to the State Entity that it has, or will acquire, the following ownership interests in the Real Property and, if applicable, Facility, and, in addition, that it possess, or will possess, all easements necessary for the operation, maintenance and management of the Real Property and, if applicable, Facility in the manner specified in Section 2.04:

(Check the appropriate box for the Real Property and, if applicable, for the Facility.)

Ownership Interest in the Real Property.

- ☒ Fee simple ownership of the Real Property.
- ☐ A Real Property/Facility Lease for the Real Property that complies with the requirements contained in Section 2.06.
[If the term of the Real Property/Facility Lease is for a term authorized by a Minnesota statute, rule or session law, then insert the citation at this point _____.]
- ☐ An easement for the Real Property (i) that is in form and substance acceptable to the State Entity and the Commissioner, (ii) that is for a term that is equal to or greater than 125% of the Useful Life of the Real Estate and, if applicable, Facility, or for a term authorized by a Minnesota statute, rule or session law, and (iii) which cannot be modified, restated, amended, changed in any other way, or prematurely cancelled or terminated without the prior written consent of the State Entity and the Commissioner.
[If the term of the easement is for a term authorized by a Minnesota statute, rule or session law, then insert the citation at this point _____.]

Ownership Interest in, if applicable, the Facility.

- ☐ Fee simple ownership of the Facility.
- ☐ A Real Property/Facility Lease for the Facility that complies with all of the requirements contained in Section 2.06.
[If the term of the Real Property/Facility Lease is for a term authorized by a Minnesota statute, rule or session law, then insert the citation at this point _____.]

Section 2.03 Use of Grant Proceeds. The Public Entity shall use the Program Grant solely to reimburse itself for expenditures it has already made, or will make, in the performance of the following activities, and may not use the Program Grant for any other purpose.

(Check all appropriate boxes.)

- ☐ Acquisition of fee simple title to the Real Property.

- ☐ Acquisition of a leasehold interest in the Real Property.
- ☐ Acquisition of an easement for the Real Property.
- ☐ Improvement of the Real Property.
- ☐ Acquisition of fee simple title to the Facility.
- ☐ Acquisition of a leasehold interest in the Facility.
- ☐ Construction of the Facility.
- ☐ Renovation of the Facility.
- ☒ Install Utilities and Construct Roadway and Sidewalk.
(Describe other or additional purposes.)

Section 2.04 **Operation of the Real Property and Facility.** The Real Property and, if applicable, Facility must be used by the Public Entity or the Public Entity must cause such Real Property and, if applicable, Facility to be used for the operation of the State Program or for such other use as the Minnesota legislature may from time to time designate, and for no other purposes or uses.

The Public Entity may enter into Use Contracts with Counterparties for the operation of all or any portion of the Real Property and, if applicable, Facility; provided that all such Use Contracts must have been approved, in writing, by the State Entity and the Commissioner and fully comply with all of the provisions contained in Sections 3.01, 3.02 and 3.03.

The Public Entity must, whether it is operating the Real Property and, if applicable, Facility or has contracted with a Counterparty under a Use Contract to operate all or any portion of the Real Property and, if applicable, Facility, annually determine that the Real Property and, if applicable, Facility is being used for the purpose required by this Agreement, and shall annually supply a statement to such effect to the State Entity and the Commissioner.

For those programs, if any, that the Public Entity will directly operate on all or any portion of the Real Property and, if applicable, Facility, the Public Entity covenants with and represents and warrants to the State Entity that; (i) it has the ability and a plan to fund such programs, (ii) it has demonstrated such ability by way of a plan that it submitted to the State Entity, and (iii) it will annually adopt, by resolution, a budget for the operation of such programs that clearly shows that forecast program revenues along with other funds available for the operation of such program will be equal to or greater than forecast program expenses for each fiscal year, and will supply to the State Entity and the Commissioner certified copies of such resolution and budget.

For those programs, if any, that will be operated on all or any portion of the Real Property and, if applicable, Facility by a Counterparty under a Use Contract, the Public Entity covenants with and represents and warrants to the State Entity that; (i) it will not enter into such Use Contract unless the Counterparty has demonstrated that it has the ability and a plan to fund such program, (ii) it will require the Counterparty to provide an initial program budget and annual program budgets that clearly show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal year, (iii) it will promptly review all submitted program budgets to determine if such budget clearly and accurately shows that the forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal year, (iv) it will reject any program budget that it believes does not accurately reflect forecast program revenues or expenses or does not show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses, and require the Counterparty to prepare and submit a revised program budget, and (v) upon receipt of a program budget that it believes accurately reflects forecast program revenues and expenses and that shows that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses, it will approve such budget by resolution and supply to the State Entity and the Commissioner certified copies of such resolution and budget.

Section 2.05 Public Entity Representations and Warranties. The Public Entity further covenants with, and represents and warrants to the State Entity as follows:

A. It has legal authority to enter into, execute, and deliver this Agreement, the Declaration, and all documents referred to herein, and it has taken all actions necessary to its execution and delivery of such documents.

B. It has legal authority to use the Program Grant for the purpose or purposes described in the State Program Enabling Legislation.

C. It has legal authority to operate the State Program and the Real Property and, if applicable, Facility for the purposes required by the State Program and for the functions and activities proposed in the Grant Application.

D. This Agreement, the Declaration, and all other documents referred to herein are the legal, valid and binding obligations of the Public Entity enforceable against the Public Entity in accordance with their respective terms.

E. It will comply with all of the terms, conditions, provisions, covenants, requirements, and warranties in this Agreement, the Declaration, and all other documents referred to herein.

F. It will comply with all of the provisions and requirements contained in and imposed by the G.O. Compliance Legislation, the Commissioner's Order, and the State Program.

G. It has made no material false statement or misstatement of fact in connection with its receipt of the Program Grant, and all of the information it has submitted or will submit to the State Entity or Commissioner relating to the Program Grant or the disbursement of any of the Program Grant is and will be true and correct.

H. It is not in violation of any provisions of its charter or of the laws of the State of Minnesota, and there are no actions, suits, or proceedings pending, or to its knowledge threatened, before any judicial body or governmental authority against or affecting it relating to the Real Property and, if applicable, Facility, or its ownership interest therein, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into this Agreement, the Declaration, or any document referred to herein, or to perform any of the acts required of it in such documents.

I. Neither the execution and delivery of this Agreement, the Declaration, or any document referred to herein nor compliance with any of the terms, conditions, requirements, or provisions contained in any of such documents is prevented by, is a breach of, or will result in a breach of, any term, condition, or provision of any agreement or document to which it is now a party or by which it is bound.

J. The contemplated use of the Real Property and, if applicable, Facility will not violate any applicable zoning or use statute, ordinance, building code, rule or regulation, or any covenant or agreement of record relating thereto.

K. The Project will be completed in full compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Project.

L. All applicable licenses, permits and bonds required for the performance and completion of the Project have been, or will be, obtained.

M. All applicable licenses, permits and bonds required for the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04 have been, or will be, obtained.

N. It will operate, maintain, and manage the Real Property and, if applicable, Facility or cause the Real Property and, if applicable, Facility, to be operated, maintained and managed in compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Real Property and, if applicable, Facility.

O. It will fully enforce the terms and conditions contained in any Use Contract.

P. It has complied with the matching funds requirement, if any, contained in Section 7.23.

Q. It will not, without the prior written consent of the State Entity and the Commissioner, allow any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested to be created or exist against the Public Entity's interest in the Real Property or, if applicable, Facility, or the Counterparty's interest in the Use Contract, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner will consent to any such lien or encumbrance that secures the repayment of a loan the repayment of which will not impair or burden the funds needed to operate the Real Property and, if applicable, Facility in the manner specified in Section 2.04, and for which the entire amount is used (i) to acquire additional real estate that is needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04 and will be included in and as part of the Public Entity's interest in the Real Property and, if applicable, Facility, and/or (ii) to pay for capital improvements that are needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

R. It reasonably expects to possess the ownership interest in the Real Property and, if applicable, Facility described Section 2.02 for the entire Useful Life of the Real Estate and, if applicable, Facility, and it does not expect to sell such ownership interest.

S. It does not reasonably expect to receive payments under a Use Contract in excess of the amount the Public Entity needs and is authorized to use to pay the operating expenses of the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract or to pay the principal, interest, redemption premiums, and other expenses on any Approved Debt.

T. It will supply, or cause to be supplied, whatever funds are needed above and beyond the amount of the Program Grant to complete and fully pay for the Project.

U. The Construction Items will be completed substantially in accordance with the Construction Contract Documents by the Completion Date, and all such items along with, if applicable, the Facility will be situated entirely on the Real Property.

V. It will require the Contractor or Contractors to comply with all rules, regulations, ordinances, and laws bearing on its performance under the Construction Contract Documents.

W. It shall furnish such satisfactory evidence regarding the representations and warranties described herein as may be required and requested by either the State Entity or the Commissioner.

Section 2.06 **Leasehold Ownership.** *This Section shall only apply if the Public Entity's ownership interest in the Real Property, the Facility, if applicable, or both is by way of a Real Property/Facility Lease. For all other circumstances this Section is not needed and should be ignored and treated as if were left blank, and any reference to this Section in this Agreement shall be ignored and treated as if the reference did not exist.*

A. A Real Property/Facility Lease must comply with the following provisions.

1. It must be in form and contents acceptable to the State Entity and the Commissioner, and specifically state that it may not be modified, restated, amended, changed in any way, or prematurely terminated or cancelled without the prior written consent and authorization by the State Entity and the Commissioner.

2. It must be for a term that is equal to or greater than 125% of the Useful Life of the Real Estate and, if applicable, Facility, or such other period of time specifically authorized by a Minnesota statute, rule or session law.

3. Any payments to be made under it by the Public Entity, whether designated as rent or in any other manner, must be by way of a single lump sum payment that is due and payable on the date that it is first made and entered into.

4. It must not contain any requirements or obligations of the Public Entity that if not complied with could result in a termination thereof.

5. It must contain a provision that provides sufficient authority to allow the Public Entity to operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

6. It must not contain any provisions that would limit or impair the Public Entity's operation of the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

7. It must contain a provision that prohibits the Lessor from creating or allowing, without the prior written consent of the State Entity and the Commissioner, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Leased Premises or the Lessor's interest in the Real Property/Facility Lease, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner will consent to any such lien or encumbrance if the holder of such lien or encumbrance executes and files of record a document under which such holder subordinates such lien or encumbrance to the Real Property/Facility Lease and agrees that upon foreclosure of such lien or encumbrance to be bound by and comply with all of the terms, conditions and covenants contained in the Real Property/Facility Lease as if such holder had been an original Lessor under the Real Property/Facility Lease.

8. It must acknowledge the existence of this Agreement and contain a provision that the terms, conditions and provisions contained in this Agreement shall control over any inconsistent or contrary terms, conditions and provisions contained in the Real Property/Facility Lease.

9. It must provide that any use restrictions contained therein only apply as long as the Public Entity is the lessee under the Real Property/Facility Lease, and that such use restrictions will terminate and not apply to any successor lessee who purchases the Public Entity's interest in the Real Property/Facility Lease.

B. The provisions contained in this Section are not intended to and shall not prevent the Public Entity from including additional provisions in the Real Property/Facility Lease that are not inconsistent with or contrary to the requirements contained in this Section.

C. The expiration of the term of a Real Property/Facility Lease shall not be an event that requires the Public Entity to reimburse the State Entity for any portion of the Program Grant, and upon such expiration the Real Property and, if applicable, Facility shall no longer be subject to this Agreement.

D. The Public Entity shall fully and completely comply with all of the terms, conditions and provisions contained in a Real Property/Facility Lease, and shall obtain and file, in the Office of the County Recorder or the Registrar of Titles, whichever is applicable, the Real Property/Facility Lease or a short form or memorandum thereof.

Section 2.07 Event(s) of Default. The following events shall, unless waived in writing by the State Entity and the Commissioner, constitute an Event of Default under this Agreement upon either the State Entity or the Commissioner giving the Public Entity 30 days written notice of such event and the Public Entity's failure to cure such event during such 30 day time period for those Events of Default that can be cured within 30 days or within whatever time period is needed to cure those Events of Default that cannot be cured within 30 days as long as the Public Entity is using its best efforts to cure and is making reasonable progress in curing such Events of Default, however, in no event shall the time period to cure any Event of Default exceed 6 months unless otherwise consented to, in writing, by the State Entity and the Commissioner.

A. If any representation, covenant, or warranty made by the Public Entity in this Agreement, in any Payment Request, in any other document furnished pursuant to this Agreement, or in order to induce the State Entity to disburse any of the Program Grant, shall prove to have been untrue or incorrect in any material respect or materially misleading as of the time such representation, covenant, or warranty was made.

B. If the Public Entity fails to fully comply with any provision, term, condition, covenant, or warranty contained in this Agreement, the Declaration, or any other document referred to herein.

C. If the Public Entity fails to fully comply with any provision, term, condition, covenant or warranty contained in the G.O. Compliance Legislation, the Commissioner's Order, or the State Program Enabling Legislation.

D. If the Public Entity fails to complete the Project, or cause the Project to be completed, by the Completion Date.

E. If the Public Entity fails to provide and expend the full amount of the matching funds, if any, required under Section 7.23 for the Project.

Notwithstanding the foregoing, any of the above delineated events that cannot be cured shall, unless waived in writing by the State Entity and the Commissioner, constitute an Event of Default under this Agreement immediately upon either the State Entity or the Commissioner giving the Public Entity written notice of such event.

Section 2.08 Remedies. Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is cured to the satisfaction of the State Entity, the State Entity or the Commissioner may enforce any or all of the following remedies.

A. The State Entity may refrain from disbursing the Program Grant; provided, however, the State Entity may make such disbursements after the occurrence of an Event of Default without thereby waiving its rights and remedies hereunder.

B. If the Event of Default does not involve a failure to comply with the provisions contained in Sections 4.01 or 4.02, then the Commissioner, as a third party beneficiary of this Agreement, may demand that the Outstanding Balance of the Program Grant be returned to it, and upon such demand the Public Entity shall return such amount to the Commissioner.

C. If the Event of Default involves a failure to comply with the provisions contained in Sections 4.01 or 4.02, then the Commissioner, as a third party beneficiary of this Agreement, may demand that the Public Entity pay the amounts that would have been paid if there had been full and complete compliance with such provisions, and upon such demand the Public Entity shall pay such amount to the Commissioner.

D. Either the State Entity or the Commissioner, as a third party beneficiary of this Agreement, may enforce any additional remedies they may have in law or equity.

The rights and remedies herein specified are cumulative and not exclusive of any rights or remedies that the State Entity or the Commissioner would otherwise possess.

If the Public Entity does not repay the amounts required to be paid under this Section or under any other provision contained in this Agreement within 30 days of demand by the Commissioner, or any amount ordered by a court of competent jurisdiction within 30 days of entry of judgment against the Public Entity and in favor of the State Entity and/or the Commissioner, then such amount may, unless precluded by law, be taken from or off-set against any aids or other monies that the Public Entity is entitled to receive from the State of Minnesota.

Section 2.09 Notification of Event of Default. The Public Entity shall furnish to the State Entity and the Commissioner, as soon as possible and in any event within 7 days after it has obtained knowledge of the occurrence of each Event of Default or each event which with the giving of notice or lapse of time or both would constitute an Event of Default, a statement setting forth details of each Event of Default or event which with the giving of notice or upon the lapse

of time or both would constitute an Event of Default and the action which the Public Entity proposes to take with respect thereto.

Section 2.10 Effect of Event of Default. This Agreement shall survive any and all Events of Default and remain in full force and effect even upon the payment of any amounts due under this Agreement, and shall only be terminated upon the Public Entity's sale of its interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01 and transmittal of all or a portion of the proceeds of such sale to the Commissioner in compliance with the provisions contained in Section 4.02, or in accordance with the provisions contained in Section 2.11.

Section 2.11 Termination/Modification of Grant. If the Project is not started on or before December 31, 2009, or such a later date to which the Public Entity and the State Entity may agree in writing, or all of the Program Grant has not been disbursed as of December 31, 2010, or such later dates to which the Public Entity and the State Entity may agree in writing, then the State Entity's obligation to fund the Program Grant shall terminate. In such event, (i) if none of the Program Grant has been disbursed by such dates then the State Entity's obligation to fund any portion of the Program Grant shall terminate and this Agreement shall terminate and no longer be of any force or effect, and (ii) if some but not all of the Program Grant has been disbursed by such dates then the State Entity shall have no further obligation to provide any additional funding for the Program Grant and this Agreement shall remain in full force and effect but shall be modified and amended to reflect the amount of the Program Grant that was actually disbursed as of such date. This provision shall not, in any way, affect the Public Entity's obligation to complete the Project by the Completion Date.

This Agreement shall also terminate and no longer be of any force or effect upon the Public Entity's sale of its interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01 and transmittal of all or a portion of the proceeds of such sale to the Commissioner in compliance with the provisions contained in Section 4.02, or upon the termination of Public Entity's ownership interest in the Real Property and, if applicable, Facility if such ownership interest is by way of an easement or under a Real Property/Facility Lease. Upon such termination the State Entity shall execute, or have executed, and deliver to the Public Entity such documents as are required to release the Real Property and, if applicable, Facility, from the effect of this Agreement and the Declaration.

Article III USE CONTRACTS

This Article III and its contents is only needed and only applies if the Public Entity enters into an agreement with another party under which such other party will operate any portion of the Real Property, and if applicable, Facility. For all other circumstances this Article III and its contents is not needed and should be ignored and treated as if were left blank, and any reference to this Article III, its contents, and the term Use Contract in this Agreement shall be ignored and treated as if the references did not exist.

Section 3.01 **General Provisions.** If the Public Entity has statutory authority to enter into a Use Contract, then it may enter Use Contracts for various portions of the Real Property and, if applicable, Facility; provided that each and every Use Contract that the Public Entity enters into must comply with the following requirements:

- A. The purpose for which it was entered into must be to operate the State Program.
- B. It must contain a provision setting forth the statutory authority under which the Public Entity is entering into such contract, and must comply with the substantive and procedural provisions of such statute.
- C. It must contain a provision stating that it is being entered into in order for the Counterparty to operate the State Program and must describe such program.
- D. It must contain a provision that will provide for oversight by the Public Entity. Such oversight may be accomplished by way of a provision that will require the Counterparty to provide to the Public Entity; (i) an initial program evaluation report for the first fiscal year that the Counterparty will operate the State Program, (ii) program budgets for each succeeding fiscal year showing that forecast program revenues and additional revenues available for the operation of the State Program (from all sources) by the Counterparty will equal or exceed expenses for such operation for each succeeding fiscal year, and (iii) a mechanism under which the Public Entity will annually determine that the Counterparty is using the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract to operate the State Program.
- E. It must allow for termination by the Public Entity in the event of a default thereunder by the Counterparty, or in the event that the State Program is terminated or changed in a manner that precludes the operation of such program in the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract.
- F. It must terminate upon the termination of the statutory authority under which the Public Entity is operating the State Program.
- G. It must require the Counterparty to pay all costs of operation and maintenance of that portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract, unless the Public Entity is authorized by law to pay such costs and agrees to pay such costs.

H. If the Public Entity pays monies to a Counterparty under a Use Contract, such Use Contract must meet the requirements of Rev. Proc. 97-13, 1997-1 CB 632, so that such Use Contract does not result in “private business use” under Section 141(b) of the Code.

I. It must be approved, in writing, by the State Entity and the Commissioner, and any Use Contract that is not approved, in writing, by the State Entity and the Commissioner shall be null and void and of no force or effect.

J. It must contain a provision requiring that each and every party thereto shall, upon direction by the Commissioner, take such actions and furnish such documents to the Commissioner as the Commissioner determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal income taxation.

K. It must contain a provision that prohibits the Counterparty from creating or allowing, without the prior written consent of the State Entity and the Commissioner, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Real Property or, if applicable, Facility, or the Counterparty’s interest in the Use Contract, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner will consent, in writing, to any such lien or encumbrance that secures the repayment of a loan the repayment of which will not impair or burden the funds needed to operate the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract in the manner specified in Section 2.04 and for which the entire amount is used (i) to acquire additional real estate that is needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04 and will be included in and as part of the Public Entity’s interest in the Real Property and, if applicable, Facility, and/or (ii) to pay for capital improvements that are needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

L. If the amount of the Program Grant exceeds \$200,000.00, then it must contain a provision requiring the Counterparty to list any vacant or new positions it may have with state workforce centers as required by Minn. Stat. § 116L.66 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, for the term of the Use Contract.

Section 3.02 Initial Term and Renewal. The initial term for a Use Contract may not exceed the lesser of (i) 50% of the Useful Life of the Real Estate and, if applicable, Facility for the portion of the Real Estate and, if applicable, Facility that is the subject of the Use Contract, or (ii) the shortest term of the Public Entity’s ownership interest in the Real Property and, if applicable, Facility.

A Use Contract may allow for renewals beyond its initial term on the conditions that (i) the term of any renewal may not exceed the initial term, (ii) the Public Entity must make a determination that renewal will continue to carry out the State Program and that the Counterparty is suited and able to perform the functions contained in Use Contract that is to be renewed, (iii)

the Use Contract may not include any provisions that would require, either directly or indirectly, the Public Entity to either make the determination referred to in this Section or to renew the Use Contract with the Counterparty after the expiration of the initial term or any renewal term, and (iv) no such renewal may occur prior to the date that is 6 months prior to the date on which the Use Contract is scheduled to terminate. Provided, however, notwithstanding anything to the contrary contained herein the Public Entity's voluntary agreement to reimburse the Counterparty for any investment that the Counterparty provided for the acquisition or betterment of the Real Property and, if applicable, Facility that is the subject of the Use Contract if the Public Entity does not renew a Use Contract if requested by the Counterparty is not deemed to be a provision that directly or indirectly requires the Public Entity to renew such Use Contract.

Section 3.03 Reimbursement of Counterparty. A Use Contract may but need not contain, at the sole option and discretion of the Public Entity, a provision that requires the Public Entity to reimburse the Counterparty for any investment that the Counterparty provided for the acquisition or betterment of the Real Property and, if applicable, Facility that is the subject of the Use Contract if the Public Entity does not renew a Use Contract if requested by the Counterparty. If agreed to by the Public Entity, such reimbursement shall be on terms and conditions agreed to by the Public Entity and the Counterparty.

Section 3.04 Receipt of Monies Under a Use Contract. If the Public Entity receives any monies under a Use Contract in excess of the amount the Public Entity needs and is authorized to use to pay the operating expenses of the portion of the Real Property and, if applicable, Facility that is the subject of a Use Contract, and to pay the principal, interest, redemption premiums, and other expenses on Approved Debt, then a portion of such excess monies must be paid by the Public Entity to the Commissioner. The portion of such excess monies that the Public Entity must and shall pay to the Commissioner shall be determined by the Commissioner, and absent circumstances which would indicate otherwise such portion shall be determined by multiplying such excess monies by a fraction the numerator of which is the Program Grant and the denominator of which is sum of the Program Grant and the Approved Debt.

Article IV SALE

Section 4.01 Sale. The Public Entity shall not sell its interest in the Real Property and, if applicable, Facility unless all of the following provisions have been complied with fully.

- A. The Public Entity determines, by official action, that the Real Property and, if applicable, Facility is no longer usable or needed for the operation of the State Program, which such determination may be based on a determination that the Real Property or, if applicable, Facility is no longer suitable or financially feasible for such purpose.
- B. The sale is made as authorized by law.
- C. The sale is for Fair Market Value.
- D. The written consent of the Commissioner has been obtained.

The acquisition of the Public Entity's interest in the Real Property and, if applicable, Facility at a foreclosure sale, by acceptance of a deed-in-lieu of foreclosure, or enforcement of a security interest in personal property used in the operation thereof, by a lender that has provided monies for the acquisition of the Public Entity's interest in or betterment of the Real Property and, if applicable, Facility shall not be considered a sale for the purposes of this Agreement if after such acquisition the lender operates the Real Property and, if applicable, Facility in a manner which is not inconsistent with the requirements imposed under Section 2.04 and the lender uses its best efforts to sell such acquired interest to a third party for Fair Market Value. The lender's ultimate sale or disposition of the acquired interest in the Real Property and, if applicable, Facility shall be deemed to be a sale for the purposes of this Agreement, and the proceeds thereof shall be disbursed in accordance with the provisions contained in Section 4.02.

The Public Entity may participate in any public auction of its interest in the Real Property and, if applicable, Facility and bid thereon; provided that the Public Entity agrees that if it is the successful purchaser it will not use any part of the Real Property or, if applicable, Facility for the State Program.

Section 4.02 **Proceeds of Sale.** Upon the sale of the Public Entity's interest in the Real Property and, if applicable, Facility the proceeds thereof after the deduction of all costs directly associated and incurred in conjunction with such sale, but not including the repayment of any debt associated with the Public Entity's interest in the Real Property and, if applicable, Facility, shall be disbursed in the following manner and order.

A. The first distribution shall be to the Commissioner in an amount equal to the Outstanding Balance of the Program Grant, and if the amount of such net proceeds shall be less than the amount of the Outstanding Balance of the Program Grant then all of such net proceeds shall be distributed to the Commissioner.

B. The remaining portion, after the distribution specified in Section 4.02.A, shall be distributed to pay in full any outstanding Approved Debt in the order of priority of such debt.

C. The remaining portion, after the distributions specified in Sections 4.02A and B, shall be distributed to (i) reimburse the Public Entity for its Ownership Value, and (ii) to pay interested public and private entities, other than any such entity that has already received the full amount of its contribution, the amount of money that such entity contributed to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs. If such remaining portion is not sufficient to reimburse interested public and private entities for the full amount that such entities contributed to the acquisition or betterment of the Real Property and, if applicable, Facility, then the amount available shall be distributed as such entities may agree in writing.

D. The remaining portion, after the distributions specified in Sections 4.02.A, B and C, shall be divided and distributed to the State Entity, the Public Entity, and any other public and private entity that contributed funds to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs, other than lenders who supplied any of such

funds, in proportion to the contributions that the State Entity, the Public Entity, and such other public and private entities made to the acquisition and betterment of the Real Property and, if applicable, Facility as such amounts are part of the Ownership Value, Initial Acquisition and Betterment Costs, and Subsequent Betterment Costs.

The distribution to the State Entity shall be made to the Commissioner, and the Public Entity may direct its distribution to be made any other entity including, but not limited to, a Counterparty.

All amounts to be disbursed under this Section 4.02 must be consented to, in writing, by the Commissioner, and no such disbursements shall be made without such consent.

The Public Entity shall not be required to pay or reimburse the State Entity or the Commissioner for any funds above and beyond the full net proceeds of such sale, even if such net proceeds are less than the amount of the Outstanding Balance of the Program Grant.

Article V

COMPLIANCE WITH G.O. COMPLIANCE LEGISLATION AND THE COMMISSIONER'S ORDER

Section 5.01 **State Bond Financed Property.** The Public Entity and the State Entity acknowledge and agree that the Public Entity's interest in the Real Property and, if applicable, Facility is, or when acquired by the Public Entity will be, "state bond financed property", as such term is used in the G.O. Compliance Legislation and the Commissioner's Order, and, therefore, the provisions contained in such statute and order apply, or will apply, to the Public Entity's interest in the Real Property and, if applicable, Facility and any Use Contracts relating thereto.

Section 5.02 **Preservation of Tax Exempt Status.** In order to preserve the tax-exempt status of the G.O. Bonds, the Public Entity agrees as follows:

A. It will not use the Real Property or, if applicable, Facility, or use or invest the Program Grant or any other sums treated as "bond proceeds" under Section 148 of the Code including "investment proceeds," "invested sinking funds," and "replacement proceeds," in such a manner as to cause the G.O. Bonds to be classified as "arbitrage bonds" under Section 148 of the Code.

B. It will deposit into and hold all of the Program Grant that it receives under this Agreement in a segregated non-interest bearing account until such funds are used for payments for the Project in accordance with the provisions contained herein.

C. It will, upon written request, provide the Commissioner all information required to satisfy the informational requirements set forth in the Code including, but not limited to, Sections 103 and 148 thereof, with respect to the GO Bonds.

D. It will, upon the occurrence of any act or omission by the Public Entity or any Counterparty that could cause the interest on the GO Bonds to no longer be tax exempt and upon direction from the Commissioner, take such actions and furnish such documents as

the Commissioner determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal taxation, which such action may include either; (i) compliance with proceedings intended to classify the G.O. Bonds as a “qualified bond” within the meaning of Section 141(e) of the Code, (ii) changing the nature or terms of the Use Contract so that it complies with Revenue Procedure 97-13, 1997-1 CB 632, or (iii) changing the nature of the use of the Real Property or, if applicable, Facility so that none of the net proceeds of the G.O. Bonds will be used, directly or indirectly, in an “unrelated trade or business” or for any “private business use” (within the meaning of Sections 141(b) and 145(a) of the Code), or (iv) compliance with other Code provisions, regulations, or revenue procedures which amend or supersede the foregoing.

E. It will not otherwise use any of the Program Grant, including earnings thereon, if any, or take or permit to or cause to be taken any action that would adversely affect the exemption from federal income taxation of the interest on the G.O. Bonds, nor otherwise omit, take, or cause to be taken any action necessary to maintain such tax exempt status, and if it should take, permit, omit to take, or cause to be taken, as appropriate, any such action, it shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

Section 5.03 Changes to G.O. Compliance Legislation or the Commissioner’s Order. In the event that the G.O. Compliance Legislation or the Commissioner’s Order is amended in a manner that reduces any requirement imposed against the Public Entity, or if the Public Entity’s interest in the Real Property or, if applicable, Facility is exempt from the G.O. Compliance Legislation and the Commissioner’s Order, then upon written request by the Public Entity the State Entity shall enter into and execute an amendment to this Agreement to implement herein such amendment to or exempt the Public Entity’s interest in the Real Property and, if applicable, Facility from the G.O. Compliance Legislation or the Commissioner’s Order.

Article VI DISBURSEMENT OF GRANT PROCEEDS

Section 6.01 The Disbursements. The State Entity agrees, on the terms and subject to the conditions set forth herein, to make Disbursements from the Program Grant to the Public Entity from time to time in an aggregate total amount not to exceed the amount of the Program Grant. If the amount of Program Grant that the State Entity cumulatively disburses hereunder to the Public Entity is less than the amount of the Program Grant delineated in Section 1.01, then the State Entity and the Public Entity shall enter into and execute whatever documents the State Entity may request in order to amend or modify this Agreement to reduce the amount of the Program Grant to the amount actually disbursed. Provided, however, in accordance with the provisions contained in Section 2.11, the State Entity’s obligation to make Disbursements shall terminate as of the dates specified in such Section even if the entire Program Grant has not been disbursed by such dates.

Disbursements shall only be for expenses that (i) are for those items of a capital nature delineated in **Attachment III** to this Agreement, (ii) accrued no earlier than September 12, 2008, or (iii) have otherwise been consented to, in writing, by the Commissioner of Finance.

It is the intent of the parties hereto that the rate of disbursement of the Disbursements shall not exceed the rate of completion of the Project or the rate of disbursement of the matching funds required, if any, under Section 7.23. Therefore, the cumulative amount of all Disbursements disbursed by the State Entity at any point in time shall not exceed the portion of the Project that has been completed and the percentage of the matching funds required, if any, under Section 7.23 that have been disbursed as of such point in time. This requirement is expressed by way of the following two formulas:

Formula #1

Cumulative Disbursements $\leq$ (Program Grant) x (percentage of matching funds, if any, required under Section 7.23 that have been disbursed)

Formula #2

Cumulative Disbursements $\leq$ (Program Grant) x (percentage of Project completed)

Section 6.02 **Payment Requests.** Whenever the Public Entity desires a Disbursement of a portion of the Program Grant, the Public Entity shall submit to the State Entity a Payment Request duly executed on behalf of the Public Entity or its designee. Each Payment Request with respect to construction items shall be limited to amounts equal to; (i) the total value of the classes of the work by percentage of completion as approved by the Public Entity and the State Entity, plus (ii) the value of materials and equipment not incorporated in the Project but delivered and suitably stored on or off the Real Property in a manner acceptable to the State Entity, less (iii) any applicable retainage, and less (iv) all prior Disbursements.

Notwithstanding anything herein to the contrary, no Disbursements for materials stored on or off the Real Property will be made by the State Entity unless the Public Entity shall advise the State Entity, in writing, of its intention to so store materials prior to their delivery and the State Entity has not objected thereto.

At the time of submission of each Payment Request, the Public Entity shall submit to the State Entity such supporting evidence as may be requested by the State Entity to substantiate all payments which are to be made out of the relevant Payment Request or to substantiate all payments then made with respect to the Project.

If on the date a Disbursement is desired the Public Entity has complied with all requirements of this Agreement and the State Entity approves the relevant Payment Request and receives a current construction report from the Inspecting Engineer recommending payment, then the State Entity shall disburse the amount of the requested Disbursement to the Public Entity.

Section 6.03 **Additional Funds.** If the State Entity shall at any time in good faith determine that the sum of the undisbursed amount of the Program Grant plus the amount of all other funds committed to the Project is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the Project, then the State Entity may send written notice thereof to the Public Entity specifying the amount which must be supplied in order to provide sufficient funds to complete the Project. The Public

Entity agrees that it will, within 10 calendar days of receipt of any such notice, supply or have some other entity supply the amount of funds specified in the State Entity's notice.

Section 6.04 **Condition Precedent to Any Disbursement.** The obligation of the State Entity to make any Disbursement hereunder (including the initial Disbursement) shall be subject to the following conditions precedent:

A. The State Entity shall have received a Payment Request for such Disbursement specifying the amount of funds being requested, which such amount when added to all prior requests for a Disbursement shall not exceed the amount of the Program Grant delineated in Section 1.01.

B. The State Entity shall have received a duly executed Declaration that has been duly recorded in the appropriate governmental office, with all of the recording information displayed thereon.

C. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that (i) the Public Entity has legal authority to and has taken all actions necessary to enter into this Agreement and the Declaration, and (ii) this Agreement and the Declaration are binding on and enforceable against the Public Entity.

D. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity has sufficient funds to fully and completely pay for the Project and all other expenses that may occur in conjunction therewith.

E. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity is in compliance with the matching funds requirements, if any, contained in Section 7.23.

F. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, showing that the Public Entity possesses the ownership interest delineated in Section 2.02.

G. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Real Property and, if applicable, Facility, and the contemplated use thereof are permitted by and will comply with all applicable use or other restrictions and requirements imposed by applicable zoning ordinances or regulations, and, if required by law, have been duly approved by the applicable municipal or governmental authorities having jurisdiction thereover.

H. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that that all applicable and required building permits, other permits, bonds and licenses necessary for the Project have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

I. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that all applicable and required permits, bonds and licenses necessary for the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04 have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

J. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Project will be completed in a manner that will allow the Real Property and, if applicable, Facility to be operated in the manner specified in Section 2.04.

K. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity has the ability and a plan to fund the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04.

L. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the insurance requirements under Section 7.01 have been satisfied.

M. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, of compliance with the provisions and requirements specified in Section 7.10 and all additional applicable provisions and requirements, if any, contained in Minn. Stat. § 16B.335 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time. Such evidence shall include, but not be limited to, evidence that; (i) the predesign package referred to in Section 7.10.B has, if required, been reviewed by and received a favorable recommendation from the Commissioner of Administration for the State of Minnesota, (ii) the program plan and cost estimates referred to in Section 7.10.C have, if required, received a recommendation by the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways and Means Committee, and (iii) the Chair of the Minnesota House of Representatives Capital Investment Committee has, if required, been notified pursuant to Section 7.10.G.

N. No Event of Default under this Agreement or event which would constitute an Event of Default but for the requirement that notice be given or that a period of grace or time elapse shall have occurred and be continuing.

O. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Contractor will complete the Construction Items substantially in conformance with the Construction Contract Documents and pay all amounts lawfully owing to all laborers and materialmen who worked on the Construction Items or supplied materials therefore, other than amounts being contested in good faith. Such evidence may be in the form of payment and performance bonds in amounts equal to or greater than the amount of the fixed price or guaranteed maximum price contained in the Construction Contract Documents that name the State Entity and the Public Entity dual obligees thereunder, or such other evidence as may be acceptable to the Public Entity and the State Entity.

P. No determination shall have been made by the State Entity that the amount of funds committed to the Project is less than the amount required to pay all costs and expenses of any kind that may reasonably be anticipated in connection with the Project, or if such a determination has been made and notice thereof sent to the Public Entity under Section 6.03, then the Public Entity has supplied, or has caused some other entity to supply, the necessary funds in accordance with such section or has provided evidence acceptable to the State Entity that sufficient funds are available.

Q. The Public Entity has supplied to the State Entity all other items that the State Entity may reasonably require.

Section 6.05 **Construction Inspections.** The Public Entity and the Architect, if any, shall be responsible for making their own inspections and observations of the Construction Items, and shall determine to their own satisfaction that the work done or materials supplied by the Contractors to whom payment is to be made out of each Disbursement has been properly done or supplied in accordance with the Construction Contract Documents. If any work done or materials supplied by a Contractor are not satisfactory to the Public Entity or the Architect, if any, or if a Contractor is not in material compliance with the Construction Contract Documents in any respect, then the Public Entity shall immediately notify the State Entity, in writing. The State Entity and the Inspecting Engineer, if any, may conduct such inspections of the Construction Items as either may deem necessary for the protection of the State Entity's interest, and that any inspections which may be made of the Project by the State Entity or the Inspecting Engineer, if any, are made and all certificates issued by the Inspecting Engineer, if any, will be issued solely for the benefit and protection of the State Entity, and the Public Entity will not rely thereon.

Article VII MISCELLANEOUS

Section 7.01 **Insurance.** The Public Entity shall, upon acquisition of the ownership interest delineated in Section 2.02, insure the Facility, if such exists, in an amount equal to the full insurable value thereof by self insuring under a program of self insurance legally adopted, maintained and adequately funded by the Public Entity or by way of builders risk insurance and fire and extended coverage insurance with a deductible in an amount acceptable to the State Entity, and shall name the State Entity as loss payee thereunder. If damages which are covered by such required insurance occur, then the Public Entity shall, at its sole option and discretion, either; (i) use or cause the insurance proceeds to be used to fully or partially repair such damage and to provide or cause to be provided whatever additional funds that may be needed to fully or partially repair such damage, or (ii) sell its interest in the damaged Facility and portion of the Real Property associated therewith in accordance with the provisions contained in Section 4.01.

If the Public Entity elects to only partially repair such damage, then the portion of the insurance proceeds not used for such repair shall be applied in accordance with the provisions contained in Section 4.02 as if the Public Entity's interest in the Real Property and Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 4.02 upon the ultimate sale of the Public Entity's interest in the Real Property and Facility. If the Public Entity elects to sell its interest in the damaged Facility and portion of the Real Property

associated therewith, then such sale must occur within a reasonable time period from the date the damage occurred and the cumulative sum of the insurance proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 4.02, with the insurance proceeds being so applied within a reasonable time period from the date they are received by the Public Entity.

The State Entity agrees to and will assign or pay over to the Public Entity all insurance proceeds it receives so that the Public Entity can comply with the requirements that this Section imposes thereon as to the use of such insurance proceeds.

If the Public Entity elects to maintain general comprehensive liability insurance regarding the Real Property and, if applicable, Facility, then the Public Entity shall have the State Entity named as an additional named insured therein.

At the written request of either the State Entity or the Commissioner, the Public Entity shall promptly furnish to the requesting entity all written notices and all paid premium receipts received by the Public Entity regarding the required insurance, or certificates of insurance evidencing the existence of such required insurance.

If the Public Entity fails to provide and maintain the insurance required under this Section, then the State Entity may, at its sole option and discretion, obtain and maintain insurance of an equivalent nature and any funds expended by the State Entity to obtain or maintain such insurance shall be due and payable on demand by the State Entity and bear interest from the date of advancement by the State Entity at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per annum based upon a 365 day year. Provided, however, nothing contained herein, including but not limited to this Section, shall require the State Entity to obtain or maintain such insurance, and the State Entity's decision to not obtain or maintain such insurance shall not lessen the Public Entity's duty to obtain and maintain such insurance.

Section 7.02 Condemnation. If after the Public Entity has acquired the ownership interest delineated in Section 2.02 all or any portion of the Real Property and, if applicable, Facility is condemned to an extent that the Public Entity can no longer comply with the provisions contained in Section 2.04, then the Public Entity shall, at its sole option and discretion, either; (i) use or cause the condemnation proceeds to be used to acquire an interest in additional real property needed for the Public Entity to continue to comply with the provisions contained in Section 2.04 and, if applicable, to fully or partially restore the Facility and to provide or cause to be provided whatever additional funds that may be needed for such purposes, or (ii) sell the remaining portion of its interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01. Any condemnation proceeds which are not used to acquire an interest in additional real property or to restore, if applicable, the Facility shall be applied in accordance with the provisions contained in Section 4.02 as if the Public Entity's interest in the Real Property and, if applicable, Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 4.02 upon the ultimate sale of the Public Entity's interest in the remaining Real Property and, if applicable, Facility. If the Public Entity elects to sell its interest in the portion of the Real Property and, if applicable, Facility that remains after the condemnation, then such sale must occur within a reasonable time period from the date the condemnation occurred and the cumulative sum of the

condemnation proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 4.02, with the condemnation proceeds being so applied within a reasonable time period from the date they are received by the Public Entity.

As recipient of any of condemnation awards or proceeds referred to herein, the State Entity agrees to and will disclaim, assign or pay over to the Public Entity all of such condemnation awards or proceeds it receives so that the Public Entity can comply with the requirements that this Section imposes upon the Public Entity as to the use of such condemnation awards or proceeds.

Section 7.03 Use, Maintenance, Repair and Alterations. The Public Entity shall (i) keep the Real Property and, if applicable, Facility, in good condition and repair, subject to reasonable and ordinary wear and tear, (ii) complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Real Property and promptly restore in like manner any portion of the Facility, if applicable, which may be damaged or destroyed thereon and pay when due all claims for labor performed and materials furnished therefore, (iii) comply with all laws, ordinances, regulations, requirements, covenants, conditions and restrictions now or hereafter affecting the Real Property or, if applicable, Facility, or any part thereof, or requiring any alterations or improvements thereto, (iv) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair, (v) comply with the provisions of any Real Property/Facility Lease if the Public Entity's interest in the Real Property and, if applicable, Facility, is a leasehold interest, and (vi) comply with the provisions of any condominium documents and any applicable reciprocal easement or operating agreements if the Real Property and, if applicable, Facility, is part of a condominium regime or is subject to a reciprocal easement or use agreement.

The Public Entity shall not, without the written consent of the State Entity and the Commissioner, (a) permit or suffer the use of any of the Real Property or, if applicable, Facility, for any purpose other than the purposes specified in Section 2.04, (b) remove, demolish or substantially alter any of the Real Property or, if applicable, Facility, except such alterations as may be required by laws, ordinances or regulations or such other alterations as may improve such Real Property or, if applicable, Facility by increasing the value thereof or improving its ability to be used to operate the State Program thereon or therein, (c) do any act or thing which would unduly impair or depreciate the value of the Real Property or, if applicable, Facility, (d) abandon the Real Property or, if applicable, Facility, (e) commit or permit any waste or deterioration of the Real Property or, if applicable, Facility, (f) remove any fixtures or personal property from the Real Property or, if applicable, Facility, that was paid for with the proceeds of the Program Grant unless the same are immediately replaced with like property of at least equal value and utility, or (g) commit, suffer or permit any act to be done in or upon the Real Property or, if applicable, Facility, in violation of any law, ordinance or regulation.

If the Public Entity fails to maintain the Real Property and, if applicable, Facility in accordance with the provisions contained in this Section, then the State Entity may perform whatever acts and expend whatever funds that are necessary to so maintain the Real Property and, if applicable, Facility and the Public Entity irrevocably authorizes and empowers the State Entity to enter upon the Real Property and, if applicable, Facility, to perform such acts as may be necessary to so maintain the Real Property and, if applicable, Facility. Any actions taken or

funds expended by the State Entity hereunder shall be at its sole option and discretion, and nothing contained herein, including but not limited to this Section, shall require the State Entity to take any action, incur any expense, or expend any funds, and the State Entity shall not be responsible for or liable to the Public Entity or any other entity for any such acts that are undertaken and performed in good faith and not in a negligent manner. Any funds expended by the State Entity to perform such acts as may be necessary to so maintain the Real Property and, if applicable, Facility shall be due and payable on demand by the State Entity and bear interest from the date of advancement by the State Entity at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per annum based upon a 365 day year.

Section 7.04 Records Keeping and Reporting. Each year and until the State Entity determines that the project goals have been met, the Public Entity shall submit to the State Entity a report, satisfactory to the State Entity, on the distribution of funds and the progress of the Project covered from the date of the Agreement through June 30 of each year. The report must be received by the State Entity no later than July 25 of each year. The report shall identify specific project goals listed in the Grant Application for the Project and quantitatively and qualitatively measure the progress of such goals. Reporting forms will be provided by the State Entity. Upon determination that the project goals have been met, the State Entity shall issue a letter to the Public Entity stating such.

The Public Entity shall maintain or cause to be maintained books, records, documents and other evidence pertaining to the costs or expenses associated with the Project and operation of the Real Property and, if applicable, Facility needed to comply with the requirements contained in this Agreement, the G.O. Compliance Legislation, the Commissioner's Order, and the State Program Enabling Legislation, and upon request shall allow or cause the entity which is maintaining such items to allow the State Entity, auditors for the State Entity, the Legislative Auditor for the State of Minnesota, or the State Auditor for the State of Minnesota, to inspect, audit, copy, or abstract, all of such items. The Public Entity shall use or cause the entity which is maintaining such items to use generally accepted accounting principles in the maintenance of such items, and shall retain or cause to be retained (i) all of such items that relate to the Project for a period of 6 years from the date that the Project is fully completed and placed into operation, and (ii) all of such items that relate to the operation of the Real Property and, if applicable, Facility for a period of 6 years from the date such operation is initiated.

Section 7.05 Inspections by State Entity. Upon reasonable request by the State Entity and without interfering with the normal use of the Real Property and, if applicable, Facility, the Public Entity shall allow, and will require any entity to whom it leases, subleases, or enters into a Use Contract for any portion of the Real Property and, if applicable, Facility to allow the State Entity to inspect the Real Property and, if applicable, Facility.

Section 7.06 Data Practices. The Public Entity agrees with respect to any data that it possesses regarding the Program Grant, the Project, or the operation of the Real Property and, if applicable, Facility, to comply with all of the provisions and restrictions contained in the Minnesota Government Data Practices Act contained in Chapter 13 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 7.07 **Non-Discrimination.** The Public Entity agrees to not engage in discriminatory employment practices regarding the Project, or operation or management of the Real Property and, if applicable, Facility, and it shall, with respect to such activities, fully comply with all of the provisions contained in Chapters 363A and 181 of the Minnesota Statutes that exist as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 7.08 **Worker's Compensation.** The Public Entity agrees to comply with all of the provisions relating to worker's compensation contained in Minn. Stat. §§ 176.181 Subd. 2 & 176.182 that exist as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, with respect to the Project and the operation or management of the Real Property and, if applicable, Facility.

Section 7.09 **Antitrust Claims.** The Public Entity hereby assigns to the State Entity and the Commissioner all claims it may have for over charges as to goods or services provided with respect to the Project, and operation or management of the Real Property and, if applicable, Facility that arise under the antitrust laws of the State of Minnesota or of the United States of America.

Section 7.10 **Review of Plans and Cost Estimates.** The Public Entity agrees to comply with all applicable provisions and requirements, if any, contained in Minn. Stat. § 16B.335 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, for the Project, and in accordance therewith the Public Entity and the State Entity agree to comply with the following provisions and requirements if such provisions and requirements are applicable.

A. The Public Entity shall provide all information that the State Entity may request in order for the State Entity to determine that the Project will comply with the provisions and requirements contained in Minn. Stat. § 16B.335 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

B. Prior to its proceeding with design activities for the Project the Public Entity shall prepare a predesign package and submit it to the Commissioner of Administration for the State of Minnesota for review and comment. The predesign package must be sufficient to define the purpose, scope, cost, and projected schedule for the Project, and must demonstrate that the Project has been analyzed according to appropriate space and needs standards. Any substantial changes to such predesign package must be submitted to the Commissioner of Administration for the State of Minnesota for review and comment.

C. If the Project includes the construction of a new building, substantial addition to an existing building, a substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then the Public Entity shall not prepare final plans and specifications until it has prepared a program plan and cost estimates for all elements necessary to complete the Project and presented them to the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways and Means Committee and the chairs have made their recommendations, and it has notified

the Chair of the Minnesota House of Representatives Capital Investment Committee. The program plan and cost estimates must note any significant changes in the work to be performed on the Project, or in its costs, which have arisen since the appropriation from the legislature for the Project was enacted or which differ from any previous predesign submittal.

D. The Public Entity must notify the Chairs of the Minnesota State Senate Finance Committee, the Minnesota House of Representatives Capital Investment Committee and the Minnesota House of Representatives Ways and Means Committee of any significant changes to the program plan and cost estimates referred to in Section 7.10.C.

E. The program plan and cost estimates referred to in Section 7.10.C must ensure that the Project will comply with all applicable energy conservation standards contained in law, including Minn. Stat. §§ 216C.19 to 216C.20 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, and all rules adopted thereunder.

F. If any of the Program Grant is to be used for the construction or remodeling of the Facility, then both the predesign package referred to in Section 7.10.B and the program plan and cost estimates referred to in Section 7.10.C must include provisions for cost-effective information technology investments that will enable the occupant of the Facility to reduce its need for office space, provide more of its services electronically, and decentralize its operations.

G. If the Project does not involve the construction of a new building, substantial addition to an existing building, substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then prior to beginning work on the Project the Public Entity shall just notify the Chairs of the Minnesota State Senate Finance Committee, the Minnesota House of Representatives Capital Investment Committee and the Minnesota House of Representatives Ways and Means Committee that the work to be performed is ready to begin.

H. The Project must be; (i) substantially completed in accordance with the program plan and cost estimates referred to in Section 7.10.C, (ii) completed in accordance with the time schedule contained in the program plan referred to in Section 7.10.C, and (iii) completed within the budgets contained in the cost estimates referred to in Section 7.10.C.

Provided, however, the provisions and requirements contained in this Section only apply to public lands or buildings or other public improvements of a capital nature, and shall not apply to the demolition or decommissioning of state assets, hazardous material projects, utility infrastructure projects, environmental testing, parking lots, exterior lighting, fencing, highway rest areas, truck stations, storage facilities not consisting primarily of offices or heated work areas, roads, bridges, rails, pathways, campgrounds, athletic fields, dams, floodwater retention systems, water access sites, harbors, sewer separation projects, water and wastewater facilities, port development projects for which the Commissioner of Transportation for the State of Minnesota has entered into an assistance agreement under Minn. Stat. § 457A.04 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from

time to time, ice arenas, local government projects with a construction cost of less than \$1,500,000.00, or any other capital project with a construction cost of less than \$750,000.00.

Section 7.11 Prevailing Wages. The Public Entity agrees to comply with all of the applicable provisions contained in Chapter 177 of the Minnesota Statutes, and specifically those provisions contained in Minn. Stat. §§ 177.41 through 177.435 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time with respect to the Project and the operation of the State Program on or in the Real Property and, if applicable, Facility. By agreeing to this provision, the Public Entity is not acknowledging or agreeing that the cited provisions apply to the Project or the operation of the State Program on or in the Real Property and, if applicable, Facility.

Section 7.12 Liability. The Public Entity and the State Entity agree that they will, subject to any indemnifications provided herein, be responsible for their own acts and the results thereof to the extent authorized by law, and they shall not be responsible for the acts of the other party and the results thereof. The liability of the State Entity and the Commissioner is governed by the provisions contained in Minn. Stat. § 3.736 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time. If the Public Entity is a “municipality” as such term is used in Chapter 466 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, then the liability of the Public Entity, including but not limited to the indemnification provided under Section 7.13, is governed by the provisions contained in such Chapter 466.

Section 7.13 Indemnification by the Public Entity. The Public Entity shall bear all loss, expense (including attorneys’ fees), and damage in connection with the Project and operation of the Real Property and, if applicable, Facility, and agrees to indemnify and hold harmless the State Entity, the Commissioner, and the State of Minnesota, their agents, servants and employees from all claims, demands and judgments made or recovered against the State Entity, the Commissioner, and the State of Minnesota, their agents, servants and employees, because of bodily injuries, including death at any time resulting therefrom, or because of damages to property of the State Entity, the Commissioner, or the State of Minnesota, or others (including loss of use) from any cause whatsoever, arising out of, incidental to, or in connection with the Project or operation of the Real Property and, if applicable, Facility, whether or not due to any act of omission or commission, including negligence of the Public Entity or any contractor or his or their employees, servants or agents, and whether or not due to any act of omission or commission (excluding, however, negligence or breach of statutory duty) of the State Entity, the Commissioner, or the State of Minnesota, their employees, servants or agents.

The Public Entity further agrees to indemnify, save, and hold the State Entity, the Commissioner, and the State of Minnesota, their agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation by the Public Entity, its officers, employees, or agents, or by any Counterparty, its officers, employees, or agents, of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce the provisions contained in Section 7.06.

The Public Entity's liability hereunder shall not be limited to the extent of insurance carried by or provided by the Public Entity, or subject to any exclusions from coverage in any insurance policy.

Section 7.14 **Relationship of the Parties.** Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners or a joint venture between the Public Entity, the State Entity, or the Commissioner, nor shall the Public Entity be considered or deemed to be an agent, representative, or employee of either the State Entity, the Commissioner, or the State of Minnesota in the performance of this Agreement, the Project, or operation of the Real Property and, if applicable, Facility.

The Public Entity represents that it has already or will secure or cause to be secured all personnel required for the performance of this Agreement and the Project, and the operation and maintenance of the Real Property and, if applicable, Facility. All personnel of the Public Entity or other persons while engaging in the performance of this Agreement, the Project, or the operation and maintenance of the Real Property and, if applicable, Facility shall not have any contractual relationship with either the State Entity, the Commissioner, or the State of Minnesota and shall not be considered employees of any of such entities. In addition, all claims that may arise on behalf of said personnel or other persons out of employment or alleged employment including, but not limited to, claims under the Workers' Compensation Act of the State of Minnesota, claims of discrimination against the Public Entity, its officers, agents, contractors, or employees shall in no way be the responsibility of either the State Entity, the Commissioner, or the State of Minnesota. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from either the State Entity, the Commissioner, or the State of Minnesota including, but not limited to, tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

Section 7.15 **Notices.** In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing and shall be sufficient if personally served or sent by prepaid, registered, or certified mail (return receipt requested), to the business address of the party to whom it is directed. Such business address shall be that address specified below or such different address as may hereafter be specified, by either party by written notice to the other:

To the Public Entity at:

City of Roseville
2660 Civic Center Drive
Roseville, MN 55113
Attention: Jamie Radel

To the State Entity at:

Department of Employment and Economic Development
1st National Bank Building
332 Minnesota Street, Suite E200
St. Paul, MN 55101-1351

Attention: Brownfields and Redevelopment

To the Commissioner at:

Minnesota Department of Finance
400 Centennial Office Bldg.
658 Cedar St.
St. Paul, MN 55155
Attention: Commissioner

Section 7.16 **Binding Effect and Assignment or Modification.** This Agreement and the Declaration shall be binding upon and inure to the benefit of the Public Entity and the State Entity, and their respective successors and assigns. Provided, however, that neither the Public Entity nor the State Entity may assign any of its rights or obligations under this Agreement or the Declaration without the prior written consent of the other party. No change or modification of the terms or provisions of this Agreement or the Declaration shall be binding on either the Public Entity or the State Entity unless such change or modification is in writing and signed by an authorized official of the party against which such change or modification is to be imposed.

Section 7.17 **Waiver.** Neither the failure by the Public Entity, the State Entity, or the Commissioner, as a third party beneficiary of this Agreement, in any one or more instances to insist upon the complete and total observance or performance of any term or provision hereof, nor the failure of the Public Entity, the State Entity, or the Commissioner, as a third party beneficiary of this Agreement, to exercise any right, privilege, or remedy conferred hereunder or afforded by law shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of either the Public Entity, the State Entity, or the Commissioner, as a third party beneficiary of this Agreement, in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

Section 7.18 **Entire Agreement.** This Agreement, the Declaration, and the documents, if any, referred to and incorporated herein by reference embody the entire agreement between the Public Entity and the State Entity, and there are no other agreements, either oral or written, between the Public Entity and the State Entity on the subject matter hereof.

Section 7.19 **Choice of Law and Venue.** All matters relating to the validity, construction, performance, or enforcement of this Agreement or the Declaration shall be determined in accordance with the laws of the State of Minnesota. All legal actions initiated with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued in the State of Minnesota District Court located in the City of St. Paul, County of Ramsey, State of Minnesota.

Section 7.20 **Severability.** If any provision of this Agreement is finally judged by any court to be invalid, then the remaining provisions shall remain in full force and effect and they shall be interpreted, performed, and enforced as if the invalid provision did not appear herein.

Section 7.21 **Time of Essence.** Time is of the essence with respect to all of the matters contained in this Agreement.

Section 7.22 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

Section 7.23 **Matching Funds.** The Public Entity must obtain and supply the following matching funds, if any, for the Project:

The Public Entity must pay for at least one-half of the redevelopment costs as a local match from any money available to the Public Entity. Eligible redevelopment costs incurred up to twelve months prior to the application due date can be included as part of the local match requirement if such items have been approved, in writing, by the State Entity.

Any matching funds which are intended to meet the above requirements must be in the form of cash monies which have been or will be used to pay for the Project. The Public Entity shall supply to the Commissioner whatever documentation the Commissioner may request to substantiate the availability and source of any matching funds, and the source and terms relating to all matching funds must be consented to, in writing, by the Commissioner.

Section 7.24 **Source and Use of Funds.** The Public Entity represents to the State Entity and the Commissioner that **Attachment III** to this Agreement is intended to be and is a source and use of funds statement showing the total cost of the Project and all of the funds that are available for the completion of the Project, and that the information contained in such **Attachment III** correctly and accurately delineates the following information.

A. The total cost of the Project detailing all of the major elements that make up such total cost and how much of such total cost is attributed to each such major element.

B. The source of all funds needed to complete the Project broken down amongst the following categories:

- (i) State funds including the Program Grant, identifying the source and amount of such funds.
- (ii) Matching funds, identifying the source and amount of such funds.
- (iii) Other funds supplied by the Public Entity, identifying the source and amount of such funds.
- (iv) Loans, identifying each such loan, the entity providing the loan, the amount of each such loan, the terms and conditions of each such loan, and all collateral pledged for repayment of each such loan.
- (v) Other funds, identifying the source and amount of such funds.

C. Such other financial information that is needed to correctly reflect the total funds available for the completion of the Project, the source of such funds and the expected use of such funds.

Previously paid project expenses may only be included as a source of funds and included in **Attachment III** if such items have been approved, in writing, by the State Entity.

If any of the funds included under the source of funds have conditions precedent to the release of such funds, then the Public Entity must provide to the State Entity and the Commissioner a detailed description of such conditions and what is being done to satisfy such conditions.

The Public Entity shall also supply whatever other information and documentation that the State Entity or the Commissioner may request to support or explain any of the information contained in **Attachment III** to this Agreement.

The value of the Public Entity's ownership interest in the Real Property and, if applicable, Facility should only be shown in **Attachment III** to this Agreement if such ownership interest is being acquired and paid for with funds shown in such **Attachment III**, and for all other circumstances such value should be shown in the definition for Ownership Value in Section 1.01 and not included in such **Attachment III**.

Section 7.25 **Project Completion Schedule.** The Public Entity represents to the State Entity and the Commissioner that **Attachment IV** to this Agreement correctly and accurately delineates the projected schedule for the completion of the Project.

Section 7.26 **Third-Party Beneficiary.** The State Program will benefit the State of Minnesota and the provisions and requirements contained herein are for the benefit of both the State Entity and the State of Minnesota. Therefore, the State of Minnesota, by and through its Commissioner, is and shall be a third-party beneficiary of this Agreement.

Section 7.27 **Public Entity Tasks.** Any tasks that this Agreement imposes upon the Public Entity may be performed by such other entity as the Public Entity may select or designate, provided that the failure of such other entity to perform said tasks shall be deemed to be a failure to perform by the Public Entity.

Section 7.28 **State Entity and Commissioner Required Acts and Approvals.** The State Entity and the Commissioner shall not (i) perform any act herein required or authorized by it in an unreasonable manner, (ii) unreasonably refuse to perform any act that it is required to perform hereunder, or (iii) unreasonably refuse to provide or withhold any approval that is required of it herein.

Section 7.29 **Applicability to Real Property and Facility.** This Agreement applies to the Public Entity's interest in the Real Property and if a Facility exists to the Facility. The term "if applicable" appearing in conjunction with the term "Facility" is meant to indicate that this Agreement will apply to a Facility if one exists, and if no Facility exists then this Agreement will only apply to the Public Entity's interest in the Real Property.

Section 7.30 **Additional Requirements.** The Public Entity and the State Entity agree to comply with the following additional requirements. In the event of any conflict or inconsistency

between the following additional requirements and any other provisions or requirement contained in this Agreement, the following additional requirements contained in this Section shall control.

The Grantee shall maintain adequate financial records consistent with generally accepted accounting principles. The Grantee shall furnish the Grantor with an independent audit covering each grant year in which grant disbursements or expenditures were made; and prepared in compliance with generally recognized audit standards. The audit shall include a schedule of revenue and expenditures for the Project. The audit must be submitted within 30 days after the completion of the audit, but not later than one year after the end of the audit period. Alternatively, the Grantee shall submit accounting system records that track the use of grant proceeds and all matching funds by eligible Project Costs for each year in which grant disbursement and expenditures were made. The records shall reflect both expenditures and revenues and shall be submitted after all grant proceeds and matching funds have been expended or at the Grantor's request.

DEED grant funds will go toward the costs of Roadway Construction, Sidewalk Construction, and Utility Installation; Tax Increment Financing will be used by the City of Roseville to cover the matching costs toward these activities and for Right-of-Way Acquisition.

Where language within this agreement references the Public Entity operating the State Program, it means the operation of the activities eligible under the Redevelopment Grant Program.

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IN TESTIMONY HEREOF, the Public Entity and the State Entity have executed this General Obligation Bond Proceeds Grant Agreement Construction Grant for the Twin Lakes Redevelopment Project under the Redevelopment Grant Program on the day and date indicated immediately below their respective signatures.

PUBLIC ENTITY:

City of Roseville,
a Statutory City

By: _____

Craig D. Klausing

Its: _____
Mayor

Dated: _____, _____

And: _____

Bill Malinen

Its: _____
Interim City Manager

Dated: _____, _____

STATE ENTITY:

Minnesota Department of Employment and Economic
Development,

By: _____

Paul A. Moe

Its: _____
Deputy Commissioner

Dated: _____, _____

ENCUMBERANCE:

Minnesota Department of Employment and Economic
Development,

By: _____

Title: _____

Date Encumbered: B22-14423 12/05/08

(Individual signing certifies that funds have been encumbered as
required by Minnesota Statute 16A.15 and 16C.05)

This is a sample declaration. The actual declaration should be drafted by the Public Entity or the Public Entity's attorney and include the language provided. The legal description in Exhibit A to this declaration should be the same legal description listed in Attachment II to this grant agreement and should only include the restricted, public property. The completed declaration must be recorded by the county and a recorded copy must be submitted to DEED prior to disbursement of funds.

**Attachment I to Grant Agreement
DECLARATION**

The undersigned has the following interest in the real property legally described in **Exhibit A** attached and all facilities situated thereon (cumulatively referred to as the "Restricted Property"):

(Check the appropriate box.)

☐ a fee simple title,

☐ a lease, or

☐ an easement,

and as owner of such fee title, lease or easement, does hereby declare that such interest in the Restricted Property is hereby made subject to the following restrictions and encumbrances:

- A. The Restricted Property is bond financed property within the meaning of Minn. Stat. § 16A.695 that exists as of the effective date of the grant agreement identified in B hereinbelow, is subject to the encumbrance created and requirements imposed by such statutory provision, and cannot be sold or otherwise disposed of by the public officer or agency which has jurisdiction over it or owns it without the approval of the commissioner of the Minnesota Department of Finance, which approval must be evidenced by a written statement signed by said commissioner and attached to the deed or instrument used to sell or otherwise dispose of the Restricted Property; and
- B. The Restricted Property is subject to all of the terms, conditions, provisions, and limitations contained in that certain «Insert the name of the grant agreement exactly as it appears on the title page of the grant agreement» between «Name of grant recipient» and the «Department of Employment and Economic Development», dated «Effective date of grant agreement», «Year».

The Restricted Property shall remain subject to such restrictions and encumbrances until it is released therefrom by way of a written release in recordable form signed by both the _____ «Department of Employment and Economic Development» and the commissioner of the Minnesota Department of Finance, and such written release is recorded in the real estate records relating to the Restricted Property.

This Declaration may not be terminated, amended, or in any way modified without the specific written consent of the commissioner of the Minnesota Department of Finance.

(SIGNATURE BLOCK, ACKNOWLEDGMENTS, AND STATEMENT AS TO WHOM IT WAS DRAFTED BY)

Exhibit A to Declaration
LEGAL DESCRIPTION OF RESTRICTED PROPERTY

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Attachment II to Grant Agreement
LEGAL DESCRIPTION OF REAL (RESTRICTED) PROPERTY

That part of the Southwest Quarter and the Southeast Quarter of Section 4, Township 29, Range 23, Ramsey County, Minnesota, described as follows:

Commencing at the Northwest corner of the Southwest Quarter of Section 4, Township 29, Range 23, Ramsey County, Minnesota; thence South 01 degrees 13 minutes 29 seconds East, assumed bearing along the west line of said Southwest Quarter a distance of 1719.60 feet to the point of beginning; thence North 89 degrees 25 minutes 42 seconds East a distance of 50.00 feet; thence South 03 degrees 20 minutes 19 seconds East a distance of 225.91 feet; thence South 29 degrees 51 minutes 34 seconds East a distance of 23.07 feet; thence North 89 degrees 21 minutes 12 seconds East a distance of 467.39 feet; thence North 62 degrees 45 minutes 38 seconds East a distance of 101.49 feet; thence North 01 degrees 12 minutes 08 seconds West a distance of 63.14 feet; thence North 05 degrees 27 minutes 45 seconds West a distance of 85.69 feet; thence North 03 degrees 54 minutes 57 seconds East a distance of 71.36 feet; thence North 01 degrees 12 minutes 08 seconds West a distance of 1701.13 feet, to the north line of said Southwest Quarter of Section 4; thence North 89 degrees 04 minutes 15 seconds East, along said north line of the Southwest Quarter of Section 4, a distance of 60.00 feet; thence South 01 degrees 12 minutes 08 seconds East a distance of 1694.99 feet; thence South 10 degrees 06 minutes 34 seconds East a distance of 115.80 feet; thence South 26 degrees 13 minutes 33 seconds East a distance of 73.43 feet; thence South 81 degrees 44 minutes 22 seconds East a distance of 38.77 feet; thence Easterly 159.47 feet along a non tangential curve concave to the South having a radius of 401.40 feet a central angle of 22 degrees 45 minutes 47 seconds, the chord of said curve bears North 77 degrees 50 minutes 56 seconds East; thence North 89 degrees 13 minutes 50 seconds East, tangent to the last described curve, a distance of 269.18 feet; thence North 60 degrees 31 minutes 16 seconds East a distance of 81.80 feet; thence North 08 degrees 49 minutes 44 seconds East a distance of 79.55 feet; thence North 89 degrees 17 minutes 34 seconds East a distance of 72.08 feet; thence South 01 degrees 24 minutes 37 seconds East a distance of 67.14 feet; thence South 09 degrees 52 minutes 26 seconds East a distance of 42.97 feet; thence North 87 degrees 43 minutes 03 seconds East a distance of 34.08 feet; thence South 01 degrees 14 minutes 38 seconds East a distance of 103.83; thence South 72 degrees 18 minutes 30 seconds West a distance of 53.40 feet; thence South 01 degrees 01 minutes 34 seconds East a distance of 206.88 feet; thence South 88 degrees 58 minutes 26 seconds West a distance of 60.86 feet; thence North 07 degrees 00 minutes 23 seconds West a distance of 186.73 feet; thence North 57 degrees 42 minutes 34 seconds West a distance of 86.61 feet; thence South 83 degrees 51 minutes 35 seconds West a distance of 104.58 feet; thence North 89 degrees 06 minutes 18 seconds West a distance of 136.85 feet; thence Westerly 212.45 feet along a tangential curve concave to the South having a radius of 275.00 feet a central angle of 44 degrees 15 minutes 52 seconds; thence South 01 degrees 03 minutes 53 seconds East, not tangent to the last described curve, a distance of 149.40 feet; thence South 89 degrees 39 minutes 20 seconds West a distance of 131.14 feet;

thence North 01 degrees 11 minutes 34 seconds West a distance of 102.87 feet; thence Westerly 114.74 feet along a non tangential curve concave to the North having a radius of 388.16 feet a central angle of 16 degrees 56 minutes 12 seconds, the chord of said curve bears South 80 degrees 56 minutes 57 seconds West; thence South 89 degrees 25 minutes 03 seconds West, tangent to the last described curve, a distance of 419.04 feet; thence South 36 degrees 22 minutes 37 seconds West a distance of 22.00 feet; thence South 01 degrees 32 minutes 34 seconds East a distance of 193.22 feet; thence South 05 degrees 17 minutes 12 seconds West a distance of 64.62 feet; thence North 89 degrees 35 minutes 50 seconds West a distance of 75.86 feet; to a point on the west line of said Southwest Quarter of Section 4, said point being 290.05 feet North of the Southwest corner of said Southwest Quarter of Section 4, as measured along said west line; thence North 01 degrees 13 minutes 29 seconds West, along said west line of the Southwest Quarter of Section 4 a distance of 628.28 feet, to the point of beginning, and there terminating.

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**Attachment III to Grant Agreement
SOURCE AND USE OF FUNDS FOR THE PROJECT**

Source of Funds		Use of Funds	
Entity Supplying Funds	Amount	Identity of Items	Amount
State Funds		Items of a Capitol Nature Eligible for GO Program Grant Funds:	
State GO Program Grant	\$528,846	Road Construction	\$164,423
State GF Grant	\$-----	Storm Sewer	\$100,000
Other		Right Of Way Acquisition	\$264,423
-----	\$-----	Sub Total	\$528,846
-----	\$-----		\$
-----	\$-----		\$
-----	\$-----		\$
Sub-Total	\$528,846		\$
Matching Funds			
TIF	\$1,635,577		
Metro Transit Funds	\$453,577		
Sub Total	\$2,089,154		
Other Public Entity Funds		Items Paid for with Non-GO Program Grant Funds	
-----	\$-----	Road Construction	\$353,577
-----	\$-----	Storm Sewer	\$100,000
Sub-Total		Right Of Way Acquisition	\$1,635,577
		Sub Total	\$2,089,154
Loans			
-----	\$-----		
Sub-Total	\$-----		
Other Funds			
-----	\$-----		
Sub-Total	\$-----		-
Prepaid Project Expenses			
-----	\$-----		
Sub-Total	\$-----		
TOTAL FUNDS	\$2,618,000	TOTAL PROJECT COSTS	\$2,618,000

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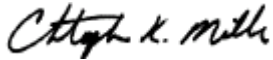
Attachment IV to Grant Agreement
PROJECT COMPLETION SCHEDULE

Acquisition of Right-Of-Way: March 2009
Infrastructure Construction: November 2009

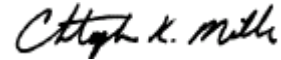
ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: 03/23/09
Item No.: 7.d

Department Approval



Acting City Manager Approval



Item Description: Authorize Legal Proceedings Pursuant to the Centre Pointe Redevelopment Agreement with Ryan Companies

BACKGROUND

At the December 3, 2007 City Council meeting, the Council held a discussion on whether to grant contractual relief to Ryan Companies in conjunction with the redevelopment agreement pertaining to the City's Centre Pointe area. At the conclusion of the discussion, the Council voted 4-1 to reject the request.

Ryan Companies was made aware of the Council's decision in a letter from Staff dated December 6, 2007. This was followed up by another letter from Staff dated February 25, 2008 to Ryan Companies formally requesting that they remit a check to the City in the amount of \$93,574, which represented their remaining obligation under the terms of the Agreement.

Since this time, Ryan Companies has continued its efforts to obtain contractual relief. The City Attorney was asked to issue a follow-up response and to inform them of our intentions to collect the amount owed. A copy of this letter is attached. To date, Ryan Companies has not paid the City. As a result, Staff is seeking Council authorization to pursue legal proceedings to collect.

POLICY OBJECTIVE

The City is owed \$93,574 in conjunction with the Redevelopment Agreement referenced above and has exhausted all diplomatic efforts to collect these monies. It is in the public's interest to initiate legal proceedings to recoup what is contractually owed to the City.

FINANCIAL IMPACTS

The costs of the legal proceedings will be initially paid by the City's Risk Management Fund. The City will seek to recover legal costs in conjunction with this effort.

STAFF RECOMMENDATION

Staff recommends the Council approve the attached resolution authorizing the City Attorney to initiate legal proceedings to recover the amounts owed under the Centre Pointe Redevelopment Agreement.

25 **REQUESTED COUNCIL ACTION**

26 Motion to approve a resolution authorizing the City Attorney to initiate legal proceedings to recover the
27 amounts owed under the Centre Pointe Redevelopment Agreement.

28

Prepared by: Chris Miller, Finance Director

Attachments: A: Resolution authorizing the City Attorney to pursue legal proceedings

B: July 16, 2008 letter from the City Attorney

**EXTRACT OF MINUTES OF MEETING OF THE
CITY COUNCIL OF THE CITY OF ROSEVILLE**

* * * * *

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Roseville, County of Ramsey, Minnesota was duly held on the 9th day of March, 2009 at 6:00 p.m.

The following members were present: and , and the following were absent:

Member introduced the following resolution and moved its adoption:

RESOLUTION _____

**RESOLUTION DECLARING EVENT OF DEFAULT AND AUTHORIZING LEGAL COUNSEL TO
INITIATE LITIGATION**

WHEREAS, on March 24, 1997, the City of Roseville entered into a contract (“Agreement”) with Ryan Companies;

WHEREAS, by the terms of that Agreement, the City of Roseville made certain loans to Ryan Companies;

WHEREAS, by the terms of that Agreement, Ryan Companies was to repay any portion of those loans that were outstanding on December 31, 2007;

WHEREAS, the City of Roseville has calculated that, as of December 31, 2007, Ryan Companies had not repaid the outstanding amount of \$93,574;

WHEREAS, since December 31, 2007, the City of Roseville and its legal counsel have made several written requests to Ryan Companies for the outstanding \$93,574;

WHEREAS, on July 16, 2008, legal counsel for the City of Roseville provided Ryan Companies with written notice, pursuant to Section 8.2 of the Agreement, that Ryan Companies had ten (10) days in which to repay the \$93,754; and

WHEREAS, Ryan Companies has not yet repaid the \$93,574.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Roseville, Minnesota, as follows:

1. The City hereby declares Ryan Companies to be in default of its contractual obligations under the March 24, 1997 Agreement.
2. The City hereby invokes its rights pursuant to Section 8.2 of the Agreement.

- 78
79 3. The City hereby authorizes the law firm of Ratwik Roszak & Maloney, P.A. to enforce its rights
80 under Section 8.2 of the Agreement and to initiate legal proceedings to recover the money owed
81 by Ryan Companies as authorized by Section 8.2(f) of the Agreement.
82

83 The motion for adoption of the foregoing resolution was seconded by member_____ and,
84 after full discussion thereof and upon vote being taken thereon, the following voted in favor thereof:
85
86

87 and the following voted against the same:
88
89
90

91 WHEREUPON, said resolution was declared duly passed and adopted.
92

93 State of Minnesota)
94) SS
95 County of Ramsey)
96

97 I, undersigned, being the duly qualified City Manager of the City of Roseville, County of Ramsey, State of
98 Minnesota, do hereby certify that I have carefully compared the attached and foregoing extract of minutes
99 of a regular meeting of said City Council held on the 9th day of March, 2009 with the original thereof on
100 file in my office.
101

102 WITNESS MY HAND officially as such Manager this 9th day of March, 2009
103
104
105

106 _____
107 William J. Malinen
108 City Manager
109

110 Seal

Jay T. Squires
Direct Fax: (612) 225-6834
jts@ratwiklaw.com

Christian R. Shafer
Direct Fax: (612) 225-6838
crs@ratwiklaw.com



July 16, 2008

VIA UNITED STATES MAIL

Mr. Kent Carlson
Ryan Companies
50 South 10th Street, Suite 300
Minneapolis, MN 55403-2012

RE: Ryan Companies Debt
Our File No. 4002(1)-0312

Dear Mr. Carlson:

This law firm represents the City of Roseville ("City"). The City and Ryan Twin Lakes Limited Partnership ("Ryan") entered a Development Agreement ("Agreement") on March 24, 1997.

Pursuant to the Agreement, Ryan was obligated to repay the City any portion of the of City's loans to Ryan which were outstanding on December 31, 2007. The City has calculated that the amount owed by Ryan under the Agreement is ninety-three thousand five hundred seventy four dollars (\$93,574). Despite several written requests from the City since December 31, 2007 (see attached), Ryan has not repaid the City, and is currently in violation of the terms of the Agreement.

730 Second Avenue South, Suite 300, Minneapolis, MN 55402 • p (612) 339-0060 • f (612) 339-0038 • www.ratwiklaw.com

Paul C. Ratwik
John M. Roszak
Patricia A. Maloney*
Terrence J. Foy*
Stephen G. Andersen**
Scott T. Anderson
Kevin J. Rupp

Jay T. Squires*†
Ann R. Goering
Nancy E. Blumstein*
Joseph J. Langel
Michael J. Waldspurger*
Margaret A. Skelton
Amy E. Mace

Eric J. Quiring
Kimberley K. Sobieck
Sonya J. Guggemos
Erin E. Ische
Andrea N. Amidon
Christian R. Shafer
Trevor S. Helmers

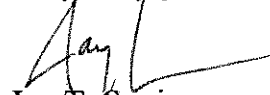
* Also admitted in WI
** Civil Trial Specialist
Certified by the MN
State Bar Association
† Real Property Specialist
Certified by the MN
State Bar Association

Mr. Kent Carlson
July 16, 2008
Page 2 of 2

This letter serves as the written notice required by Section 8.2 of the Agreement. If Ryan does not pay the City the ninety-three thousand five hundred seventy four dollars (\$93,574) which it owes within ten (10) days of its receipt of this letter, we will approach the City Council for authorization to declare Ryan in default, pursuant to Section 8.1(a) of the Agreement, of its contractual obligations and to proceed with remedies authorized by Section 8.2 of the Agreement.

As you are aware, if the City declares an event of default, Ryan is obligated under Section 8.5 of the Agreement to pay any attorneys' fees or other costs incurred by the City to collect upon Ryan's debt. Should the City declare an event of default, the City intends to collect attorneys' fees from Ryan. This letter serves as the formal demand for required by Section 8.5 of the Agreement.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay T. Squires", with a long horizontal stroke extending to the right.

Jay T. Squires
Christian R. Shafer

cc: Christopher Miller

JTS/crs

RRM: 120530

REQUEST FOR COUNCIL ACTION

Date: 3/23/09

Item No.: 7.e

Department Approval

Acting City Manager Approval

Cheryl K. Miller

Item Description: Recycling Contract Amendment to Cover Increased Liability Insurance Requirement

BACKGROUND

Roseville requires contractors that provide services to residents on behalf of the City to carry liability insurance. At the time the recycling contract was let, the statutory requirement was that contractors carry \$1 million in coverage. The Legislature has since increased the requirement to \$1.5 million in coverage.

Eureka Recycling secured additional liability insurance to cover the entities to which it provides service. Roseville's portion of that insurance premium increase is \$14, 887.04 annually.

POLICY OBJECTIVE

The amendment will bring the City and Eureka Recycling into compliance with state law.

BUDGET IMPLICATIONS

This would result in an annual increase in cost of \$14,887.04. The Recycling budget is approximately \$400,000. It is an enterprise fund and monies come from resident fees, an annual SCORE grant and money from the sale of recyclables.

REQUESTED COUNCIL ACTION

Approve recycling contract amendment

Prepared by: Tim Pratt
Attachments: A: Contract amendment

**AMENDMENT TO AGREEMENT
FOR RECYCLING SERVICES**

This Agreement amends that certain agreement dated December 5, 2005 by and between the City of Roseville ("City") and Eureka Recycling ("Contractor").

WHEREAS, under the 12/5/05 Agreement, Contractor agreed to provide recycling services, and, in conjunction with said services, agreed, under Article VII, to provide insurance;

WHEREAS, the municipal liability limits in state law have changed;

WHEREAS, the parties hereto intend to modify Contractor's insurance limits to be consistent with state law changes.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. The limits of liability for general liability coverage provided by Contractor under Article VII (1) of the 12/5/05 Agreement, shall be increased from \$1,000,000 to \$1,500,000.

2. To cover the cost of this increased insurance requirement the annual contract cost will be increased by \$14,887.04.

3. All other terms of the 12/5/05 Agreement shall remain unchanged.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates set forth below.

CITY OF ROSEVILLE

EUREKA RECYCLING

By _____
Its Mayor: Craig D. Klausing

By _____

Dated _____

Dated _____

and

By _____
Its City Manager: William J. Malinen

By _____

RRM: 126196/lmj

REQUEST FOR COUNCIL ACTION

Date: 3/23/09

Item No.:7.f

Department Approval

Acting City Manager Approval

Cheryl K. Miller

Item Description: Approve Contract for Operation of the Clean Up Day

BACKGROUND

The City solicited proposals for the latest Clean Up Day contract covering 2009-2011. Waste Management was the low bidder, and on January 12, 2009 the Council authorized staff to negotiate a contract with Waste Management. Costs will remain approximately the same as with the previous contract.

Most of the service standards are included in the Request For Proposals which was before the Council on June 9, 2008.

POLICY OBJECTIVE

To secure a contractor for operation of the City's Clean Up Day.

BUDGET IMPLICATIONS

To encourage participation the City has paid one-third of the disposal costs for material collected at the Clean Up Day. This typically runs \$5,000-6,000 a year. Funding comes from the Recycling budget and has been included in the budget approved by the Council.

REQUESTED COUNCIL ACTION

Approve the contract with Waste Management for operation of the City's Clean Up Day.

Prepared by: [Name, Title]

Attachments: A: Contract

B:

C:

**CITY OF ROSEVILLE
AGREEMENT FOR OPERATION OF CLEAN-UP DAY**

This Agreement is made and entered into by and between the City of Roseville, Minnesota, "City" and Waste Management of Minnesota, Inc., "Contractor", a Minnesota Corporation, with its principal place of business at 10050 Naples St. NE, Blaine, Minnesota 55449.

WHEREAS, the City has solicited proposals for a clean-up day in the City; and

WHEREAS, the Contractor has submitted a proposal for operation of a clean-up day; and

NOW, THEREFORE, in consideration of the mutual promises set forth below, the parties agree as follows:

1. Proposal. The term "Proposal" refers to Contractor's October 30, 2008 Proposal for Clean-Up Day Operation. A copy of the Proposal is attached hereto and incorporated herein by reference.
2. RFP. The terms "RFP" or "City RFP" refer to the September 30, 2008 City of Roseville Request for Proposal for Operation of a Clean-Up Day. A copy of the RFP is attached hereto and incorporated herein by reference.

II. Collection and Disposal Requirements

1. Collection Hours: Contractor shall maintain sufficient equipment and personnel to assure that all collection operations on Clean-Up Day begin no later than 8:00 a.m., and are completed by 3:00 p.m. on the scheduled Clean-Up Day.
2. Compliance with Disposal, Driving and Hauling Laws: collection, transportation, and disposal of all collected items shall be accomplished in accordance with all existing laws and ordinances.
3. Collection Vehicle Equipment Requirements: All collection vehicles used in performance of the Contract shall be duly licensed and inspected by the State of Minnesota and meet all applicable federal, state, and local rules, regulations and standards.

All vehicles must be clearly identified on both sides with Contractor's name and telephone number.

- 1
2 4. Personnel Requirements: Contractor shall retain sufficient personnel
3 and equipment to fulfill the requirements and specifications of this
4 Agreement, including, but not limited to, a portable toilet, collection
5 area signs and direction signs. The Contractor will provide an Event
6 Supervisor to oversee the crews servicing the Clean-Up Day. The
7 Event Supervisor will coordinate service with the City's
8 representative.

9
10 Contractor's personnel will be trained both in program operations and
11 in customer service and insure that all personnel maintain a positive
12 attitude with the public and in the work place and shall:

- 13
14 a) Conduct themselves at all times in a courteous manner and
15 use no abusive or foul language.
16
17 b) Perform their duties in accordance with all existing laws and
18 ordinances and future amendments thereto of the Federal,
19 State of Minnesota, and local governing boards.
20
21 c) Be clean and presentable in appearance.
22
23 d) Wear a uniform and appropriate safety gear.
24
25 e) Drive in a safe and courteous manner.
26
27 f) Monitor for any spillage and be responsible for cleaning up any
28 litter or breakage.
29
30 g) Avoid damage to property.
31
32 h) Not perform their duties or operate vehicles while consuming
33 alcohol or illegally using controlled substances or while under
34 the influence of alcohol and/or such substances.
35

- 36 5. Materials Disposal: Contractor agrees to dispose of all MSW collected
37 at the Newport Resource Recovery Facility. MSW may be taken to the
38 Elk River Resource Recovery Facility if the operators of the Newport
39 facility divert haulers to the Elk River facility.

40
41 All other materials collected shall be disposed of at the facilities
42 designated in Attachment B.

1 The City desires to maximize the amount of material collected that is
2 reused or recycled. Contractor agrees to work with the City to identify
3 additional reuse and recycling opportunities, and to dispose of these
4 identified materials at mutually agreed upon disposal sites.

5
6 III. Compensation to Contractor

- 7
8 1. Compensation: City agrees to pay Contractor as described in the
9 Proposal. City agrees to pay Contractor at the rates proposed by
10 Contractor in Attachment A.
11
12 2. Method of Payment: Contractor shall submit itemized bills for material
13 collected. Bills submitted shall be paid in the same manner as other
14 claims made to the City.
15

16 IV. Other Requirements

- 17
18 1. Term: Term means January 1, 2009 through December 31, 2011.
19 The Clean Up Day will be held the last Saturday in April each year of
20 the contract (April 25, 2009; April 24, 2010; April 30, 2011).

21
22 Upon mutual written agreement the City and Contractor may conduct
23 a fall Clean Up Day.
24

- 25 2. Severe Weather: The Clean Up Day may be postponed due to severe
26 weather at the sole discretion of Contractor. "Severe Weather" shall
27 include, but shall not be limited to, those cases where the temperature
28 at 6:00 a.m. is -25° F. or colder.
29

30 The Contractor will be responsible for notifying the residents by radio
31 and television announcements. The City will be responsible for
32 notifying the residents by municipal cable television. Upon
33 postponement, Contractor and City shall select a new Clean Up Day.
34

- 35 3. Equal Opportunity: During the performance of the executed
36 contract, the Contractor, in compliance with Executive Order 11246,
37 as amended by Executive Order 11375 and Department of Labor
38 Regulations 41CFR, Part 60, shall not discriminate against any
39 employee or applicant for employment because of race, color,
40 religion, sex, or national origin. The Contractor shall take affirmative
41 action to insure that applicants for employment are qualified, and
42 that employees are treated during employment, without regard to
43 their race, color, religion, sex, or national origin.

Such prohibition against discrimination shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

In the event of noncompliance with the non-discrimination clauses of this contract, this contract may be canceled, terminated, or suspended, in whole or part, in addition to other remedies as provided by law.

4. Indemnification: Contractor shall defend, indemnify and hold harmless the City, its officers, agents, and employees from all claims, damages, losses, and expenses (including, but not limited to, attorneys fees) which may be incurred or for which they may suffer or for which they may be liable as a result of the negligence of the Contractor, its employees or its subcontractors in the performance of this Contract.

5. Insurance: Contractor shall provide a Certificate of Insurance as proof of general liability coverage for bodily injury or death in the amount of \$1 million and for damages to property in the sum of \$200,000.

Contractor shall also provide a Certificate of Vehicle Liability Insurance in the amount of at least \$1,500,000.

The Certificate of Insurance shall name City as an additional insured, and state that Contractor's coverage shall be the primary coverage in the event of a loss. Further, the Certificate shall provide for thirty (30) days' written notice to City before cancellation, expiration, or change of coverage.

6. Workers' Compensation Insurance: Contractor shall provide evidence of Workers' Compensation Insurance covering all employees of Contractor engaged in the performance of this Contract in accordance with the Minnesota Workers' Compensation Law.

7. Performance and Payment Bond: Contractor shall execute and deliver to City a Performance and Payment Bond with a corporate surety in the sum of \$15,000.00 or equal ("equal" may include a Letter of Credit from a banking institution approved by City). This Contract will not become effective until such a bond, in a form acceptable to City, has been delivered to City and approved by the City Attorney.

1
2 The contract shall be subject to termination by City at any time if said
3 bond shall be canceled or the surety thereon relieved from liability for
4 any reason. The term of such Performance Bond shall be for the life
5 of the contract. Extensions or renewals shall require the execution
6 and delivery of a Performance Bond in the above amount to cover the
7 period of extension or renewal.
8

- 9 8. Governing Law: The laws of the State of Minnesota shall govern all
10 interpretations of this contract, and the appropriate venue and
11 jurisdiction for any litigation which may arise hereunder will be in
12 those courts located within the County of Ramsey, State of
13 Minnesota, regardless of the place of business, residence or
14 incorporation of the Contractor.
15
- 16 9. Subcontractors: Contractor shall not enter into subcontracts for any of
17 the services provided for in this Contract without the express written
18 consent of the City.
19
- 20 10. Independent Contractor: Nothing contained in this agreement is
21 intended to, or shall be construed in any manner, as creating or
22 establishing the relationship of employer/employee between the
23 parties. The Contractor shall at all times remain an independent
24 Contractor with respect to the services to be performed under this
25 Contract. Any and all employees of Contractor or other persons
26 engaged in the performance of any work or services required by
27 Contractor under this Contract shall be considered employees or sub-
28 contractors of the Contractor only and not of the City; and any and all
29 claims that might arise, including Worker's Compensation claims
30 under the Worker's Compensation Act of the State of Minnesota or
31 any other state, on behalf of said employees or other persons while
32 so engaged in any of the work or services provided to be rendered
33 herein, shall be the sole obligation and responsibility of Contractor
34
- 35 11. Assignment: Neither party shall assign this Contract, nor any interest
36 arising herein, without the written consent of the other party.
37
- 38 12. Compliance with Laws and Regulations: In providing services
39 hereunder, Contractor shall abide by all statutes, ordinances, rules,
40 and regulations pertaining to the provision of the services to be
41 provided. Any violation shall constitute a material breach of the
42 Contract.
43

- 1 13. Audit Disclosure: Contractor shall allow City and its duly authorized
2 agents reasonable access to such of the Contractor's books and
3 records as are pertinent to all services provided under this Contract.
4 Any reports, information, data, etc. given to, prepared, or assembled
5 by Contractor under a future contract shall not be made available to
6 any other parties or party without the City's prior written approval. All
7 finished or unfinished documents, data, studies, surveys, drawings,
8 maps, models, photographs, or reports prepared by the Contractor
9 shall become the property of City upon termination of this Contract.
10
- 11 14. Utilities: The Contractor shall be obligated to protect all public and
12 private utilities, streets, or roadways, whether occupying a street or
13 public or private property. If such utilities, streets or roadways are
14 damaged by reason of the Contractor's operations, the Contractor
15 shall repair or replace same, or failing to do so promptly, the City
16 shall cause repairs or replacement to be made and the cost of doing
17 so shall be deducted from payment to be made to the Contractor.
18
- 19 15. Conflict of Interest: Contractor agrees that no member, officer, or
20 employee of the City shall have any interest, direct or indirect, in this
21 Contract or the proceeds thereof. Violation of this provision shall
22 cause this Contract to be null and void and the Contractor will forfeit
23 any payments to be made under the Contract.
24
- 25 16. Entire Contract: This Contract incorporates and includes herein the
26 RFP dated September 30, 2008. To the extent this contract conflicts
27 with the RFP, the terms of this contract control. This Contract and the
28 RFP incorporated supersede all verbal agreements and negotiations
29 between the parties relating to the subject matter hereof, as well as
30 any previous agreements presently in effect between the parties
31 relating to the subject matter hereof. Any alterations, amendments,
32 deletions, or waivers of the provisions of this Contract shall be valid
33 only when expressed in writing and duly signed by the parties, unless
34 otherwise provided herein.
35
- 36 17. Severability: The provisions of this Contract are severable. If any
37 portion of the contract is, for any reason, held by a court of competent
38 jurisdiction to be contrary to law, such decision shall not affect the
39 remaining provisions of this Contract.
40
- 41 18. Street Improvements: This Contract is subject to the right of State of
42 Minnesota, Ramsey County, or the City to improve their highways
43 and streets. The Contractor accepts the risk that such improvements

1 may prevent the Contractor from traveling its accustomed route for
2 the purpose of collecting recyclables. The Contractor agrees not to
3 make any claim for compensations against the City for such
4 interference. The City shall, whenever possible, provide to Contractor
5 information and instructions about how the Contractor may best
6 provide services in the improvement area.
7

8 19. Educational Materials. The Contractor and the Recycling Coordinator
9 shall work together in the preparation and distribution of educational
10 materials to insure accurate information and program directives. The
11 City will pay for and distribute educational materials, not including
12 supplemental material distributed by the Contractor during the Clean-
13 Up Day event.
14

15 20. Termination: The City may cancel the Contract if the Contractor fails
16 to fulfill its obligations under the Contract in a proper and timely
17 manner, or otherwise violates the terms of the Contract if the default
18 has not been cured after 90 days written notice has been provided.
19 The City shall pay Contractor all compensation earned prior to the
20 date of termination minus any damages and costs incurred by the
21 City as a result of the breach. If the contract is canceled or
22 terminated, all finished or unfinished documents, data, studies,
23 surveys, maps, models, photographs, reports or other materials
24 prepared by the Contractor under this agreement shall, at the option
25 of the City, become the property of the City, and the Contractor shall
26 be entitled to receive just and equitable compensation for any
27 satisfactory work completed on such documents or materials prior to
28 the termination.
29

1
2 IN WITNESS WHEREOF, the parties have executed this agreement on the dates
3 set forth below:
4

5
6 CITY OF ROSEVILLE

WASTE MANAGEMENT OF
MINNESOTA, INC

7
8
9
10 By _____
11 Craig D. Klausing
12 Its Mayor
13

By _____
Its _____
14

15 Dated _____
16

Dated _____
17

18 and
19

and
20

21 By _____
22 William J. Malinen
23 Its City Manager
24

By _____
Its _____
25

26 Dated _____
27

Dated _____
28
29
30
31

ATTACHMENT A

Clean Up Day Pricing

Contractor will charge the following prices for collection and disposal of designated items at the City of Roseville Clean Up Day.

Pickup Load	\$ <u>40.00</u>
Minivan/SUV Load	\$ <u>24.00</u>
Station Wagon Load	\$ <u>16.00</u>
Car Load	\$ <u>15.00</u>
Trailer (4' x 4' x 8')	\$ <u>40.00</u>
Mattress (any size)	\$ <u>15.00</u>
Box Spring (any size)	\$ <u>15.00</u>
Appliance (any size)	\$ <u>15.00</u>
Appliance (with Freon)	\$ <u>24.00</u>
Stuffed Chair	\$ <u>10.00</u>
Couch	\$ <u>16.00</u>
Hide-a-bed	\$ <u>20.00</u>
Tires (car – each)	\$ <u>3.00</u>
Tires (oversize – each)	\$ <u>35.00</u>
Tires (on rim – car – each)	\$ <u>3.25</u>
Scrap Metal	\$ <u>10.00 per yard</u>
Automotive Batteries	\$ <u>3.00</u>
Electronics	\$ <u>7.50</u>
Small Engines	\$ <u>10.00</u>
Other (Please specify)	\$ _____

Attach additional sheets if necessary.

ATTACHMENT B

Clean Up Day Materials Disposition

Contractor will designate the facility to which the following items collected at the City of Roseville Clean Up Day will be delivered.

MSW

RRT Processing Facility

Construction &
Demolition Debris

Spruce Ridge Landfill

Mattresses

RRT

Box Springs

RRT

Appliances

Waste mgmt St Paul Appliance Center

Appliances (with Freon)

Waste mgmt St Paul Appliance Center

Stuffed Chair

RRT

Couches

RRT

Hide-a-beds

RRT

Tires

Green man, Bloomington mn

Scrap Metal

Re-Million, Minneapolis mn

Automotive Batteries

A-City Battery

Electronics

Waste Management Recycle America

Carpet

RRT

Small Engines

Rebillion, Minneapolis, mn

Other (Please specify)

Attach additional sheets if necessary.

REQUEST FOR COUNCIL ACTION

Date: March 23, 2009
Item No.: 7.g

Department Approval

Acting City Manager Approval

Cheryl K. Miller

Item Description: Legislation that would allow Minnesota schools to open before Labor Day

BACKGROUND

This year Labor Day falls on Monday, September 7. Several school districts have lobbied to repeal the state law that prohibits schools from opening before Labor Day. Legislators in both the House and Senate have introduced two bills that would allow schools to open before Labor Day. One bill removes the prohibition permanently, and the other bill removes the prohibition for two years.

The Roseville Visitors Association provided the City with information about why this change would be harmful to the community, and to the state as a whole. They request the City to oppose such legislation.

The Minnesota State Fair reported that in 2004, the last year that schools were allowed to open before Labor Day, cumulative fair attendance during the three school days was down 58,000 over the previous four-year average. Bad weather followed the early start further reduced overall attendance by more than 100,000 from the previous year, and the fair operated at a loss for the first time in 24 years.

Estimates are that the annual economic impact of the fair is nearly \$200 million in the Twin Cities. Roseville is the closest hotel community, so our City would carry a large share of the loss.

In addition to hotels, Roseville's restaurants, shopping centers, businesses and other amenities would likely see a reduction in the number of visitors over the week before Labor Day.

Many of Roseville's businesses depend upon the money generated during the State Fair. Some businesses may be forced to lay off employees if businesses do not receive that additional income.

FINANCIAL IMPACTS

No direct impact.

STAFF RECOMMENDATION

Direct City Manager to contact Roseville's legislative delegation and express opposition to the proposed legislation.

31 **REQUESTED COUNCIL ACTION**

32 Direct City Manager to contact Roseville's legislative delegation and express opposition to the
33 proposed legislation.

Prepared by: William J. Malinen, City Manager

ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: 3/23/09
Item No.: 7.h

Department Approval

Christopher K. Miller

Acting City Manager Approval

Christopher K. Miller

Item Description: Request for Approval of General Purchases or Sale of Surplus Items
Exceeding \$5,000

BACKGROUND

City Code section 103.05 establishes the requirement that all general purchases and/or contracts in excess of \$5,000 be approved by the Council. In addition, State Statutes require that the Council authorize the sale of surplus vehicles and equipment.

General Purchases or Contracts

City Staff have submitted the following items for Council review and approval:

Department	Vendor	Item / Description	Amount
PW Garage	Winter Equipment	Blanket P.O. for vehicle repairs	\$ 6,000.00
PW Garage	Suburban Tire	Blanket P.O. for vehicle repairs	17,000.00
PW Garage	Factory Motor Parts	Blanket P.O. for vehicle repairs	12,000.00
PW Garage	Catco Parts & Service	Blanket P.O. for vehicle repairs	6,000.00
PW Garage	Midway Ford	Blanket P.O. for vehicle repairs	12,000.00
Info. Tech.	Digital Cities	Laserfiche software maintenance (a)	14,910.00

(a) A portion of these costs are paid by IT-related JPA cities. Roseville's share is \$4,436

Sale of Surplus Vehicles or Equipment

City Staff have identified surplus vehicles and equipment that have been replaced and/or are no longer needed to deliver City programs and services. These surplus items will either be traded in on replacement items or will be sold in a public auction or bid process. The items include the following:

Department	Item / Description
n/a	n/a

POLICY OBJECTIVE

Required under City Code 103.05.

FINANCIAL IMPACTS

Funding for all items is provided for in the current operating or capital budget.

19 **STAFF RECOMMENDATION**

20 Staff recommends the City Council approve the submitted purchases or contracts for service and, if
21 applicable, authorize the trade-in/sale of surplus items.

22 **REQUESTED COUNCIL ACTION**

23 Motion to approve the submitted list of general purchases, contracts for services, and if applicable the
24 trade-in/sale of surplus equipment.

25

26

Prepared by: Chris Miller, Finance Director

Attachments: A: None

27

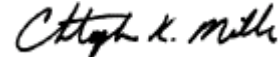
REQUEST FOR COUNCIL ACTION

Date: March 23, 2009
Item No.: 7.i

Department Approval



Acting City Manager Approval



Item Description: **2009 ENFORCING UNDERAGE DRINKING LAWS GRANT APPLICATION**

BACKGROUND

The Roseville Police Department has been conducting aggressive, thorough alcohol compliance checks on all liquor licensees in the City since 1997. The Department has used funds from the Department of Public Safety, Bureau of Justice Assistance funds, and when no funding was available, funds from its alcohol forfeiture account to support this important program *in the Department's continuing effort to remind liquor licensees of their legal and moral responsibility not to sell or serve alcohol to anyone under the age of 21.*

The Roseville Police Department is committed to the goal of zero tolerance in the sale of alcohol to minors. Free training packets for employers to train employees in preventing the sale of alcohol to minors can be downloaded from the Department's website and are also available upon request at the police department's front counter.

The business/business employee who sells the alcohol product to the underage purchaser is cited and fined per City Code 302.15.

The City of Roseville Police Department has the opportunity to apply for funding through the Minnesota Department of Public Safety, Office of Traffic Safety to enforce underage drinking laws. Funding applications are required to be received by the Office of Traffic Safety no later than April 17, 2009. Funding will cover a twelve month period, July 1, 2009 through June 30, 2010.

The police department is requesting \$4,370.00 to cover the overtime costs of officers deployed during two alcohol compliance checks.

POLICY OBJECTIVE

Six weeks before the Department's annual compliance checks commence, the Department (the Administrative Sergeant) sends a letter to all affected businesses notifying them of the upcoming checks. In that notification, businesses are also made aware that the Department promotes free training to both servers and managers to prevent the sale of alcohol to underage persons and to prevent violations of the City's Liquor Control Ordinance. Businesses are also informed that liquor licensees who participate in the free training receive less severe penalties than licensees who do not.

The Roseville Police Department (the Administrative Sergeant) then recruits officers to oversee the process during the alcohol compliance checks. The Department uses two minors (referred by police officers) to pose as underage purchasers.

The underage purchasers are paid \$15.00 an hour and the officers are paid an average of \$45.00 an hour (overtime).

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Establishments failing the compliance checks are, without exception, penalized in accordance with the City’s ordinance below.

There are 62 businesses the Department will check for alcohol compliance in 2009. The Department plans to do the initial check in August/September of 2009. Follow-up checks will be scheduled for the month of November/December 2009.

FINANCIAL IMPACTS

None. There is no city match requirement for this funding. Funding will be used to cover the cost of officer overtime.

STAFF RECOMMENDATION

The police department is recommending that it be allowed to accept the grant funds to cover the costs of conducting two alcohol compliance checks in 2009/2010.

REQUESTED COUNCIL ACTION

The police department is recommending that it be allowed to accept the grant funds to cover the costs of conducting two alcohol compliance checks in 2009/2010.

Prepared by:
Attachments: A: Resolution

Resolution
Authorizing Execution of Grant Agreement

Be it resolved that the **City of Roseville Police Department** enter into a grant agreement with the Office of Traffic Safety in the Minnesota Department of Public Safety for the project entitled, ***"Enforcing Underage Drinking Laws,"*** during the period **July 1, 2009, through June 30, 2010.**

William Malinen is hereby authorized to execute such grant agreements as necessary to implement the project on behalf of the **City of Roseville.**

I certify that the above resolution was adopted by the **City of Roseville Council** of the **City of Roseville** on **March 23, 2009.**

Signed:

Witnesseth:

William Malinen, City Manager
City of Roseville

Carol Sletner, Chief of Police
City of Roseville

Date: ____/____/____

Date: ____/____/____

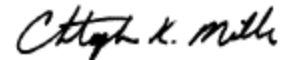
REQUEST FOR COUNCIL ACTION

Date: March 23, 2009
Item No.: 7.j

Department Approval



Acting City Manager Approval



Item Description: **APPROVAL TO APPLY FOR 2009 COPS UHP GRANT**

BACKGROUND

Since 2002, the Roseville Police Department has requested funding to add a full-time commercial patrol officer and a second full-time traffic officer to its roster; however, due to budget and staffing constraints, the department has not been able to obtain the resources to fill the positions. Through available grant funding, the department now has the opportunity to fill the open unfilled sworn position and add two new positions of full-time commercial patrol officer and a second traffic officer at no cost to the City for the first three years of the officers' employment. (Please refer to Attachment A.)

The City of Roseville is home to a large number of shopping areas--the largest center being Rosedale (the second largest mall in Minnesota with over 12,000,000 visitors annually).

Even though the City is dominated by the retail industry, the police department does not have a dedicated officer to work retail. Officers respond to calls for service and deal with retail crimes after they have been committed.

There are not enough officers to be dedicated to the City's mall areas for proactive commercial patrol activities due to the current number of calls for services in relationship to the current number of patrol officers—37 patrol officers, 38,000 plus calls for service annually.

The economic vitality of Rosedale, other mall areas, and the City of Roseville are directly related. Although there are many factors that contribute to the vitality of mall areas and the City, the level of crime in mall areas and citizens feeling of safety are very important. If the mall areas become places where individuals do not feel safe or comfortable and people choose not to patronize them, retailers will suffer.

The Department has one full-time traffic officer who patrols the City four days a week, ten hours/day. The Department is requesting the addition of a second traffic patrol officer to provide increased focus on public safety seven days/week.

POLICY OBJECTIVE

The Office of Community Oriented Policing Services (COPS Office) is announcing the availability of funding under the COPS Hiring Recovery Program (CHRP). Funding will be

34 available to address the personnel needs of state, local, and tribal law enforcement. Applications
35 for CHRP grants will be accepted online via the COPS Office web site beginning March 16,
36 2009 through April 14, 2009.

37
38 The City of Roseville Police Department is eligible to apply for this funding which would cover
39 the full cost of entry level salaries and benefits for 36 months for newly hired, full-time sworn
40 officers. Grantees are required to retain all sworn officer positions awarded through the grant
41 after grant funding is depleted.

42
43 The police department is requesting approval to apply for CHRP funding to fill the existing
44 unfilled sworn position and to add two new positions of full-time commercial patrol officer and a
45 second full-time traffic officer to its roster.

47 **BUDGET IMPLICATIONS**

48 None--for the first three years. Positions would be funded by grant monies for the first
49 three years. There is no city match required for the first three years of the officers'
50 salaries.

52 **STAFF RECOMMENDATION**

53 The police department is recommending that it be allowed to apply for funding through the
54 Office of Community Oriented Policing Services (COPS Office) under the COPS Hiring
55 Recovery Program (CHRP) to fill the existing unfilled sworn position and to add the new
56 position of full-time commercial patrol officer and a second full-time traffic officer at no cost to
57 the City for the first three full years of employment.

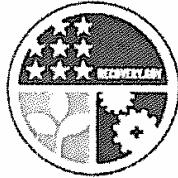
59 **REQUESTED COUNCIL ACTION**

60 The police department is requesting Council approval to apply for funding through the Office of
61 Community Oriented Policing Services (COPS Office) under the COPS Hiring Recovery
62 Program (CHRP) to fill the existing unfilled sworn position and to add the new position of full-
63 time commercial patrol officer and a second full-time traffic officer at no cost to the City for the
64 first three full years of employment.

65
Prepared by: Carol Sletner, Police Chief
Attachments: A: Description of Grant
B: City of Roseville Eligibility Status

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COPS Hiring Recovery Program (CHRP)



The Office of Community Oriented Policing Services (COPS Office) is pleased to announce the availability of funding under the COPS Hiring Recovery Program (CHRP). The COPS Office will receive the funds from the American Recovery and Reinvestment Act of 2009 to address the personnel needs of state, local, and tribal law enforcement.

Applications for CHRP grants will be accepted online via the COPS Office web site at www.cops.usdoj.gov beginning March 16, 2009 through April 14, 2009.

Quick Overview

- CHRP is a competitive grant program that provides funding directly to law enforcement agencies having primary law enforcement authority to create and preserve jobs and to increase their community policing capacity and crime-prevention efforts.
- Up to \$1 billion in grant funding will be available for the hiring and rehiring of additional career law enforcement officers.
- There is no local match requirement for CHRP, but grant funding will be based on current entry-level salary and benefits packages and therefore any additional costs for higher salaries or benefits for particular individuals hired will be the responsibility of the grantee agency.
- CHRP grants will provide 100 percent funding for approved entry-level salaries and benefits for 3 years (36 months) for newly-hired, full-time sworn officer positions (including filling existing unfunded vacancies) or for rehired officers who have been laid off, or are scheduled to be laid off on a future date, as a result of local budget cuts.

*In addition, there is no cap on the number of positions an agency may request, but awards will be limited to available funding. Please be mindful of the initial 3-year grant period and your agency's ability to fill the officer positions awarded, while following your agency's established hiring policies and procedures.

- At the conclusion of federal funding, grantees must retain all sworn officer positions awarded under the CHRP grant. The retained CHRP-funded position(s) should be added to the grantees law enforcement budget with state and/or local funds, over and above the number of locally-funded positions that would have existed in the absence of the grant.



CHRP Eligibility Worksheet

Welcome to the COPS Hiring Recovery Program (CHRP) Eligibility Worksheet

Please note that the answers to these questions will determine your eligibility in applying for funding under this program. If you have any questions regarding your eligibility, please contact the COPS Office Response Center at 1-800-421-6770 or askCopsRC@usdoj.gov.

Is your law enforcement agency a start-up agency?

☐ Yes ☒ No

Is your agency applying for this grant as part of a consortium of agencies?

☐ Yes ☒ No

Is your agency a Tribal law enforcement agency?

☐ Yes ☒ No

Is your agency applying for funds under this grant to contract for law enforcement services?

☐ Yes ☒ No

Does the law enforcement agency have primary law enforcement authority for the population served?

☒ Yes ☐ No

Is your law enforcement agency a type other than a local, state, or tribal agency (e.g., Transit, School, University/College, Public Housing, Natural Resources, Parks, etc.)?

☐ Yes ☒ No

Has your agency planned to retain all position(s) awarded under this grant program for at least one full local budget cycle following the conclusion of 36 months of grant funding?

☒ Yes ☐ No

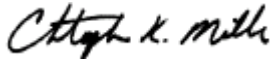
Eligible

Good news! Based on your responses and the eligibility criteria set up by the COPS Office for the CHRP grant program, your agency will be eligible to apply for CHRP funds. The COPS Office expects to open the CHRP application online by the end of March.

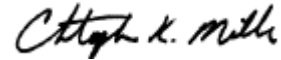
REQUEST FOR COUNCIL ACTION

Date: 03-23-09
Item No.: 11 . a

Department Approval



Acting City Manager Approval



Item Description: Public Hearing to Consider an application for Keys Café for an On-Sale Wine and 3.2% Liquor License at 1682 Lexington Avenue.

Background

Keys Cafe has applied for an On-Sale Wine and 3.2% Liquor License at 1682 Lexington Avenue. The City Attorney will review the application prior to the issuance of the license to ensure that it is in order. A representative from Keys Cafe will attend the hearing to answer any questions the Council may have.

Financial Implications

The revenue that is generated from the license fees collected is used to offset the cost of police compliance checks, background investigations, enforcement of liquor laws, and license administration.

Recommendations

It is recommended that the license be approved for the period March 23, 2009 thru December 31, 2009.

Council Action

Motion approving/denying the On-Sale Wine and 3.2% Liquor License, for Keys Cafe located at 1682 Lexington Avenue.

Prepared by: Chris Miller, Finance Director
Attachments: A: Applications



Minnesota Department of Public Safety
ALCOHOL AND GAMBLING ENFORCEMENT DIVISION
 444 Cedar St., Suite 133, St. Paul, MN 55101-5133
 (651) 201-7507 FAX (651) 297-5259 TTY (651) 282-6555
 WWW.DPS.STATE.MN.US



APPLICATION FOR COUNTY/CITY ON-SALE WINE LICENSE
 (Not to exceed 14% of alcohol by volume)

EVERY QUESTION MUST BE ANSWERED. If a corporation, an officer shall execute this application. If a partnership, LLC, a partner shall execute this application.

Workers compensation insurance company. Name THE HARTFORD COMPANY # 4111424554
 LICENSEE'S MN SALES & USE TAX ID # MMN025130 To apply for MN Sales Tax # call (651) 296-6181
 LICENSEE'S FEDERAL TAX ID # 41-1825730 - STATE SALES & USE TAX ID: 2468690

Applicants Name (Business, Partnership, Corporation) HUNN INC		Trade Name or DBA KEYS CAFE & BAKERY	
Business Address 1682 LEXINGTON AVE		Business Phone (651) 488-1828	Applicant's Home Phone ()
City Roseville		County Ramsey	State MN.
		Zip Code 55113	
Is this application ☒ New or a ☐ Transfer	If a transfer, give name of former owner		License period From To

If a corporation, give name, title, address and date of birth of each officer. If a partnership, LLC, give name, address and date of birth of each partner.

Partner/Officer Name and title ROY HUNN - PRESIDENT	Address 1682 LEXINGTON AVE	Social Security # 1	DOB 1
Partner/Officer Name and Title JEAN HUNN - SECRETARY	Address 1682 LEXINGTON AVE	Social Security # 1	DOB 1
Partner/Officer Name and Title	Address	Social Security #	DOB
Partner/Officer Name and Title	Address	Social Security #	DOB

CORPORATIONS

Date of incorporation	State of incorporation MINN	Certificate Number	Is corporation authorized to do business in Minnesota? ☒ Yes ☐ No
-----------------------	---------------------------------------	--------------------	---

If a subsidiary of another corporation, give name and address of parent corporation

BUILDING AND RESTAURANT

Name of building owner		Owner's address	
Are Property Taxes delinquent? ☐ Yes ☒ No	Has the building owner any connection, direct or indirect, with the applicant? ☐ Yes ☒ No	Restaurant seating capacity 150	
Hour's food will be available ALL OPEN HRS	No. of people restaurant employs 60	No. of months per year restaurant will be open 12	Will food service be the principle business? ☒ Yes ☐ No

Describe the premises to be licensed

STRIP MALL

If the restaurant is in conjunction with another business (resort etc.), describe business

NO

NO LICENSE WILL BE APPROVED OR RELEASED UNTIL THE \$20 RETAILER ID CARD FEE IS RECEIVED BY AGED



Minnesota Department of Public Safety
Alcohol and Gambling Enforcement Division (AGED)
444 Cedar Street, Suite 133, St. Paul, MN 55101-5133
Telephone 651-201-7507 Fax 651-297-5259 TTY 651-282-6555

Certification of an On Sale Liquor License, 3.2% Liquor license, or Sunday Liquor License

Cities and Counties: You are required by law to complete and sign this form to certify the issuance of the following liquor license types:
① City issued on sale intoxicating and Sunday liquor licenses
2) City and County issued 3.2% on and off sale malt liquor licenses

Name of City or County Issuing Liquor License Roseville License Period From: 2009 To: 2010

Circle One: New License License Transfer _____ Suspension Revocation Cancel _____
(former licensee name) (Give dates)

License type: (circle all that apply) On Sale Intoxicating Sunday Liquor 3.2% On sale 3.2% Off Sale

Fee(s): On Sale License fee: \$ _____ Sunday License fee: \$ _____ 3.2% On Sale fee: \$ _____ 3.2% Off Sale fee: \$ _____

Licensee Name: JEAN HUNN-COLLYARD DOB _____ Social Security # _____
(corporation, partnership, LLC, or Individual)

Business Trade Name Keys Cafe + Bakery Business Address 1682 N. LEXINGTON City Roseville

Zip Code 55113 County Ramsey Business Phone 651-488-1828 Home Phone _____

Home Address _____ City _____ Licensee's MN Tax ID # 41-1825730

Licensee's Federal Tax ID # 41-1825730
(To apply call IRS 800-829-4933) (To Apply call 651-296-6181) 2468690

If above named licensee is a corporation, partnership, or LLC, complete the following for each partner/officer:

Partner/Officer Name (First Middle Last)	DOB	Social Security #	Home Address
<u>ROY HUNN</u>			
<u>JEAN HUNN-COLLYARD</u>			

Intoxicating liquor licensees must attach a certificate of Liquor Liability Insurance to this form. The insurance certificate must contain all of the following:

- 1) Show the exact licensee name (corporation, partnership, LLC, etc) and business address as shown on the license.
- 2) Cover completely the license period set by the local city or county licensing authority as shown on the license.

Circle One: (Yes ☒) During the past year has a summons been issued to the licensee under the Civil Liquor Liability Law?

Workers Compensation Insurance is also required by all licensees: Please complete the following:

Workers Compensation Insurance Company Name: The Hartford Comp Policy # 1

I Certify that this license(s) has been approved in an official meeting by the governing body of the city or county.

City Clerk or County Auditor Signature _____ Date _____
(title)

On Sale Intoxicating liquor licensees must also purchase a \$20 Retailer Buyers Card. To obtain the application for the Buyers Card, please call 651-201-7504, or visit our website at www.dps.state.mn.us.

OTHER INFORMATION

- ☒ Yes ☐ No 1. Has the applicant or associates been granted an on-sale non-intoxicating malt beverage (3.2) and/or a "set-up" license in conjunction with this wine license?
- ☐ Yes ☒ No 2. Is the applicant or any of the associates in this application a member of the county board or the city council, which will issue this license? If yes, in what capacity? _____ (If the applicant is the spouse of a member of the governing body, or another family relationship exists, the member shall not vote on this application.)
- ☐ Yes ☒ No 3. During the past license year, has a summons been issued under the liquor civil liability (Dram Shop) (M.S. 340A.802). If yes, attach a copy of the summons.
- ☐ Yes ☒ No 4. Has applicant, partners, officers or employees ever had any liquor law violations in Minnesota or elsewhere. If so, give names, dates, violations and final outcome. _____
- ☐ Yes ☒ No 5. Does any person other than the applicants, have any right, title or interest in the furniture, fixtures or equipment in the licensed premises? If yes, give names and details. _____
- ☐ Yes ☒ No 6. Have the applicants any interests, directly or indirectly, in any other liquor establishments in Minnesota? If yes, give name and address of the establishment. _____

I CERTIFY THAT I HAVE READ THE ABOVE QUESTIONS AND THAT THE ANSWERS ARE TRUE AND CORRECT TO THE BEST OF MY OWN KNOWLEDGE

Signature of Applicant

The licensee must have one of the following: (Check one)

- ☐ A. Liquor Liability Insurance (Dram Shop) \$50,000 per person; \$100,000 more than one person; \$10,000 property destruction; \$50,000 and \$100,000 for loss of means of support. ATTACH "CERTIFICATE OF INSURANCE" TO THIS FORM.
- ☐ B. A Surety bond from a surety company with minimum coverage as specified above in A.
- ☐ C. A certificate from the State Treasurer that the Licensee has deposited with the State, Trust Funds having a market value of \$100,000 or \$100,000 in cash or securities.

IF LICENSE IS ISSUED BY THE COUNTY BOARD, REPORT OF COUNTY ATTORNEY

☐ Yes ☐ No I certify that to the best of my knowledge the applicants named above are eligible to be licensed.
If no, state reason. _____

Signature County Attorney

County

Date

REPORT BY POLICE OR SHERIFF'S DEPARTMENT

This is to certify that the applicant and the associates, named herein have not been convicted within the past five years for any violation of Laws of the State of Minnesota, Municipal or County Ordinances relating to Intoxicating Liquor, except as follows: _____

Signature

Department and Title

Date

IMPORTANT NOTICE

ALL RETAIL LIQUOR LICENSEES MUST HAVE A CURRENT FEDERAL SPECIAL OCCUPATIONAL STAMP. FOR INFORMATION REGARDING OBTAINING THIS STAMP, CONTACT THE BUREAU OF ALCOHOL TOBACCO AND FIREARMS AT (651) 726-0220 (PS9114-2006)

NOTICE

A \$30.00 service charge will be added to all dishonored checks. You may also be subjected to a civil penalty of \$100.00 or 100% of the value of the check, whichever is greater, plus interest and attorney fees.

Date: 3/23/09

Item: 12.a

Key's Cafe Liquor License

See Item: 11.a

REQUEST FOR COUNCIL ACTION

Date: March 23, 2009
Item No.: 12.b

Department Approval

Acting City Manager Approval

Christopher K. Miller

Item Description: Resolution to Consider Early Voting or Vote by Mail Options

BACKGROUND

The current election system has not kept pace with changing demographics and changing demands of a voter's time. The high turnout and follow up from the 2008 election demonstrate several things that can discourage or prevent eligible voters from voting or having their votes count. Numerous election reforms could help make elections easier to administer and make the voting process easier for eligible citizens to exercise their right to vote.

At the March 9, 2009 City Council meeting, Ramsey County Elections Coordinator Joe Mansky discussed the early voting or vote by mail options as possible ways to ease the pressures of administering an election.

Several legislative initiatives have been proposed this year by the Secretary of State and others to make improvements to the election process. Among the proposals are Early Voting and Vote by Mail options.

Using the early voting process, voters complete the ballot and feed it through the voting machine, eliminating the need for envelopes and the possibility of human error that could prevent their ballot from counting. Currently more than 30 states allow early voting.

Using the vote by mail option, ballots are mailed to every registered voter. It is up to the voter to return the ballot by election day. Voters have a personal identification number, usually their driver's license or passport number, which they include on the ballot envelope. Unregistered voters use the absentee voting process, either in person or through the mail, to request a ballot.

Currently townships, cities and unorganized areas with fewer than 400 registered voters can use the vote by mail in state elections. Approximately 275 precincts use the vote by mail process. Additionally, a county, municipality or school district can conduct a special election by mail but no more than two questions may be submitted and no office may be voted on.

Advocates for these types of election reform hope they pass in 2009, giving election administrators adequate time to develop rules and procedures before the 2010 election. However, there is concern that legislators may consider these changes too far-reaching without testing them on a smaller scale. Advocates for election reform hope the Legislature is willing to make these voting improvements, but recognize the need to make contingency plans.

Ramsey County Elections Coordinator Joe Mansky asked if any Ramsey County city was interested in testing either of these election reforms. City Manager Bill Malinen had experience

in Vote by Mail elections in a previous job, so he saw numerous benefits. In addition, because of Roseville's high voter turnout especially among absentee voters, Roseville would be an ideal site for a pilot project.

If the Legislature agrees to test either of these election reforms, Ramsey County staff would provide substantial support to ensure that it is done right.

POLICY OBJECTIVE

To facilitate error-free elections in which every eligible voter can vote easily and be assured that his/her vote counts.

FINANCIAL IMPACTS

None

STAFF RECOMMENDATION

Pass resolution supporting Early Voting and Vote by Mail options and offering Roseville to serve as a pilot project site for Early Voting and Vote by Mail.

Direct staff to work with Roseville's legislative delegation to pass legislation supporting election reforms.

REQUESTED COUNCIL ACTION

Pass resolution supporting Early Voting and Vote by Mail options and offering Roseville to serve as a pilot project site for Early Voting and Vote by Mail.

Direct staff to work with Roseville's legislative delegation to pass legislation supporting election reforms.

Prepared by: Carolyn Curti, Elections Coordinator
Attachments: A: Proposed Resolution

1 **Attachment A**
2 **EXTRACT OF MINUTES OF MEETING**
3 **OF THE**
4 **CITY COUNCIL OF THE CITY OF ROSEVILLE**

5
6 * * * * *

7
8 Pursuant to due call and notice thereof, a regular meeting of the City Council of the City
9 of Roseville, County of Ramsey, Minnesota was duly held on the ninth day of March,
10 2009, at 6:00 p.m.

11
12 The following members were present:

13
14 and the following were absent: .

15
16 Member introduced the following resolution and moved its adoption:

17
18 **RESOLUTION No xxxx**

19
20 **Consider Early Voting and Vote by Mail Options**

21
22 WHEREAS, The current election system has not kept pace with changing
23 demographics and changing demands of voter's time; and

24
25 WHEREAS, Early Voting and Vote by Mail are two election reform options that would
26 alleviate some of the challenges that makes voting difficult for some
27 voters; and

28
29 WHEREAS, Advocates for election reform hope the Legislature will pass legislation
30 making these voting improvements, but in the event that they do not, the
31 City of Roseville is interested in trying these reforms in a trial basis; and

32
33 WHEREAS, Because of Roseville's demographics, the City would be an ideal location
34 to serve as a pilot site to test the early voting and vote by mail options
35 during a state election; and

36
37 WHEREAS, Roseville will work with the City's legislative delegation, Ramsey
38 County, Secretary of State and other election reform advocates to serve as
39 a pilot project for early voting and vote by mail.

40
41 NOW, THEREFORE, BE IT RESOLVED, that the City of Roseville requests the
42 Legislature to approve legislation giving the City of Roseville the option
43 to serve at a pilot site to test early voting or vote by mail options in the
44 2010 election.
45

46

47 The motion for the adoption of the foregoing resolution was duly seconded by Member

48

49 , and upon a vote being taken thereon, the following voted in favor thereof:

50

51 and the following voted against the same: none.

52

53 WHEREUPON said resolution was declared duly passed and adopted.

54

Resolution - Consider Early Voting or Vote by Mail Options

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

I, the undersigned, being the duly qualified City Manager of the City of Roseville, County of Ramsey, State of Minnesota, do hereby certify that I have carefully compared the attached and foregoing extract of minutes of a regular meeting of said City Council held on the day of , 20 with the original thereof on file in my office.

WITNESS MY HAND officially as such Manager this day of , 20 .

William J. Malinen, City Manager

(Seal)

REQUEST FOR COUNCIL ACTION

Date: March 23, 2009
Item No.: 12.c

Department Approval

Acting City Manager Approval

Christopher K. Miller

Item Description: Appoint members to the Ethics; Human Rights; Parks and Recreation; Planning; Police Civil Service; and Public Works, Environment and Transportation Commissions

BACKGROUND

The City received 22 applications for vacancies on several Commissions. On March 9, the Council interviewed 18 applicants, three applicants were not available for interviews on that date, and Brad Peper withdrew his name from consideration. In addition, five sitting commissioners interviewed on February 9, 2009 for reappointment to their respective commissions.

Commissioners are appointed to three-year terms and are eligible to serve up to two consecutive full terms. When a person resigns mid-term the City Council appoints someone to fill the term.

Ethics Commission

Two vacancies for terms that expire March 31, 2012

- Margo Fjelstad (current member)
- David Horsanger

Human Rights Commission

Three vacancies for terms that expire March 31, 2012.

One vacancy for term that expires March 31, 2011

- Tam McGehee (current member)
- George Bondy (not available for interview)
- Gary Grefenberger (see also Planning)
- Liz Jaeger
- Peg Kennedy
- Keith Miller (see also Planning)
- Howard Wagner
- Barb Yates

Parks and Recreation Commission

Three vacancies for terms that expire March 31, 2012

One vacancy for a term that expires March 31, 2010.

- Gale Pederson (current member)
- Jeff Boldt (see also PWET)
- Jason Etten
- David Holt
- Mary Holt (not available for interview, but remains interested)
- Brent Huberty
- Tim Johnson (see also Planning)
- Thomas Lund
- Robert Murray
- William Olein (not available for interview, but remains interested)

Planning Commission

Three vacancies for terms that expire March 31, 2012

- Joe Wozniak (current member)
- Glenn Cook (not available for interview, but remains interested) (see also PWET)
- John Gisselquist
- Gary Grefenberg (see also Human Rights)
- Tim Johnson (see also Parks and Recreation)
- Keith Miller (see also Human Rights)

Police Civil Service Commission

One vacancy for term that expires March 31, 2012

- James Campbell

Public Works, Environment and Transportation Commission

Two vacancies for terms that expire March 31, 2012.

- Joan Felice (current member)
- Jeff Boldt (see also Parks and Rec)
- Glenn Cook (not available for interview, but remains interested) (see also Planning)
- Steve Gjerding

REQUESTED COUNCIL ACTION

- Appoint _____ and _____ to the Ethics Commission for terms ending March 31, 2012.
- Appoint _____ and _____ and _____ to the Human Rights Commission for terms ending March 31, 2012.
- Appoint _____ to the Human Rights Commission for term ending March 31, 2011.
- Appoint _____ and _____ and _____ to the Parks and Recreation Commission for terms ending March 31, 2012.
- Appoint _____ to the Parks and Recreation Commission for terms ending March 31, 2010.

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- Appoint _____ and _____ and _____ to the Planning Commission for terms ending March 31, 2012.
- Appoint _____ to the Police Civil Service Commission for term ending March 31, 2012.
- Appoint _____ and _____ to the Public Works, Environment and Transportation Commission for terms ending March 31, 2012.

Prepared by: William J. Malinen, City Manager
Attachments: A: Selection Sheets

Ethics Commission

2 vacancies

2 vacancies –full terms ending 3/31/2012

Applicant	Selection
Margo Fjelstad <i>(Current Member)</i>	
David Horsager	

Councilmember or Commission Chair/Vice Chair _____
Name

Human Rights Commission

4 vacancies

3 vacancies – full terms ending 3/31/2012

1 vacancy – partial term ending 3/31/2011

Applicant	Selection
Tam McGehee <i>(current member)</i>	
George Bondy <i>(not available for interview)</i>	
Gary Grefenberg <i>(see also Planning)</i>	
Liz Jaeger	
Peg Kennedy	
Keith Miller <i>(see also Planning)</i>	
Howard Wagner	
Barbara Yates	

Councilmember or Commission Chair/Vice Chair _____
Name

Parks & Recreation Commission

4 vacancies

3 vacancies - full terms ending 3/31/2012

1 vacancy - partial term ending 3/31/2010

Applicant	Selection
Gale Pederson <i>(current member)</i>	
Jeff Boldt <i>(see also PWET)</i>	
Jason Etten	
Dave Holt	
Mary Holt <i>(not available for interview, remains interested)</i>	
Brent Huberty	
Tim Johnson <i>(see also Planning)</i>	
Thomas Lund	
Robert Murray	
William Olein <i>(not available for interview, remains interested)</i>	

Councilmember or Commission Chair/Vice Chair _____
Name

Planning Commission

3 vacancies

3 vacancies – full terms ending 3/31/2012

Applicant	Selection
Joe Wozniak <i>(current member)</i>	
Glenn Cook <i>(see also PWET)</i> <i>(not available for interview,</i> <i>remains interested)</i>	
John Gisselquist	
Gary Grefenberg <i>(see also Human Rights)</i>	
Tim Johnson <i>(see also Parks & Recreation)</i>	
Keith Miller <i>(see also Human Rights)</i>	

Councilmember or Commission Chair/Vice Chair _____
Name

Police Civil Service Commission

1 vacancy – full term ending 3/31/2012

Applicant	Selection
James Campbell	

Councilmember or Commission Chair/Vice Chair _____
Name

Public Works, Environment and Transportation Commission

2 vacancies – full terms ending 3/31/2012

Applicant	Selection
Joan Felice <i>(Current Member)</i>	
Jeff Bodlt <i>(see also Parks & Recreation)</i>	
Glenn Cook <i>(see also Planning)</i> <i>(not available for interview,</i> <i>remains interested)</i>	
Steve Gjerdingen	

Councilmember or Commission Chair/Vice Chair _____
Name

REQUEST FOR COUNCIL ACTION

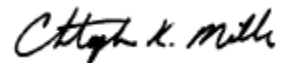
DATE: 3/23/2009

ITEM NO: 12.d

Department Approval:



Acting City Manager Approval:



Item Description: Request by Wellington Management for support of a **Rezoning** of 1126 Sandhurst Drive and 2167 Lexington Avenue to Planned Unit Development from Single Family Residence District and General Business District, respectively, and approval of a **General Concept Planned Unit Development** to allow the construction of a multi-tenant commercial office property (PF09-003)

1.0 REQUESTED ACTION

Wellington Management seeks support of a REZONING and approval of a GENERAL CONCEPT PLANNED UNIT DEVELOPMENT for a proposed redevelopment of the northwest quadrant of the intersection of County Road B and Lexington Avenue which would replace the existing TCF bank structures at 2167 Lexington Avenue and the adjacent single-family residence at 1126 Sandhurst Drive with an 11,250-square-foot commercial office building and parking area.

Project Review History

- Application submitted: February 10, 2009; determined complete: February 11, 2009
- Sixty-day review deadline: April 7, 2009
- Planning Commission recommendation (7-0 to approve): March 4, 2009
- Project report recommendation: March 23, 2009
- Anticipated City Council action: March 23, 2009

2.0 SUMMARY OF RECOMMENDATION

2.1 Planning Division staff concurs with the unanimous recommendation of the Planning Commission to support the requested REZONING of the parcels at 1126 Sandhurst Drive and 2167 Lexington Avenue to PUD from R-1 and B-3, respectively, as discussed in Sections 4-5 of the project report dated March 23, 2009.

2.2 Planning Division staff concurs with the unanimous recommendation of the Planning Commission to approve the requested GENERAL CONCEPT PLANNED UNIT DEVELOPMENT, subject to certain conditions; see Section 9 of this report for the detailed recommendation.

3.0 SUMMARY OF SUGGESTED ACTION

3.1 By motion, support the requested REZONING of the properties at 1126 Sandhurst Drive and 2167 Lexington Avenue; see Section 10 of this report for the detailed action.

3.2 By motion, approve the requested GENERAL CONCEPT PLANNED UNIT DEVELOPMENT subject to conditions, pursuant to §1008 (Planned Unit Developments) of the City Code; see Section 10 of this report for the detailed action.

4.0 REVIEW OF COMPREHENSIVE PLAN

4.1 Although the proposed development appears to be consistent with Roseville’s 2030 *Comprehensive Plan*, which would apply a land use designation of Neighborhood Business to both of the subject parcels, that document has yet to be approved by the Metropolitan Council and ratified by the City Council. This proposal, therefore, must be evaluated within the context of the existing Comprehensive Plan.

4.2 The proposed business use is to be located on the parcel at 2167 Lexington Avenue, which has a Comprehensive Plan designation of Business (B); this allows for a wide variety of residential, retail, restaurant, office, and other commercial uses consistent with the parcel’s existing General Business zoning – Roseville’s most intense business district.

4.3 The property at 1126 Sandhurst Drive has a Comprehensive Plan designation of Low Density Residential (LR), which corresponds to the kinds of uses allowed in R-1 and R-2 zoning districts. Given that the proposal only puts parking and an accessory structure (for the trash handling equipment) on this parcel and that storage buildings and off-street parking and loading areas are allowed in the zoning districts associated with the LR land use designation, no change to the Comprehensive Plan Land Use Map is necessary for this proposal.

4.4 The Cornerstone Neighborhood Mixed-Use Project, adopted into the Comprehensive Plan in 1998 as a conceptual master plan of sorts to redesign key, under-utilized retail and commercial intersections, determined that a redesigned Lexington Avenue/County Road B intersection would have great potential for positive community impact. The document indicates that “careful attention to the concerns of the neighborhood could make this corner fulfill the wishes of its adjacent residents [and] it could become the touchstone for establishing an appealing balance of structure, open space, design and use.”

The Cornerstone report stresses the importance of locating at least modest buildings at the corners of the intersection to frame the public space and “create a sense of place and closure,” and it expresses optimism for a successful redevelopment of this intersection as a whole despite the challenges presented by the lack of structures in the corners of the park and gas station properties. And although Cornerstone explicitly makes no recommendation of a preferred density or scale of development, the report frequently advocates a mix of office and retail uses on a “ground floor” with residential or office uses “above.” The report also touts this specific intersection as being: “located in a prime spot to provide community linkage. The attraction of the open space, the convenience to neighborhood retail, and access to transit are part of its potential. As a centrally-located intersection of major arterials, the intersection could serve as the hub for the spread of new resident friendly design ideas throughout the community.”

5.0 REVIEW OF ZONING/PLANNED UNIT DEVELOPMENT

5.1 A PLANNED UNIT DEVELOPMENT (PUD) is a zoning district which may include single or mixed uses on one or more lots or parcels, and is intended to be used in unique situations to create a more flexible, creative, and efficient approach to the use of the land subject to the PUD procedures, standards, and regulations contained in the City Code.

5.2 The end result of REZONING a property to PUD is the creation of a customized zoning district (i.e., a PUD Agreement) that regulates the use and development of a specific subject property in the same way that standard zoning districts regulate other properties. Aspects of such a development may deviate from the requirements of a standard zoning district, but they must be approved by the City Council and specified in the PUD Agreement in order to ensure that the overall development is in keeping with general guidance of the Comprehensive Land Use Plan. The PUD Agreement, if approved in the FINAL phase of the PUD review process, will comprise the development parameters on which the REZONING is based.

5.3 In the GENERAL CONCEPT phase, a preliminary development proposal is formally presented in a public hearing to the Planning Commission for consideration. As the name indicates, the GENERAL CONCEPT of a development is considered in this first phase; a proposal may lack significant detail, but the Planning Commission and City Council have the opportunity to help guide the development to ensure that it advances the land use goals and policies expressed in the Comprehensive Plan. If a development is approved *in concept*, the applicant then refines all of the technical plans to verify that the approved concept is feasible in reality and then submits those plans for final approval by the City Council.

5.4 Because a PUD is intended to provide flexibility with respect to standard zoning requirements on a property, it's useful to identify where the proposed PUD district would differ from the standards of established zoning districts; the following table illustrates the proposed differences:

Existing Zoning Standards	Proposed Conditions
R-1 zoning on 1126 Sandhurst Drive	
Parking setback from side property line: 5 ft.	0 ft. from <i>internal</i> lot line
Maximum impervious coverage: 30%	64% (storm water runoff equivalent to 0%)
B-3 zoning on 2167 Lexington Avenue	
Parking setback from Sandhurst Drive ROW: 15 ft.	7 ft.
Parking setback from Lexington Avenue ROW: 15 ft.	10 ft.
Parking setback from internal side property line: 5 ft.	0 ft. from internal lot line
Parking setback from side property line: 5 ft.	10 ft. from auto parts property
Building setback from County Road B ROW: 30 ft.	0 ft.
Building setback from Lexington Avenue ROW: 30 ft.	10 ft.
Traffic Visibility Triangle	
40 ft. isosceles triangle at ROW intersections	12 ft. triangle for building

The most significant of the above deviations from the standard zoning requirements are related to the proposed location of the building near the corner of County Road B and Lexington Avenue. All other typical zoning requirements (e.g., setbacks, number and size of parking spaces, building height, etc.) not identified in the preceding table are met by the proposed redevelopment.

- 99 5.5 Non-zoning requirements (e.g., for Building Codes, storm water management, etc.) have
100 been part of PUD approvals in the past, but they should be removed from the PUD
101 process, relying instead on the established approval processes.
- 102 5.6 Because the Comprehensive Plan allows (perhaps even encourages) buildings up to 3
103 stories tall in this location and others like it, Planning Division staff recommends
104 establishing a specific building envelope but does not recommend further restricting the
105 size of building that could be developed on this site in the future as long as parking
106 requirements continue to be satisfied.
- 107 5.7 While not addressed among the standard parking regulations, the Planning Commission
108 recommended a requirement to incorporate bicycle parking facilities as well as to
109 improve pedestrian circulation around the traffic light pole in the sidewalk adjacent to the
110 site. The revised site plan includes the requested bicycle parking and indicates an
111 expansion of the sidewalk facility within the County Road B right-of-way.
- 112 5.8 Although the anticipated dental office user in the southern end of the proposed building
113 has patient privacy concerns with an entrance directly from the County Road B sidewalk,
114 the building is being designed in such a way that windows in that part of the structure can
115 be replaced by an entrance as tenants change in the future. Planning Division staff
116 continues to believe that a public entrance on the eastern side of the building for
117 pedestrian access from Lexington Avenue deserves consideration, especially in light of
118 the initial absence of an entrance at the south end of the building.
- 119 5.9 Signage for the development should not be considered with the PUD application; signs
120 should instead be consistent with Code standards, which require a Master Sign Plan for
121 multi-tenant properties like the proposal.
- 122 **6.0 OTHER DEVELOPMENT REVIEW COMMITTEE COMMENTS**
123 The DRC was generally supportive of the proposal and had the following comments:
- 124 6.1 The storm water management plan for the project may need further development; this
125 need not be finalized in the GENERAL CONCEPT phase of the PUD process.
- 126 6.2 In the interest of ensuring traffic safety, some DRC members have expressed the
127 preference that the standard Traffic Visibility Triangle be maintained. This concern is
128 complicated somewhat by the fact that locating buildings near street rights-of-way is
129 encouraged in this specific location by the Comprehensive Plan and widely regarded as
130 good planning practice; while Planning Division staff is confident that this would not be
131 the case if buildings near streets created more dangerous intersections, empirical
132 evidence of the effect on traffic has been elusive. Without intending to undervalue the
133 concerns over the proposed encroachment into the Traffic Visibility Triangle, it should
134 be noted that the building would be about 18 feet from the back of the curb on County
135 Road B and about 26 feet from the curb on Lexington Avenue. Planning Division staff
136 believes that the proposed development contributes to the pedestrian-friendly
137 development called for in the Comprehensive Plan and the applicant has continued to
138 work with staff to find the balance between good planning and traffic safety.
- 139 6.3 Part of the proposal includes a 6-foot-tall, wooden privacy fence on the western end of
140 the parking area to buffer the adjacent residence from the parking lot activity. Planning
141 Division staff has been in contact with the residential property owner on the other side of

this fence to seek her opinion on whether she'd prefer the more "neighborly" feel of the proposed fence or something a little taller. This property owner is opposed to the removal of the neighboring residence and the proposed parking area and consequently rejects the discussion regarding the height of a fence to screen a parking area that, in her opinion, should not be considered.

7.0 COMMUNITY OPEN HOUSE

The applicant held the required open house meeting on January 20, 2009 at the home that would be demolished as a part of the proposal. A summary of the open house is included with this staff report as Attachment F; the attendees did not seem to have any concerns about the proposed GENERAL CONCEPT PUD which have not been addressed.

8.0 PUBLIC COMMENT

The duly noticed public hearing was held by the Planning Commission on March 4, 2009; draft meeting minutes were not available at the time this report was written.

8.1 Several members of the public offered comments on the proposal, many of which focused on the potential for the proposed development to create or exacerbate traffic problems. Although nearby residents may find the existing traffic conditions to be unacceptable, Sandhurst Drive and Lexington Avenue are both properly-functioning public streets with capacity for traffic loads beyond current volumes, and the proposed redevelopment of a drive-in bank into a medical/professional office stands to reduce the existing traffic at that location by about half. The proposed redevelopment would also distribute the reduced traffic throughout business hours better than a drive-in bank, which sees much of its traffic over the lunch hour and at the end of the business day when Lexington Avenue is at its busiest. Even if future tenants of the property included a combination of office and retail and service uses, which would be consistent with the Comprehensive in both its current and anticipated forms, the traffic generated by those uses would be unlikely to exceed that of a drive-in bank. While the site's Lexington Avenue access is signed as "Exit Only", some neighbors have misunderstood the "Drive-In Entrance" sign at the Sandhurst Avenue apron to prohibit exiting the site onto Sandhurst Avenue; this sign does not mean "enter only" but simply points to the main access of the drive-up facility. Finally, regardless of the signage at these site accesses, they are both designed such that they exceed the City Code's minimum requirements for two-way traffic.

8.2 Another common concern was that of developing new offices in the proposed location when the applicant and anticipated tenants might instead occupy existing, vacant office space elsewhere in the community. Aside from the question of whether redeveloping or renovating an existing office facility to meet the development goals is feasible, TCF plans to move operations from this site to its new location at Pascal Street when it is completed in July 2009, at which point the subject property could become yet another vacant commercial property.

8.3 Aside from perceived impacts on traffic, other concerns of various sorts were also raised about locating a building so close to the public right-of-way (ROW). Some were worried about pedestrian safety: because existing sidewalks are within the public ROW they would not be obstructed or otherwise altered by development on the adjacent property, and the proposed building would not obscure any existing crosswalks from the view of any motorists in existing driving lanes on Lexington Avenue or County Road B. Other

people felt that the proposal would create an inappropriately “urban” development in a “suburban” environment: the proposed development would certainly be a departure from what exists today, but City Council Resolution 9613 adopted into the Comprehensive Plan the principles of the Cornerstone project, affirming that it “closely follow[s]” the citizen recommendations of the 1992 community visioning process called VISTA 2000 and that it took into account the input from citizen surveys of 1990 and 1998.

9.0 RECOMMENDATION

9.1 Based on the comments and findings outlined in Sections 4-5 of this report, Planning Division staff concurs with the recommendation of the Planning Commission to support the requested REZONING of the parcels at 1126 Sandhurst Drive and 2167 Lexington Avenue to PUD from R-1 and B-3, respectively.

9.2 Based on the comments and findings outlined in Sections 4-8 of this report, the Planning Division concurs with the recommendation of the Planning Commission to approve the request for an GENERAL CONCEPT PLANNED UNIT DEVELOPMENT to allow the proposed redevelopment, subject to the following conditions:

- a. the applicant shall continue to work with staff to determine the appropriate location with respect to traffic safety of the southeastern corner of the proposed building;
- b. collection of refuse and recyclables from a detached enclosure shall not occur prior to 7:00 a.m.;
- c. the applicant shall continue to work with staff to determine how best to screen Sandhurst Drive from parking lot activity;
- d. the applicant shall provide bicycle parking facilities; and
- e. the applicant shall enhance pedestrian circulation around the traffic light pole in the public right-of-way beyond the southeast corner of the development site.

10.0 SUGGESTED ACTION

10.1 **By motion, support the requested REZONING** of the parcels at 1126 Sandhurst Drive and 2167 Lexington Avenue to PUD from R-1 and B-3, respectively, as discussed in Sections 4-5 of the project report dated March 23, 2009. The PUD Agreement, if approved in the FINAL phase of the PUD review process, will become the development contract on which the REZONING is based.

10.2 **By motion, approve the GENERAL CONCEPT PUD** for Wellington Management to allow the proposed redevelopment of 1126 Sandhurst Drive and 2167 Lexington Avenue, based on the comments and findings of Sections 4-8 and the conditions of Section 9 of the project report dated March 23, 2009.

Prepared by: Associate Planner Bryan Lloyd

Attachments: A: Area map
B: Aerial photo
C: Site photos

D: Applicant narrative
E: Open house meeting summary
F: Revised plans

Attachment A: Location Map for Planning File 09-003



Prepared by:
Community Development Department
Printed: February 24, 2009

Site Location

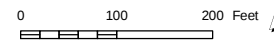
Comp Plan / Zoning
Designations

Data Sources

* Ramsey County GIS Base Map (2/4/2009)
For further information regarding the contents of this map contact:
City of Roseville, Community Development Department,
2660 Civic Center Drive, Roseville MN

Disclaimer

This map is neither a legally recorded map nor a survey and is not intended to be used as one. This map is a compilation of records, information and data located in various city, county, state and federal offices and other sources regarding the area shown, and is to be used for reference purposes only. The City does not warrant that the Geographic Information System (GIS) Data used to prepare this map are error free, and the City does not represent that the GIS Data can be used for navigational, tracking or any other purpose requiring exacting measurement of distance or direction or precision in the depiction of geographic features. If errors or discrepancies are found please contact 651-792-7085. The preceding disclaimer is provided pursuant to Minnesota Statutes §466.03, Subd. 21 (2000), and the user of this map acknowledges that the City shall not be liable for any damages, and expressly waives all claims, and agrees to defend, indemnify, and hold harmless the City from any and all claims brought by User, its employees or agents, or third parties which arise out of the user's access or use of data provided.



mapdoc: planning_commission_location.mxd

Attachment B: Aerial Map of Planning File 09-003



Attachment B



Prepared by:
Community Development Department
Printed: February 24, 2009



Site Location

Data Sources

* Ramsey County GIS Base Map (2/4/2009)

* Aerial Data: Pictometry (4/2008)

For further information regarding the contents of this map contact:
City of Roseville, Community Development Department,
2660 Civic Center Drive, Roseville MN

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0 50 100 Feet



View from the southwest



View from the northwest



7d. The proposed development plan includes the tear-down of the existing 4,000SF TCF Bank building and drive-thru and the redevelopment of the site as a new approximately 11,300 single story, commercial building. The adjacent residence at 1126 Sandhurst is being acquired in order to provide sufficient parking for the project. The proposed site plan reflects the building in the southeast corner of the site, closest to the Lexington and the County Road B intersection. The parking lot acts as a buffer from the residences along Sandhurst Avenue. Traffic flow in the parking lot is controlled through the use of parking islands and landscaping. The existing curb cuts remain in their current locations, with the exception of the County B curb cut, which will be closed.

We have been asked to provide specific support to the planning elements of our Roseville Crossing project at Lexington and County B in Roseville. We feel the Plan, as presented, reflects the highest and best use of parcel, reflecting a building situated at the southeast corner of the Site. The intersection is signalized and also contains emergency vehicle prevention (EVP) devices.

The location of the building is primarily driven by the surrounding residential community. We are keen to support a complete community experience. In order to this, the building rests farthest from the neighboring houses on Sandhurst, at the SE lot line. Parking remains on the north side of the building. Our intent is to promote safe and pleasant conditions for all in the neighborhood, including: motorists, bicyclists, pedestrians, and residents.

We have been asked to support our request for consideration of locating the building within the 40 foot Traffic Safety Triangle, as defined by the City. We therefore, include comparable sites in First Tier suburbs that have supported site plans that locate building structures in similar locations to the one we are proposing.

The Cities of Edina, Falcon Heights, St. Louis Park, and Roseville all approved pedestrian friendly and traffic calming building site designs in each of their communities. These site designs show structures placed along the property line that engage drivers by encouraging appropriate speeds and traffic safety.

4 examples of similar sites in comparable First Tier Suburban neighborhoods.

1. 50th and France Avenue in Edina, MN.
2. Snelling and Larpenteur, Falcon Heights, MN.
3. Excelsior and Grand, St. Louis Park, MN.
4. Fairview and Cty D. Roseville, MN.

Studies suggest that a device, such as buildings, that narrows sections of the street and forces drivers to pay attention, slows them down thereby decreasing the chance of accidents. These devices are present 24 hours a day. Traffic count details from Ramsey County for this intersection reflect 16,888 Average Daily Traffic for Lexington and 9,496 Average Daily Traffic for County B. We estimate the existing bank generates approximately 740, which we feel will be reduced to approximately 350 trips with our building. This reduces the number daily trips by the site by more than one half.





5000 France Ave S, Minneapolis, MN 55410

Imagery U.S. Geological Survey

© 2009 Tele Atlas
elev. 681 ft

Apr 2004

Google

Eye alt. 2161 ft

44° 54' 43.84" N 93° 15' 45.42" W

Snelling Ave N & Larpentour Ave W, Falcon Heights, MN 55113

Google

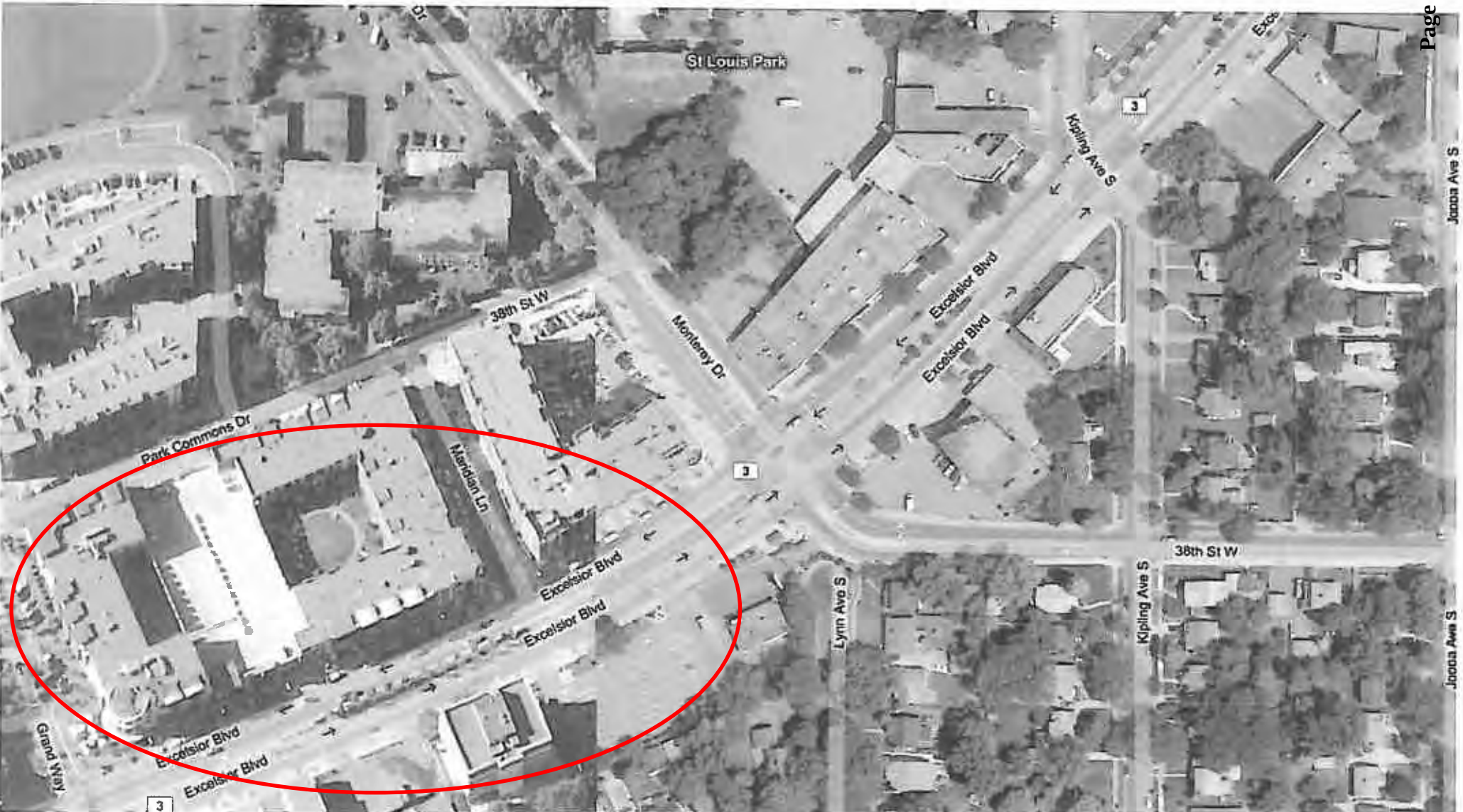
44°59'30.53"N 93°08'59.19"W

© 2008 Tolo Atlas

400' 957 ft

Apr 2006

Eye alt 318.4 ft





Open House Summary

January 20, 2009

6:30-8:00 pm

1126 Sandhurst Drive, Roseville, MN 55113

Roseville Crossing is requesting approval for the construction of a new 11,300 SF commercial building at the intersection of County B and Lexington in Roseville, MN. As part of the approval and general concept planned unit development process, a neighborhood open house was held on January 20, 2009 at 1126 Sandhurst Drive, Roseville, MN. Invitations were sent to 63 contacts, as provided by the City of Roseville and attached here.

Those attending on behalf of Roseville Crossing, LLC were::

Sonja Simonsen, Director of Finance for Wellington Management
Dan Pollastrini, Architect with Pope Architects
Eric Beazley, Loucks & Associates

Seven neighborhood residents attended the Open House as follows:

David Weinand, 1139 County Road B W, Roseville, MN.
Elmer and Eleanor Nies, 1119 Sandhurst Drive West, Roseville, MN
Benita Netteberg, 1142 Sandhurst Drive West, Roseville, MN
Jon C Klava, 1149 Sandhurst Drive West, Roseville, MN
Paul and Linda Mergens, 1126 Sandhurst Drive, Roseville, MN (Open House Hosts)

Comments from the neighbors first related to the timing of the proposed development, which is expected to start construction in late 2009 with a planned completion date in the summer 2010. All attendees were provided with site plans for reference.

Sonja Simonsen of Wellington Management explained that the proposed development plan included the tear-down of the existing 4,000SF TCF Bank building and drive-thru and the redevelopment of the site as a new 11,300 single story, commercial building. The residence at 1126 Sandhurst is being acquired in order to provide sufficient parking for the project. Ms. Simonsen indicated the primary tenant in the proposed building will be a dental clinic occupying approximately 3,500s.f. Two remaining tenant spaces remain available.

Other comments reflected questions on the traffic flow into and out of the site. Ms. Simonsen explained the proposed site plan reflects the building in the southeast corner of the site, closest to the Lexington and the County Road B intersection. The parking lot acts as a buffer from the residences. Traffic flow in the parking lot is controlled through the use of parking islands and landscaping. Dan Pollastrini and Eric Beazley explained in detail how the lay-out of the parking stalls, islands, and landscaping would ensure safe traffic flow into and out of the site. The existing curb cuts remain in their current locations, with the exception of the County B curb cut, which will be closed. Final questions reflected requesting that the developer reflect appropriate lighting in the parking lot, as a safety and security measure.

The neighbors attending the open house spoke positively about the planned traffic flow and parking on site. The neighbors also reflected support for proposed building and its location on the site as an improvement over the current use.

A map of site location, site plan, proposed rendering and invitation are attached to this summary report.

Roseville Crossing

Roseville, Minnesota

Roseville Crossing LLC.
C/O Wellington Management, Inc.
1625 Energy Park Drive, Suite 100
St. Paul, Minnesota 55108
Ph. 651-292-9844 Fax. 651-292-0072



Pope Associates, Inc.
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St. Paul, MN 55108
Ph. 651-292-9844 Fax. 651-292-0072

Professional Services:

LOUCKS ASSOCIATES

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Landscape Architecture • Environmental

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Telephone: (612) 244-5365
Fax: (612) 244-5822
www.loucksassociates.com

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CADD files prepared by the Consultant for this project are instruments of the Consultant's professional services and are not to be used for any other project without the express written consent of the Consultant. The Consultant's approval shall be required for any use of these files for any other project. The Consultant's approval shall be required for any use of these files for any other project. The Consultant's approval shall be required for any use of these files for any other project.

Submittal:

02/06/09 City Submittal
02/25/09 Rev. City Submittal
03/16/09 Revised City Submittal

Professional Signature:

I hereby certify that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

43912 Eric Brachley - PE

License No. Date

Quality Control:

EVB WRP

Project Lead: EVB/WRP Drawn By: WRP

Checked By: EVB/WRP Review Date: 2/6/09

Sheet Index:

C0-1 Cover Sheet
C0-1 Existing Conditions Plan
C0-2 Demolition Plan
C0-1 Site Plan
C0-1 Grading and Drainage Plan
C0-2 Storm Water Pollution Prevention Plan
C0-1 Utility Plan
C0-1 Utility Details
L0-1 Landscape Plan

Sheet Title:

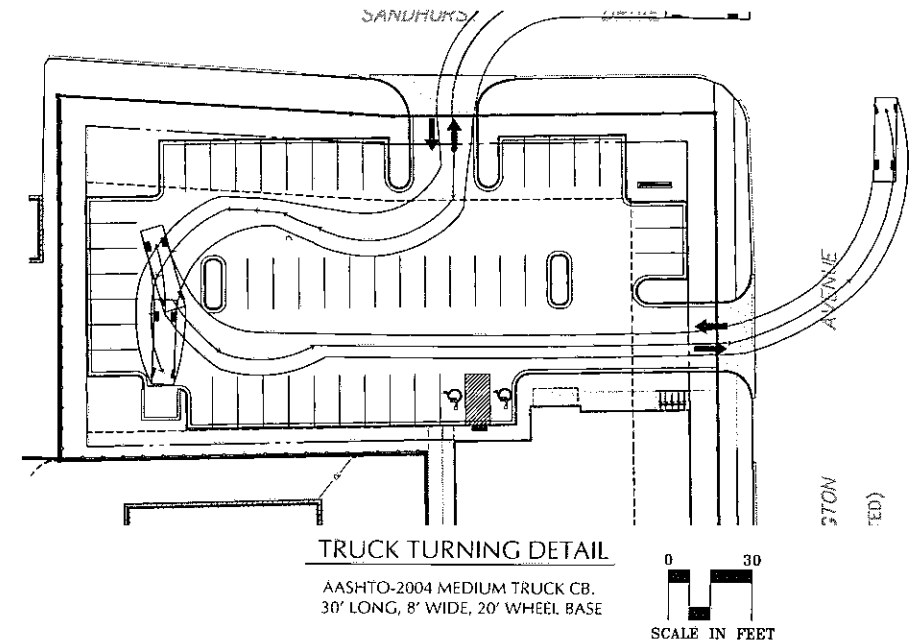
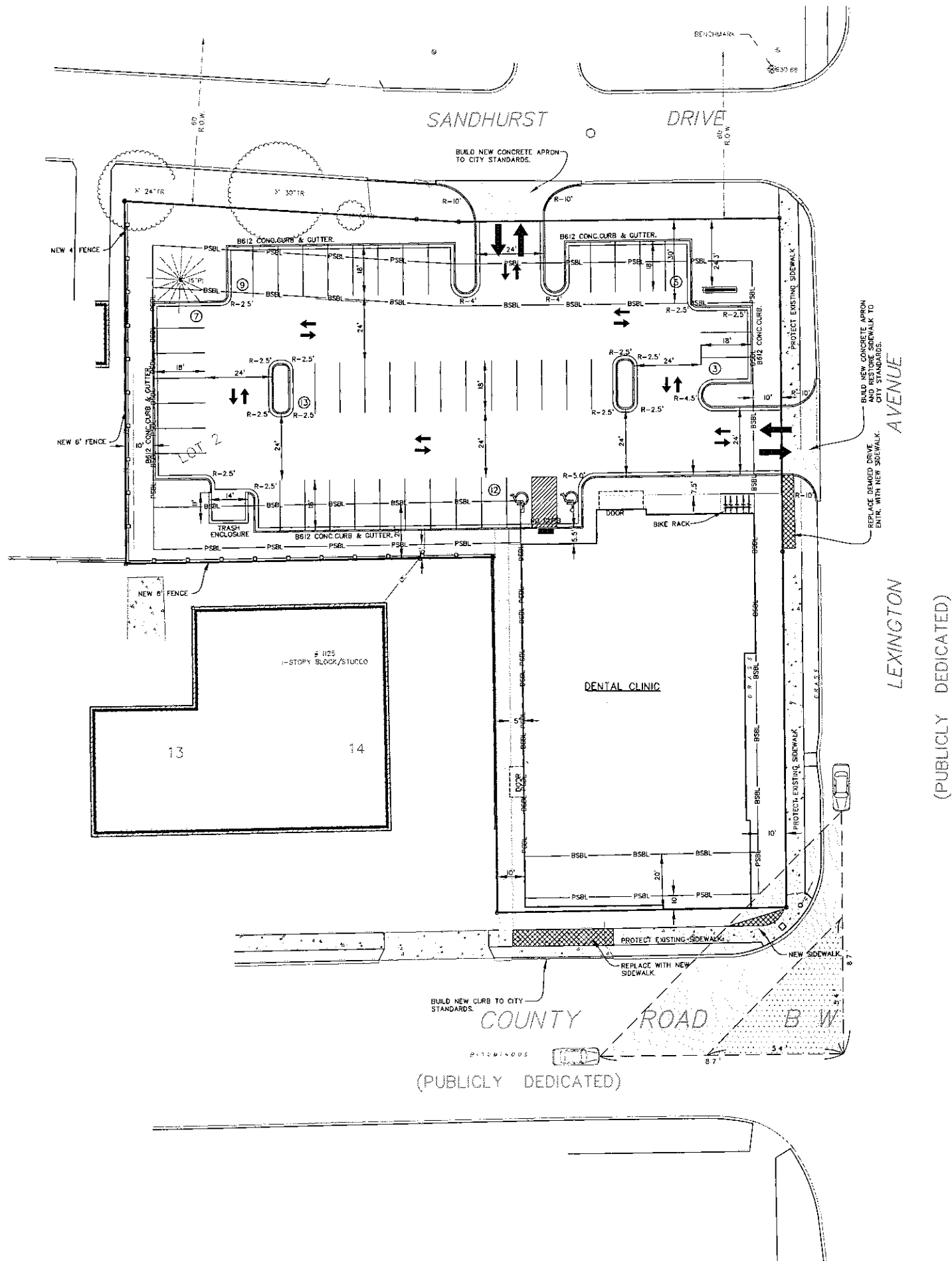
Site Plan

Project No.:

08-261

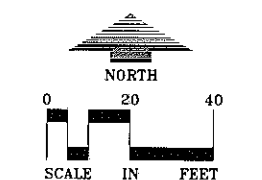
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C2-1



TRUCK TURNING DETAIL

AASHTO-2004 MEDIUM TRUCK CB.
30' LONG, 8' WIDE, 20' WHEEL BASE



EXISTING	CIVIL LEGEND	PROPOSED
	SANITARY MANHOLE	
	CATCH BASIN	
	CULVERT	
	HYDRANT	
	GATE VALVE	
	POST INDICATOR VALVE	
	LIGHT POLE	
	POWER POLE	
	SIGN	
	BENCHMARK	
	SOIL BORING	
	WATER MANHOLE	
	TELEPHONE MANHOLE	
	ELECTRIC MANHOLE	
	WATER SERVICE	
	SANITARY SERVICE	
	HANDICAP PARKING	
	DIRECTION OF FLOW	
	SPOT ELEVATION	
	CONTOURS	
	SANITARY SEWER	
	STORM SEWER	
	WATERMAIN	
	FOREMAN	
	DRANKLE	
	SALT FENCE	
	CURB & GUTTER	
	RETAINING WALL	
	EASEMENT LINE	
	SETBACK LINE	
	FENCE LINE	
	UNDERGROUND TELE	
	UNDERGROUND GAS	
	OVERHEAD UTILITY	



CALL BEFORE YOU DIG!

Gopher State One Call

TWIN CITY AREA: 651-454-0002
TOLL FREE: 1-800-252-1166

WARNING:

THE CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING FOR LOCATIONS OF ALL EXISTING UTILITIES. THEY SHALL COOPERATE WITH ALL UTILITY COMPANIES IN MAINTAINING THEIR SERVICE AND / OR RELOCATION OF LINES.

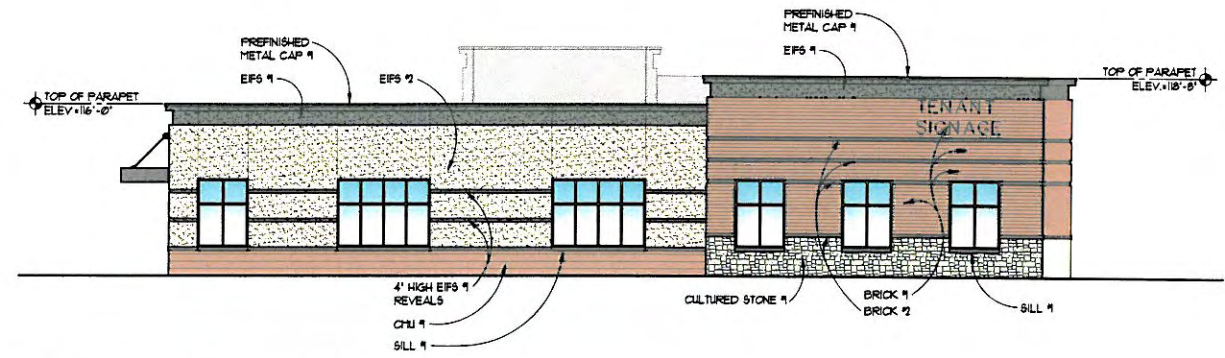
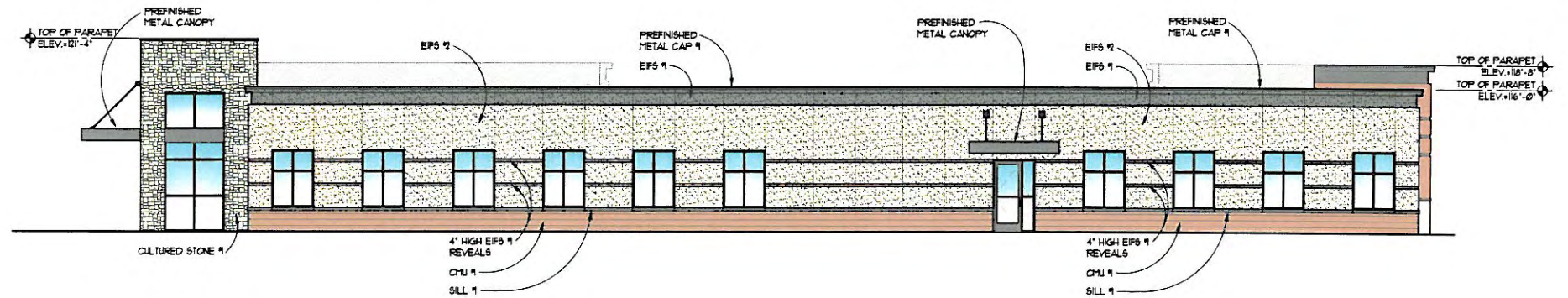
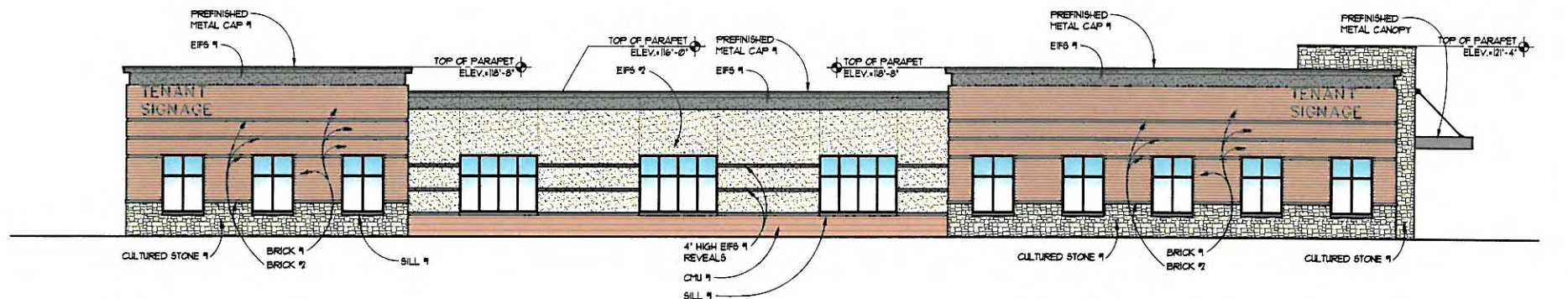
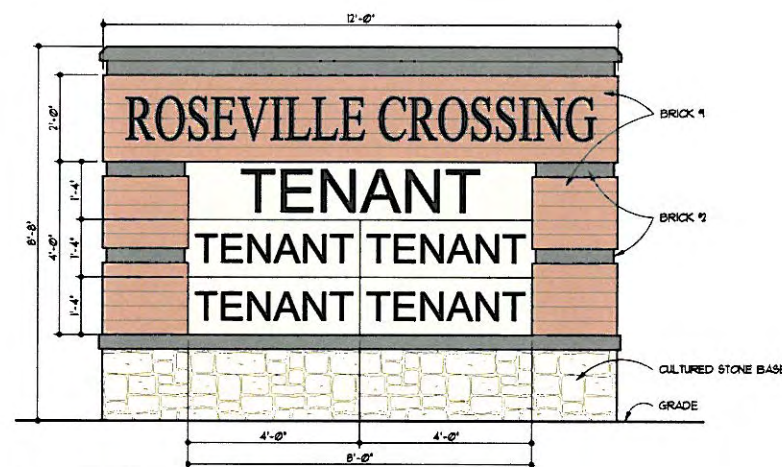
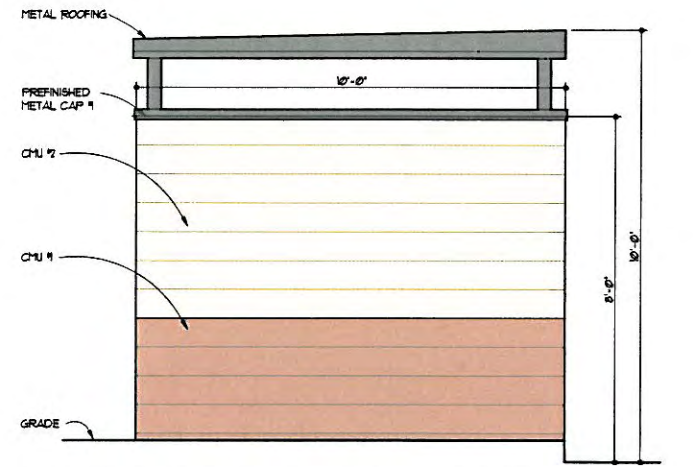
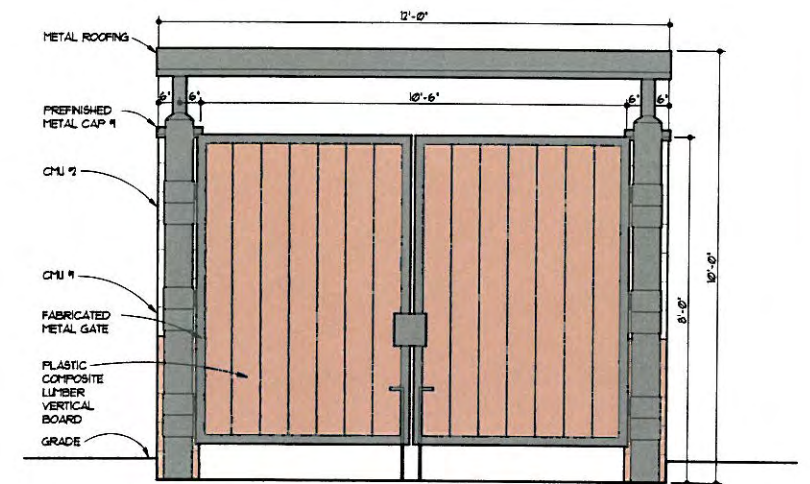
THE CONTRACTOR SHALL CONTACT GOPHER STATE ONE CALL AT 651-454-0002 AT LEAST 48 HOURS IN ADVANCE FOR THE LOCATIONS OF ALL UNDERGROUND WIRES, CABLES, CONDUITS, PIPES, MANHOLES, VALVES OR OTHER BURIED STRUCTURES BEFORE DIGGING. THE CONTRACTOR SHALL REPAIR OR REPLACE THE ABOVE WHEN DAMAGED DURING CONSTRUCTION AT NO COST TO THE OWNER.

POPE
 ARCHITECTS

 POPE ASSOCIATES INC.
 1235 ENERGY PARK DRIVE
 ST. PAUL, MN 55108-5118
 PH. (651) 642-9200
 FAX (651) 642-1101

Wellington
 MANAGEMENT, INC.

 ROSEVILLE
 CROSSING

 7 NORTH ELEVATION
 A3.1 1/8"=1'-0"

 6 SOUTH ELEVATION
 A3.1 1/8"=1'-0"

 5 WEST ELEVATION
 A3.1 1/8"=1'-0"

 4 EAST ELEVATION
 A3.1 1/8"=1'-0"

 3 MONUMENT SIGN ELEVATION
 A3.1 1/2"=1'-0"

 2 TRASH ENCLOSURE ELEVATION
 A3.1 1/2"=1'-0"

 1 TRASH ENCLOSURE GATE ELEVATION
 A3.1 1/2"=1'-0"

**EXTERIOR
 ELEVATIONS**

Issues and Revisions:

 OWNER'S REVIEW 2-4-09
 CITY SUBMITTAL 2-6-09
 CITY RESUBMITTAL 2-25-09
 CITY RESUBMITTAL 3-18-09

Submission No. 82443-07028C

Drawn by DD

Checked by GV

SHEET

A3.1



POPE ASSOCIATES INC.
1255 ENERGY PARK DRIVE
ST. PAUL, MN 55108-5118
PH: (651) 642-9200
FAX: (651) 642-1101

Wellington
MANAGEMENT, INC.

ROSEVILLE
CROSSING

EXTERIOR
ELEVATIONS

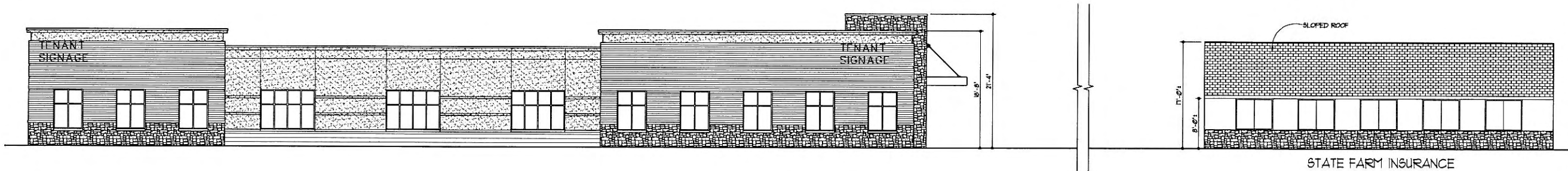
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CITY RESUBMITTAL	2-25-09
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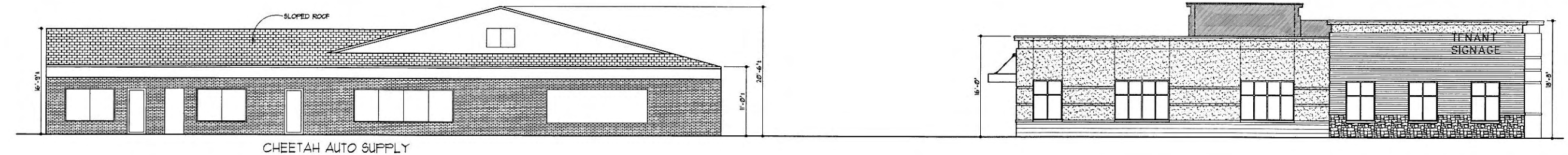
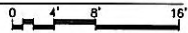
Commission No. 82443-07028C
Drawn by DD
Checked by GV

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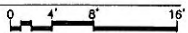
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2 EAST ELEVATION (LEXINGTON AVENUE)
A3.2 1/8"=1'-0"



1 SOUTH ELEVATION (COUNTY ROAD B)
A3.2 1/8"=1'-0"



Roseville Crossing

Roseville, Minnesota

Wellington Management, Inc.

1625 Energy Park Drive, Suite 100
St. Paul, Minnesota 55108
Ph 651-292-9844 Fax 651-292-0072

POPE

POPE ASSOCIATES INC.
1000 Energy Park Drive
St. Paul, MN 55108
Fax 651-292-0072

Professional Services:

LOUCKS
ASSOCIATES

Planning • Civil Engineering • Land Surveying
Landscape Architecture • Environmental

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Telephone: (763) 424-5705
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CADD Qualification:

CADD files prepared by the Consultant for this project are the property of the Consultant and shall not be used for any other project without the written consent of the Consultant. The Consultant shall not be held responsible for any errors or omissions in the CADD files. The Consultant shall not be held responsible for any errors or omissions in the CADD files. The Consultant shall not be held responsible for any errors or omissions in the CADD files.

Submitted:

02/26/05 City Submitted

LANDSCAPE
PLAN

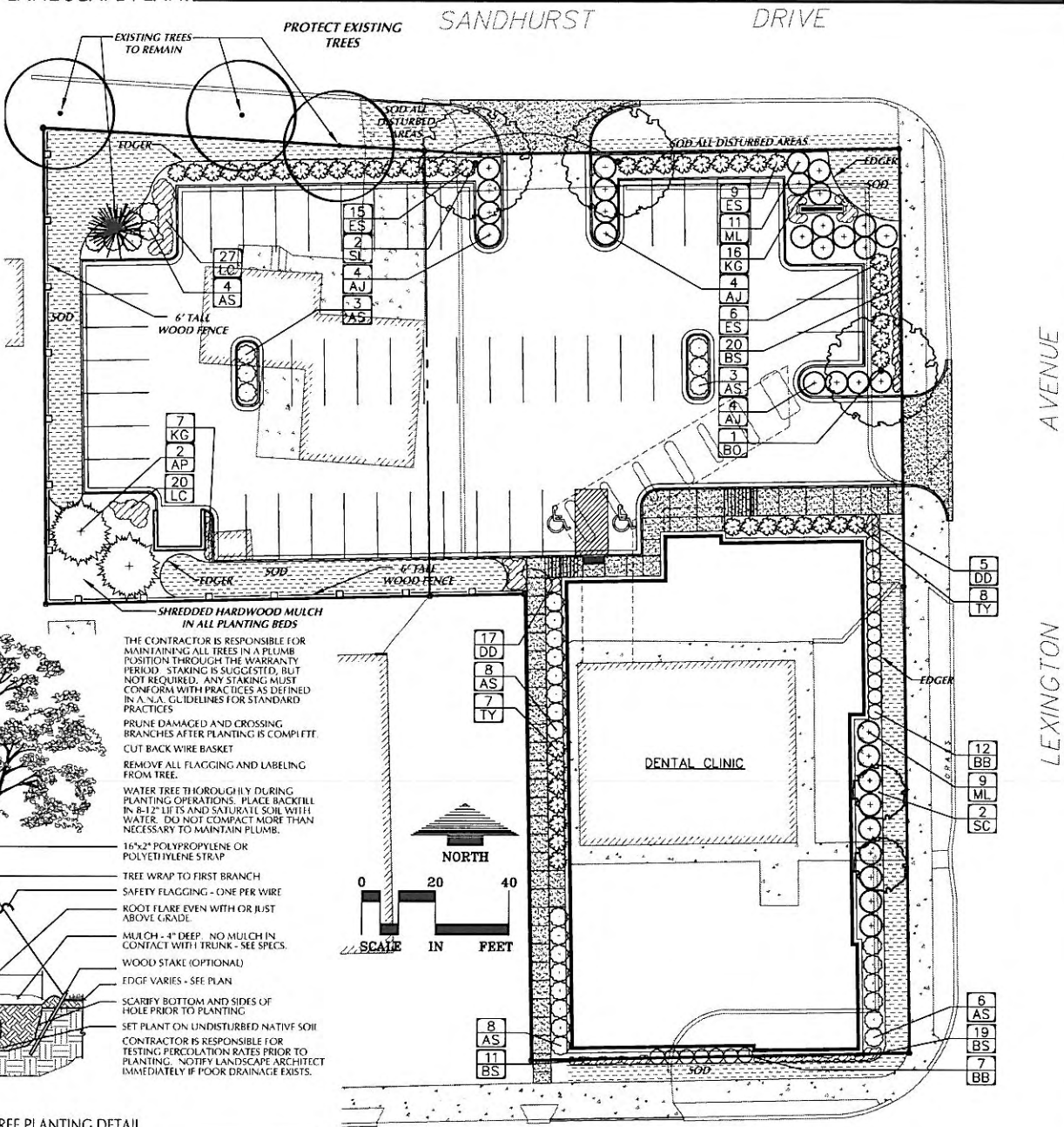
Project No.

08261

Sheet No.

L1-1

LANDSCAPE PLAN:



4 DECIDUOUS TREE PLANTING DETAIL

SCALE: 1/2" = 1'-0"

Drawn by: TJS

Check by: TJS

DATE: 02/26/05

PROJECT: 08261

SHEET: L1-1

REVISIONS:

NO. DESCRIPTION

1. 02/26/05

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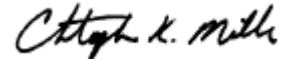
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REQUEST FOR COUNCIL ACTION

Date: 03/23/2009
Item No.: 12.e

Department Approval

Acting City Manager Approval



Item Description: Consideration of Penalty for Centennial Gardens Apartments Non-Compliance

BACKGROUND

In June of 2007, the Roseville City Council authorized the issuance of tax-exempt bonds for Centennial Gardens Apartments in the amount of \$12M to Gardens East Limited Partnership in order to finance the acquisition and renovation of the buildings. The tax-exempt bonds are considered “conduit financing” and have no fiscal impact on the part of the City. As part of arrangement, Gardens East Limited Partnership agreed to keep at least 20% of the units as affordable in accordance with Minnesota Statutes 474A.047.

In the fall of 2008, there were several letters from Jack Cann of the Housing Preservation Project regarding the project’s violation of state statutes governing the use of the tax-exempt bonds. Specifically, Mr. Cann alleged that the project did not meet the minimum threshold for providing affordable rents for at least 20% of the units since the developer failed to include utilities in their calculation of rents when determining the fair market rent.

Upon review of Mr. Cann’s assertions and in response to the City’s inquiries, the developer’s attorney recognized a mistake was made in the rent calculations and that the project was not in compliance with state statutes. Subsequently, the developer reduced the rents to meet the affordability guidelines. In November 2008, Gardens East Partnership identified 31 households that were overcharged in rent and refunded a total of \$1,687 to these parties

In order to confirm the developer’s assertions, staff has requested and reviewed information regarding the rent charged to all of the units within the development from the time the bonds were issued (June 2007) to present to verify exactly when the project was not in compliance. The developer provided a spreadsheet detailing the rent each unit was being charged for rent between June 2007 to the present. (Attachment E).

POLICY OBJECTIVE

Providing affordable housing options in our community has long been identified as a priority for the City and the Roseville Housing and Redevelopment Authority thru the City’s Comprehensive Plan and the RHRA Housing Policies.

BUDGET IMPLICATIONS

30 The costs for issuing the original bond was paid for by the developer. City and RHRA staff on this
31 matter have not been billed to the developer, but the time for Briggs and Morgan, the City's bond
32 counsel to review the matter is being charged back to the developer.

33 **DISCUSSION**

34 Minnesota State Statutes 474A.047 describe the requirements that projects must adhere to if they are
35 using Residential Rental Bonds. One of the requirements is that at least 20% of the units do not exceed
36 the area fair market rent. Section 474A.047(3) discusses penalties:

37 *474A.047 Subd. 3. **Penalty.***

38 *The issuer shall monitor project compliance with the rental rate and income level*
39 *requirements under subdivision 1. The issuer may issue an order of noncompliance if a project*
40 *is found by the issuer to be out of compliance with the rental rate or income level requirements*
41 *under subdivision 1. The owner or owners of the project shall pay a penalty to the issuer equal*
42 *to one-half of one percent of the total amount of bonds issued for the project under this chapter*
43 *if the issuer issues an order of noncompliance. For each additional year a project is out of*
44 *compliance, the annual penalty must be increased by one-half of one percent of the total amount*
45 *of bonds issued under this chapter for the project. The issuer may waive insubstantial*
46 *violations.*

47 The statutes are very clear that the penalty is a fixed amount. In Centennial Gardens case, the penalty
48 would be \$60,000 if the City finds the development out of non-compliance. In talking to City bond
49 counsel, the statutes do not allow the issuer (the City) to levy a lesser or greater penalty. In the case of
50 "insubstantial violations" the issuer may waive the penalty.

51 In determining on whether to issue a penalty, the City Council should first discuss whether or not the
52 violations of charger higher rent than allowed was an "insubstantial violation" or not. A total of 31
53 tenants were deemed to be overcharged a total of \$1,687, with individual tenant overcharges ranging
54 from \$10 to \$180. It should be noted that the developer's attorney asserts that in their opinion that
55 actually only 15 households needed to be rebated. A detailed breakdown of the 31 refunds is contained
56 in Attachment H.

57 The developer originally acknowledged that they miscalculated the rents when applying the 20%
58 affordable standard but that it was an oversight and not intentional and have since lowered the rent and
59 refunded the overpayments to those that were overcharged.

60 In a letter dated February 26, 2009 the developer's attorney, Norm Jones indicates that based on his
61 interpretation, rent is defined as payable directly by the tenant, and therefore, any tenant receiving a
62 Section 8 voucher is often paying less than the fair marked rent out of their own pocket. Mr. Jones,
63 further states that based on his interpretation (namely that Section 8 payments should not be counted as
64 part of the rent the tenant pays), that the project was only in violation in the months of July, August,
65 and September of 2008. Mr. Jones concludes that although various legal issues (from their point of
66 view) remain unclear and would have to be tested in the courts, the developer has exhibited responsive
67 behavior by refunding those that were overcharged and noted that the actual violation period was short
68 and the dollar amounts were minimal. Mr. Jones has sent an additional letter dated March 16, 2009
69 further expanding his perspective of the matter.

70 The City's bond counsel, Mary Ippel of Briggs and Morgan, in response to Mr. Jones' February 26,
71 2009 letter and has prepared a letter, a copy of which is attached. Ms. Ippel's letter states that Mr.

Jones' position is not an unreasonable interpretation of the statutes, but has a concern that such a "literal interpretation of the statutes defeats the goal of making housing affordable to all".

Staff has provided a simplified worksheet (Attachment J) showing the number of units that were in compliance with state statutes. The worksheet shows that if Section 8 vouchers are included in rent (contrary to Mr. Jones' opinion), there were six months of non-compliance. The second set of numbers shows that if Section 8 vouchers are not counted as rent (Mr. Jones' interpretation), the time of non-compliance is three months.

Regardless of how the statutes and regulations are interpreted, it is clear that there was a violation of the affordability guidelines for a period of time in 2008. Staff has reviewed the rent information from the time the bonds were issued to present. Staff's analysis (which holds that Section 8 vouchers are included in the rent, contrary to Mr. Jones' interpretation) has determined that in the 19 months since the bonds were issued, there were six months the project was not in compliance (June, July, August, September, October, and November of 2008).

In staff's review of the matter, we have not found any deliberate attempt to charge tenants more than was allowed. Based on the communication dated October 31, 2008 from Norm Jones, the attorney for the developer, the developer relied on a faulty interpretation on what was included in "gross rent". Staff did find that several mistakes occurred when the developer tried to apply the regulations and in calculating the correct rent. While review of situation has not found any malicious intent on the part of the developer, staff is concerned that these problems could recur if proper oversight and care is not applied in the future. Staff also found very poor communication between the developer and the tenants as well as between the developer's team members in regards to the proper rent that should be charged.

The City has received a letter dated February 23, 2009 from State Senator John Marty stating that the developer's non-compliance was substantial and that the City Council should levy the penalty.

STAFF RECOMMENDATION

Staff recommends that a letter of non-compliance be issued to the developer but that no penalty be levied. Specifically, the letter should state that Centennial Gardens was in non-compliance with the affordability regulations for the months of June, July, August, September, October and November 2008 but that the violations that occurred have been deemed "insubstantial" and no penalty will be levied at this time. The non-compliance letter should further state that violations were a result of a misinterpretation of regulations and poor communication. Finally, the letter should clearly state that if this or a similar violation occurs again, the City will levy a penalty.

REQUESTED COUNCIL ACTION

Motion to authorize staff to send a non-compliance letter finding the violations as insubstantial and waiving a penalty to Gardens East Limited Partnership in regards to the Centennial Commons apartment development.

-or-

Motion to issue a non-compliance order to Gardens East Limited Partnership finding the violations substantial and levying a penalty of \$60,000 in accordance with Minnesota State Statutes Section 474A.047(3).

Prepared by: Patrick Trudgeon, Community Development Director (651) 792-7071

Attachments:

- A: 2008 Minnesota Statutes Section 474A.047 Residential Rental Bonds; Limitations
- B: Letter from Jack Cann, Housing Preservation Project dated October 24, 2008
- C: Letter from Norm Jones , Attorney for Gardens East Limited Partnership, dated October 31, 2008
- D: Letter from Jack Cann, Housing Preservation Project dated November 26, 2008
- E: Spreadsheet showing rent paid from June 2007 thru February 2009
- F: Letter from Norm Jones, Attorney for Gardens East Limited Partnership, dated February 26, 2009
- G: Letter from Mary Ippel, City Bond Counsel, dated March 4, 2009.
- H: Spreadsheet showing units that were overcharged and the amount of rebate each received.
- I: Letter from Norm Jones, Attorney for Gardens East Limited Partnership, dated March 16, 2009
- J: Spreadsheet showing period of non-compliance
- K: Letter from State Senator John Marty, dated February 23, 2009

2008 Minnesota Statutes

474A.047 RESIDENTIAL RENTAL BONDS; LIMITATIONS.

Subdivision 1. **Eligibility.** (a) An issuer may only use the proceeds from residential rental bonds if the proposed project meets the following requirements:

(1) the proposed residential rental project meets the requirements of section 142(d) of the Internal Revenue Code regarding the incomes of the occupants of the housing; and

(2) the maximum rent for at least 20 percent of the units in the proposed residential rental project do not exceed the area fair market rent or exception fair market rents for existing housing, if applicable, as established by the federal Department of Housing and Urban Development. The rental rates of units in a residential rental project for which project-based federal assistance payments are made are deemed to be within the rent limitations of this clause.

(b) The proceeds from residential rental bonds may be used for a project for which project-based federal rental assistance payments are made only if:

(1) the owner of the project enters into a binding agreement with the Minnesota Housing Finance Agency under which the owner is obligated to extend any existing low-income affordability restrictions and any contract or agreement for rental assistance payments for the maximum term permitted, including any renewals thereof; and

(2) the Minnesota Housing Finance Agency certifies that project reserves will be maintained at closing of the bond issue and budgeted in future years at the lesser of:

(i) the level described in Minnesota Rules, part 4900.0010, subpart 7, item A, subitem (2), effective May 1, 1997; or

(ii) the level of project reserves available prior to the bond issue, provided that additional money is available to accomplish repairs and replacements needed at the time of bond issue.

Subd. 2. **15-year agreement.** Prior to the issuance of residential rental bonds, the developer of the project for which the bond proceeds will be used must enter into a 15-year agreement with the issuer that specifies the maximum rental rates of the rent-restricted units in the project and the income levels of the residents of the project occupying income-restricted units. Such rental rates and income levels must be within the limitations established under subdivision 1. The developer must annually certify to the issuer over the term of the agreement that the rental rates for the rent-restricted units are within the limitations under subdivision 1. The issuer may request individual certification of the income of residents of the income-restricted units. The commissioner may request from the issuer a copy of the annual certification prepared by the developer. The commissioner may require the issuer to request individual certification of all residents of the income-restricted units.

Subd. 3. **Penalty.** The issuer shall monitor project compliance with the rental rate and income level requirements under subdivision 1. The issuer may issue an order of

noncompliance if a project is found by the issuer to be out of compliance with the rental rate or income level requirements under subdivision 1. The owner or owners of the project shall pay a penalty to the issuer equal to one-half of one percent of the total amount of bonds issued for the project under this chapter if the issuer issues an order of noncompliance. For each additional year a project is out of compliance, the annual penalty must be increased by one-half of one percent of the total amount of bonds issued under this chapter for the project. The issuer may waive insubstantial violations.

History: 1990 c 552 s 7; 1991 c 346 s 13,14; 1992 c 545 art 1 s 5; 1993 c 164 s 4; 1994 c 527 s 6; 1997 c 169 s 4; 2000 c 493 s 15; 2001 c 214 s 24,25; 2008 c 366 art 5 s 19



Housing Preservation Project
A Public Interest Law Firm

October 24, 2008

Mayor Craig Klausing
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113

Re: Centennial Commons – non-compliance with Minn. Stat. § 474A.047

Dear Mayor Klausing:

We recently received, pursuant to a Data Practices Act request, communications from the owners of Centennial Commons to the City purporting to demonstrate compliance with Minn. Stat. § 474A.047. In fact, these communications demonstrate that the project is not in compliance with the statute's requirements and that the rents charged exceed the maximum permissible rents by amounts ranging from \$34 to \$39/month on 31 units for 2008. The owner's rents meet the statutory standard on only 7 units – 3.7% of the total, not the required 20%.

Minn. Stat. § 474A.047 Subd. 1(a)(2) requires that rent on 20% of the units in projects financed with tax exempt debt "not exceed the area fair market rent or exception fair market rents for existing housing, if applicable, as established by the federal Department of Housing and Urban Development. The statute requires the issuer (here, the City of Roseville) to monitor compliance. Minn. Stat. § 474A.047 Subd. 3. The statute provides a penalty of .5% of the bond amount for non-compliance.

Attached as Exhibit 1 are excerpts from the owner's October 29, 2008 communication to the City demonstrating non-compliance. Exhibit 1 was submitted to the City by the owner purporting to demonstrate compliance with § 474A.047. It indicates that the contract rent for 41 units (21.6% of the 190 units) is set at or below the 2008 Fair Market Rent (FMR) set by HUD for the metropolitan area. However, FMRs are gross rents, including utilities paid by the tenant, not contract rents: "Fair market rent means the rent, including the cost of utilities (except telephone)" 24 C.F.R. § 888.111(b); see also Fair Market Rents: Overview, HUD website, <http://www.huduser.org/datasets/fmr.html> ("FMRs are gross rent estimates. They include the shelter rent plus the cost of all tenant-paid utilities, except telephones, cable or satellite television service, and internet service.") Also included in Exhibit 1 is a utility schedule which the owner also included in its 9/29/08 communication to the City, indicating tenant paid utilities estimated at \$34/month for 1-bedroom units and \$39/month for 2-bedroom units. Because the rents for 31 units were set at the FMRs, rather than at the FMRs less the utility estimate, the rents on these units exceed the statutory maximum by the amount of the utilities estimated to be paid by the tenants.

The table attached as Exhibit 2 shows the amounts by which the owner's rents exceed the statutory maximum, for 2008 as well as for FY 2009 (which began October 1,

2008) for 31 units.

We request that the City take the following steps to bring the owner into compliance with Minn. Stat. § 474A.047:

- 1) Require that the owner immediately reduce the rents on 31 units so that the gross rents do not exceed the FMRs for units of that size.
- 2) Require that the owner pay the statutory .5% penalty for 2008, equal to \$60,000. This is a substantial violation which has gone on for more than a year, and may not be waived by the issuer.
- 3) Require that the owner reimburse all tenants overcharged to date.

Yours truly,

A handwritten signature in black ink, appearing to read 'Jack Cann', with a long horizontal flourish extending to the right.

Jack Cann

cc: Councilmember Ihlan
State Senator Marty
Bob Odman, MHFA
Norman L Jones, owners' attorney

Chris Miller

From: Jones Norman [NJones@winthrop.com]
Sent: Monday, September 29, 2008 1:54 PM
To: Jeanne Kelsey, Chris Miller
Cc: Terry McNellis, swenson@michaelddevelopment.com, bmcdonough@briggs.com, mippel@briggs.com
Subject: Owner response letter to City of Roseville (revised 9/29/08) PDF
Attachments: Owner response letter to City of Roseville (revised 9/29/08) PDF



Owner response
letter to City ...

Jeanne,

In response to your request, we've revised the attachment to include additional rent schedules showing compliance with the rental restrictions. Let me know of any questions.

Thank you.

--Norm

Norman L. Jones
Winthrop & Weinstine, P.A.
Suite 3500
225 South Sixth Street
Minneapolis, MN 55402-4629
Direct Dial: 612-604-6605
Fax: 612-604-6905
E-mail: njones@winthrop.com

Internet: www.winthrop.com <file://www.winthrop.com>

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<<Owner response letter to City of Roseville (revised 9/29/08).PDF>>

Centennial - Rent Data

# of Units by Type (June 2007)	
Studio	2
1 Bedroom	91
2 Bedroom	93
3 Bedroom	4

	Rents (June 2007)	# Units at this Rent Level	Average Rent for Type	Rents (September 2008)	# Units at this Rent Level	Average Rent for Type	Tax Credit Maximum Rents
Studio	\$450	1	\$475	\$500	2	\$500	\$822
	\$500	1					
1 Bedroom	\$575	3	\$657	\$699	17	\$770	\$875
	\$600	2					
	\$625	9					
	\$635	1					
	\$650	53					
	\$675	8					
	\$700	4					
	\$725	11					
2 Bedroom	\$725	8	\$770	\$750	2	\$848	\$1,053
	\$735	1					
	\$750	22					
	\$775	41					
	\$800	21					
3 Bedroom	\$1,000	1	\$1,125	\$1,000	1	\$1,128	\$1,217
	\$1,100	1					
	\$1,200	2					
Total # Units		190			190		

Centennial - Tax Credit Rent Limitations

	Rents (September 2008)	# Units at this Rent Level	Tax Credit Rent Limit *	# Units Meeting Tax Credit Rent Limit
Studio	\$500	2	\$822	2
1 Bedroom	\$699	17	\$875	17
	\$700	1	\$875	1
	\$702	9	\$875	9
	\$775	66	\$875	66
2 Bedroom	\$750	2	\$1,053	2
	\$775	2	\$1,053	2
	\$848	16	\$1,053	16
	\$850	33	\$1,053	33
	\$900	38	\$1,053	38
3 Bedroom	\$1,000	1	\$1,217	1
	\$1,100	1	\$1,217	1
	\$1,205	2	\$1,217	2
Total # Units **		190		190

* LIHC Limit calculated by subtracting the following utility allowances from the published 60% gross rent limits:

Studio	\$27
1 bedroom	\$34
2 bedroom	\$39
3 bedroom	\$45

* Note: LIHC and federal bond rules require at least 40% of the units must meet these rent limits

Electronic Application

IV. ESTIMATED ANNUAL INCOME AND EXPENSES

A. HOUSING INCOME											
RFP Unit Type (OBR, 1BR, 2BR, etc.)	# of DU	Approx. Size (Net Rentable Sq. Ft.) of Units	Proposed Monthly Contract Rent Per Unit	Total Annual Contract Rent (# x rent x 12)	Estimated Cost of Monthly Utilities Paid by Occupant	Monthly Gross Rent (Proposed Contract Rent + Utilities)	Rental Rooms Per Unit***	Total Rooms (# of Units x Rooms Per Unit)	Rent Limit (% of AMI)	Income Limit (% of AMI)	Unit Type*
OBR/SRC	1	456	\$500	\$6,000	\$27	\$527	2.5	2.5	60%	60%	HTC
OBR/SRC	1	456	\$500	\$6,000	\$27	\$527	2.5	2.5			MR
1BR	76	623	\$740	\$674,880	\$34	\$774	3.5	266	60%	60%	HTC
1BR	17	623	\$775	\$158,100	\$34	\$809	3.5	59.5			MR
2BR	70	876	\$860	\$722,400	\$39	\$899	4.5	315	60%	60%	HTC
2BR	21	876	\$869	\$218,988	\$39	\$908	4.5	94.5			MR
3BR	3	1,044	\$1,125	\$40,500	\$45	\$1,170	6.0	18	60%	60%	HTC
3BR	1	1,044	\$1,140	\$13,680	\$45	\$1,185	6.0	6			MR
				\$0		\$0	0.0	0			
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				\$0		\$0	0.0	0			
				\$0		\$0	0.0	0			
UNITS	190			\$1,840,548				764			

* Indicate if: HTC, HOME, Market Rate (MR), Employee Occupied (EO), Owner Occupied (OO), Project Based Assistance (PBA), Hollman (MHOP), Federally Assisted (FA)

*** ETR/SRO = 2.5 rooms
 1 BR = 3.5 rooms
 2 BR = 4.5 rooms
 3 BR = 6.0 rooms
 4 BR = 7.0 rooms
 5 BR = 8.5 rooms
 Bed = 2.0 rooms

Utilities to be paid by Occupant (Excluding Telephone):

- ☐ Water & Sewer ☐ Heat -Type: _____
☐ Hot Water ☒ Air Conditioning _____
☒ Household Electric ☐ Other-Specify: _____

Source of Utility Allowance Calculation (HTC code IRS Notice 94-60, Issued 6/96):

- ☒ Public Housing Authority Metro HRA ☐ Other (Specify) _____
☐ Utility Company Effective Date of Source of Information: 11/6/2006

1. GROSS POTENTIAL RENT:

a. Rental Housing Potential		\$1,840,548
b. Parking/Garage Rent Potential		
# of surface parking	143	Monthly fee \$0
# of covered parking	192	Monthly fee \$0
c. Commercial Rent Potential (specify)		
d. Miscellaneous Rent Potential (specify)		
e. Gross Potential Rent (Total Lines 1a thru 1d)		\$1,840,548

2. RENTAL LOSS:

a. Rental Housing Vacancy		
Vacancy Factor	7.0%	x Line 1a = \$128,838
b. Parking/Garage Vacancy		
Vacancy Factor		x Line 1b = \$0
c. Commercial Vacancy		
Vacancy Factor		x Line 1c = \$0
d. Miscellaneous Utilized Income		
e. Employee Rent Credits		
f. Out of Service Units		
g. Rental Concession Adjustments		
h. Bad Debt		
i. Total Rental Loss (Total Lines 2a thru 2h)		\$128,838

3. NET RENTAL COLLECTIONS: (Line 1e minus 2i) \$1,711,710

EXHIBIT 2

From 9/24 email

BRs	Units	Contract Rent	Utility estimate	Gross Rent	2008 FMR	Units Counted as <=FMR	Number Actually <=FMR	Amount Over FMR 2008 FMR	2009 FMR	Number Actually <=FMR	Amount Over FMR 2009 FMR
0	1	500	27	527	593	1	1		610	1	
0	1	500	27	527	593	1	1		610	1	
1	17	699	34	733	699	17	0	34	719	0	14
1	1	700	34	734	699		0		719	0	
1	9	702	34	736	699		0		719	0	
1	66	775	34	809	699		0		719	0	
2	2	750	39	789	848	2	2		873	2	
2	2	775	39	814	848	2	2		873	2	
2	16	848	39	887	848	16	0	39	873	0	14
2	33	850	39	889	848		0		873	0	
2	38	900	39	939	848		0		873	0	
3	1	1000	45	1045	1110	1	1		1143	1	
3	1	1100	45	1145	1110	1	0		1143	0	
3	2	1205	45	1250	1110		0		1143	0	
	190					41	7			7	
						21.58%	3.68%			3.68%	



October 31, 2008

Norman L. Jones III
Direct Dial: (612) 604-6605
njones@winthrop.com

Mayor Craig Klausing
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113

RE: October 24, 2008 letter from Jack Cann

Dear Mayor Klausing:

We were copied on a letter dated October 24, 2008 from Jack Cann addressed to you.

The letter related to the interpretation of Minnesota Statutes Section 474A.047 which requires that certain bond-financed apartment projects maintain 20% of the apartment units at rents at or below Fair Market Rents as established by HUD. In this case our firm disagrees with Mr. Cann's rationale, but agrees with him as to the end result. This represents a reversal of our firm's previous position, and it was our advice on which the owner relied in determining its compliance with this provision.

The relevant part of Minnesota Statutes 474A.047, Subd. 1(a)(2) provides as follows:

"(2) the maximum rent for at least 20 percent of the units in the proposed residential rental project do not exceed the area fair market rent or exception fair market rents for existing housing, if applicable, as established by the federal Department of Housing and Urban Development. ..."

Our firm had previously interpreted the first use above of the term "rent" to mean actual rent. As recently as Tuesday, we informally received the same interpretation from a responsible official at the Department of Finance, which has regulatory authority over this portion of the Minnesota statutes. However, after further research by Briggs & Morgan, we have concluded our past interpretation was in error and have notified our client. The owner is immediately correcting its FMR rent limits going forward to take into account the utility allowance.

Looking backward, to discover the extent of the issue in the past, we reviewed past rent rolls from the project, including for December 2007, May 2008 and June 2008. We found the following numbers of units that were rented or offered for rent at or below the FMRs (out of 190 total units), when properly adding utility allowances to the rent:

Month of Rent Roll	Efficiencies below FMR	1-beds below FMR	2-beds below FMR	3-beds below FMR	Total units below FMR	% below FMR
December 2007	2	40	75	2	119	62.6%
May 2008	2	25	51	1	79	41.5%
June 2008	2	1	17	1	21	11.0%

It is our conclusion, based on this data, that the project was in compliance with the FMR requirement through the end of May 2008.

As stated above, as soon as we notified the owner of our changed interpretation, the owner immediately started correcting its rent structure to come back into compliance this month. The extent of the issue is the 5-month period from June 2008 through this month during which the project was in only partial compliance.

The owner hereby proposes to refund rent to tenants occupying units which were intended to meet the FMR requirement during the period from June 2008 forward such that the actual rent plus utility allowance meets the FMR rent restriction.

Although Mr. Cann's letter makes the immediate call to penalize the owner, we would suggest that a penalty is unwarranted at this time. The purpose of a penalty is to induce voluntary compliance or change behavior. As stated above, the owner thought it was fully and voluntarily in compliance for the entire period and relied on our advice in support of that. As soon as we brought this matter to their attention on Tuesday they began corrective measures. Also, the period of noncompliance was very short. Fortunately, Mr. Cann's inquiry at this time allowed us to catch our error and have the owner correct it before the situation went on for a long period of time. Finally, it appears the situation can be completely corrected by refunds to tenants, bringing the project back into full compliance.

An additional submission will be made to you when the corrective measures have been completed by the owner. Please let me know if you have any questions regarding this matter.

Very truly yours,

WINTHROP & WEINSTINE, P.A.



Norman L. Jones III

Mayor Craig Klausing
October 31, 2008
Page 3

cc: Councilmember Amy Ihlan
Bob Odman
Jack Cann
Mary Ippel

4114993v1



Housing Preservation Project
A Public Interest Law Firm

November 26, 2008

Mayor Craig Klausing
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113

Re: Centennial Commons – non-compliance with Minn. Stat. § 474A.047

Dear Mayor Klausing:

On October 24, we wrote you demonstrating that the owners of Centennial Commons were not in compliance with Minn. Stat. § 474A.047 Subd. 1(a)(2). The statute requires that 20% of the units in projects financed with tax exempt bonds be rented at no more than the area Fair Market Rents. Fair Market Rents are gross rents – contract rents plus tenant paid utilities. The owner's communication to the City indicated that the owners were charging contract rents equal to the fiscal year 2008 Fair Market Rents on those units designated to comply with the statute. Thus, during fiscal 2008, residents of these units were being over-charged by the amount of the utility allowance (\$34 for 1-BR units and \$39 for 2-BR units). An increase in the Fair Market Rents for fiscal 2009 (beginning October 1, 2008) appeared to reduce the amount of the violation to \$14/unit. We asked that the City require the owner to reduce the rents to the levels permitted by the statute, reimburse tenants who had overpaid, and pay the statutory penalty equal to .5% of the bond amount.

The owner's attorneys responded on October 31, 2008 conceding that FMRs are gross rents and were set too high. They indicated that the owner would reduce the contract rents on at least 20% of the units to the FMRs less the utility allowances and would reimburse tenants who had overpaid. They argued, however, that the non-compliance with the statute was an innocent mistake based on bad advice from the law firm and therefore the penalty should not be imposed.

We were informed late last week by tenant Marsha Cressy that the owner, having previously given her a two month notice that her two bedroom rent would be raised to \$848 on December 1, had still not rescinded that notice in conformance with the attorney's promise that they would do so. The rent level set for December 1 is the FMR for 2-BR units for FY 2008. It is apparently intended by the owner to comply with the Minnesota statute. But, as we pointed out in our letter, and as the owner's attorney conceded, it does not. The FY 2009 FMR is \$873 for a 2-BR units; the utility allowance cited by the owner is \$39, so the contract rent for a 2-BR unit intended to meet the 20% requirement may not exceed \$834. It is quite disturbing that as recently as last week the owner was demanding rents in excess of the statutory limit, having promised more than a month ago through their attorneys not to do so.

570 Asbury Street, Suite 105 • St. Paul, MN 55104 • tel: 651.642.0102 • fax: 651.642.0051

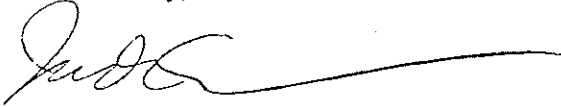
Dedicated to expanding and preserving the supply of affordable housing in Minnesota and nationwide

The statute requires the issuer (here, the City of Roseville) to monitor compliance. Minn. Stat. § 474A.047 Subd. 3. We appreciate the City's recent request that the owner document compliance with the statute. We request that the City immediately assure that any improper rent increases scheduled for December 1 have been canceled.

As to the statutory penalty, we would point out that the assertion that the violation was based on a misinterpretation of the law is highly suspect. The rent limits in the tax credit program, with which the owner and its attorney are quite familiar are gross rent limits; so owner and attorney were familiar with the concept as is indicated by the fact that the owner included utility allowances in its submissions to the MHFA. That FMRs are likewise gross rents is a concept familiar to any experienced housing professional – and the owners are experienced professionals. That the owners understood the meaning of the statute is further indicated by the fact that the owner's initial submission to the MFHA set contract rents for 20% of the units at levels intended to be below the FMRs when utility allowances were added. For instance, the 2007 1-Br FMR was \$707 and the utility allowance was \$30, permitting a contract rent of no more than \$677. The standard rent shown for 1-Brs was \$725 but 19 units were set at \$675 – clearly recognizing the need to deduct utility costs from the FMR to arrive at a contract rent within the statutory limit for units intended to satisfy the 20% requirement.

This was a substantial violation of the statute; one which appears to have continued long after the owner's attorney promised that it would stop. In such cases, the penalty is mandatory.

Yours truly,

A handwritten signature in black ink, appearing to read 'Jack Cann', with a long horizontal flourish extending to the right.

Jack Cann

cc: Councilmember Ihlan
State Senator Marty
Bob Odman, MHFA
Norman L Jones, owners' attorney

February 26, 2009

Norman L. Jones III
Direct Dial: (612) 604-6605
njones@winthrop.com

Mayor Craig Klausing
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113

RE: Update on Centennial Gardens project FMR Compliance

Dear Mayor Klausing:

We have been asked to provide an update to our letter of October 31, 2008 reporting on the historical compliance of the Centennial Gardens project with the requirements of Minnesota Statutes Section 474A.047. We have been asked to (i) consider the effect of certain Section 8 voucher payments, (ii) reflect some corrected data reported by the owner's outside consultant when looking at actual rent payments received, and (iii) report on the corrective measures taken.

As you know, the first part of Minnesota Statutes 474A.047, Subd. 1(a)(2) provides as follows:

“(2) the maximum rent for at least 20 percent of the units in the proposed residential rental project do not exceed the area fair market rent or exception fair market rents for existing housing, if applicable, as established by the federal Department of Housing and Urban Development. ...”

The term “rent” is defined in Minnesota Statutes 474A.02 Subd. 23b as:

“the total monthly cost of occupancy payable directly by the tenant and the cost of any utilities, other than telephone. It does not include a charge for a service that is not required as a condition of occupancy.” (emphasis added)

We conclude that only amounts payable directly by the tenant can be considered “rent” under this provision.

We have been informed that a number of Section 8 vouchers are being utilized at the project. Section 8 vouchers work by requiring the tenant to pay a certain amount directly to the owner (which amount has been determined by HUD to be affordable to that tenant), and HUD also pays an amount to the owner. In these cases, the amount to be treated as “rent” under the above definition is the amount payable by the tenant.

This result is consistent with the policy underlying the rent limitation in Minnesota Statutes, which is affordability to residents. The definition of "rent" focuses on what the resident has to pay out of his or her own pocket. If the opposite were true, and the statute were to also include as "rent" payments by others who are not residents, that (i) would do nothing to help affordability to residents, and (ii) would hinder what the various state or federal rental assistance programs are designed to do. In that case, would the owner, for example, have to refuse to rent FMR units to Section 8 voucher holders? Or would the owner first have to negotiate a lower voucher amount with HUD? One can quickly see how such a statute would create conflict between the FMR requirements in Minnesota statutes versus the federal or state rental assistance provider.

We have also been asked to interpret an additional sentence appearing in Minnesota Statute Section 474A.047, Subd. 1(a)(2), as follows:

"The rental rates of units in a residential rental project for which project-based federal assistance payments are made are deemed to be within the rent limitations of this clause."

Our interpretation of this sentence is threefold. First, this sentence by its terms has no direct application to this project because no project-based federal assistance payments are being made to the project. Second, as a policy statement, it appears to be entirely consistent with the policy we describe above, which is noninterference with other governmental programs designed to assist tenants to pay for housing. Third, it seems to indicate deference to HUD. As if to say, "If HUD says the rent is affordable, we won't impose a harsher standard." We don't think it's appropriate to interpret this sentence as saying "federal assistance payments that are not project based are deemed not to be within the rent limitations." This would be inconsistent with the plain words in the definition of "rent" in the statute and would make nonsense of the policy described above.

As a separate matter, the owner's consultant has made the owner aware that, most likely due to a computer error, rent rolls on which we based our conclusions as to June 2008 in some cases stated increased rent levels which were not actually paid by tenants until 30 or 60 days later. The data which we have now been provided and upon which we rely for purposes of this letter has been verified with actual tenant ledgers for the relevant periods.

In our October 31, 2008 letter, we had concluded that the project was in compliance with the Minnesota FMR requirement through May 2008. Below is a chart which summarizes our conclusions from June 2008 (revised) through the remainder of the year. We found the following numbers of units that were rented at or below the FMRs (out of 190 total units), as described above using only amounts paid by the tenants:

Month	Total units at or below FMR	% at or below FMR
June 2008	40	21.1%
July 2008	36	18.9%
August 2008	24	12.6%
September 2008	34	17.9%
October 2008	41	21.6%
November 2008	41	21.6%
December 2008	67	35.6%

We should note that for the above we used the conservative assumption that no vacant units met the FMR requirement, although the statute is not clear in this regard and an argument could certainly be made the other way.

We also did not take into account any refund actions taken by the owner, although the owner issued refunds to residents and former residents occupying certain units during the period from June through November 2008. We feel the owner did the right thing by trying to correct what was in its power (as it said in October it would do). The refunds did serve the policy of affordability by putting money back in the tenant's pockets. The refunds in total were small, because the amounts overcharged were small (leading to the conclusion that the violation was small).

We also see that the owner has corrected rent levels going forward (again as the owner said in October it would do) and the issue has been completely fixed for the future.

Finally, various legal issues surrounding compliance under Minnesota Statute Sec. 474A.047 remain unclear and would have to be tested in the courts. Legal arguments could be made by the owner as to, for example (i) compliance by means of vacant units, (ii) compliance by means of refunds, and (iii) compliance by means of annual periods versus monthly periods. For the 2008, at least 33.6% of the units on average were actually rented at or below FMR.

Fortunately, the owner's responsive behavior and the small size of the problem indicates that a penalty is unwarranted anyway at this time. The owner thought it was always in compliance, and when the issue was brought to its attention, sincere corrective measures were begun immediately and successfully. The period of the problem was short and the dollar amounts involved were small.

Mayor Craig Klausing
February 26, 2009
Page 4

Thank you for your consideration and please let me know if you have any questions regarding this matter.

Very truly yours,

WINTHROP & WEINSTINE, P.A.



Norman L. Jones III

cc: Mary Ippel, Esq.
Terry McNellis

4338153v1



W2200 First National Bank Building
332 Minnesota Street
St. Paul MN 55101-1396
tel 651.808.6600
fax 651.808.6450

March 4, 2009

Mary L. Ippel
651.808.6620
mippel@briggs.com

City of Roseville, Minnesota
Roseville City Hall
2660 Civic Center Drive
Roseville, MN 55113-1815
Attn: Patrick Trudgeon

Re: Centennial Gardens Project FMR Compliance

Dear Pat:

Minnesota Statutes, Section 474A.047, Subdivision 3 requires the City to monitor the Centennial Gardens Project's compliance with the statutory rental rate and income level requirements set forth in Minnesota Statutes, Section 474A.047, Subdivision 1. In particular, the City is required to monitor the requirement that the maximum rent for at least 20 percent of the units in the Centennial Gardens Project does not exceed the area fair market rent or exception fair market rents for existing housing. If the City determines that the Centennial Gardens Project is not in compliance it must either assess a penalty or determine that the violation is insubstantial.

Gardens East Partnership (the "Developer") acknowledges that the Centennial Gardens Project was not in compliance with the rent restriction which leaves the City Council in the position of determining whether or not the noncompliance was insubstantial. However, there remains a question over the correct method of quantifying the noncompliance. Minnesota Statutes, Section 474A.02, Subdivision 23b defines rent as the "total monthly cost of occupancy payable directly by the tenant and the cost of any utilities". The question that has been raised is whether amounts paid under the Section 8 voucher program on behalf of tenants are included in determining whether the rental payment rates are within the statutory limitations. Those amounts are not literally paid directly by the tenant. Therefore, a literal reading of the statute would exclude those amounts and the noncompliance by Gardens East Partnership would be even smaller than the approximately \$1,700 originally determined. That is the interpretation set forth in Norm Jones's February 26, 2009 letter, which is not an unreasonable interpretation of the statute.

However, there may be a policy reason for including Section 8 voucher payments in quantifying rent. Prospective tenants without Section 8 vouchers may not have rented units in the Centennial Gardens Project because they couldn't afford the rents being advertised and

March 4, 2009

Page 2

charged. Therefore a literal interpretation of the statute defeats its goal of making housing affordable to all.

At any rate, whether we consider policy or solely the text of the statute, the Centennial Gardens Project was still out of compliance for some portion of the units as acknowledged in Mr. Jones's letter. We suggest evaluating Gardens East Partnership's original quantification of its noncompliance as approximately \$1,700. That way, the Council will have applied the more cautious standard in determining whether or not the noncompliance was insubstantial and, if a court ever determined that it is incorrect to exclude amounts paid under the Section 8 voucher program from the determination of rent, the Council would not have to reevaluate a finding of insubstantiality.

Sincerely,

A handwritten signature in cursive script, reading "Mary L. Ippel".

Mary L. Ippel

JSB

Centennial Commons -- Refund Data

Unit #	# of Bdrms	Tenant	June Rebate	July Rebate	August Rebate	Sept Rebate	Oct Rebate	Nov Rebate	Rent Rebate
1400-15	1		\$ -	\$ -	\$ -	\$ -	\$ -	\$ 11.00	\$ 11.00
1400-3	1		\$ -	\$ -	\$ 34.00	\$ 34.00	\$ 14.00	\$ 11.00	\$ 93.00
1420-12	1	Second Occupant	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 11.00	\$ 11.00
1420-12	1	First Occupant	\$ 35.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 35.00
1425-5	1		\$ -	\$ -	\$ -	\$ -	\$ -	\$ 11.00	\$ 11.00
2815-15	2		\$ -	\$ -	\$ 20.00	\$ -	\$ 14.00	\$ 14.00	\$ 48.00
2815-21	1		\$ 10.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 10.00
2815-23	2	Second Occupant	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 14.00	\$ 14.00
2815-23	2	First Occupant	\$ -	\$ -	\$ 41.00	\$ -	\$ -	\$ -	\$ 41.00
2815-6	2		\$ -	\$ -	\$ 41.00	\$ -	\$ -	\$ -	\$ 41.00
2825-12	2		\$ -	\$ -	\$ -	\$ 39.00	\$ 14.00	\$ 14.00	\$ 67.00
2825-12	2		\$ 41.00	\$ 41.00	\$ 41.00	\$ -	\$ -	\$ -	\$ 123.00
2825-16	1		\$ -	\$ -	\$ 110.00	\$ -	\$ -	\$ -	\$ 110.00
2825-18	2	Second Occupant	\$ -	\$ -	\$ -	\$ -	\$ 14.00	\$ 14.00	\$ 28.00
2825-18	2	First Occupant	\$ 41.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 41.00
2825-20	2		\$ -	\$ -	\$ -	\$ -	\$ -	\$ 14.00	\$ 14.00
2835-13	1		\$ -	\$ -	\$ 110.00	\$ -	\$ -	\$ -	\$ 110.00
2835-2	2	Second Occupant	\$ -	\$ -	\$ -	\$ -	\$ 14.00	\$ 14.00	\$ 28.00
2835-2	2	First Occupant	\$ 41.00	\$ 41.00	\$ -	\$ -	\$ -	\$ -	\$ 82.00
2835-24	1		\$ -	\$ -	\$ -	\$ -	\$ -	\$ 11.00	\$ 11.00
2835-5	1		\$ -	\$ -	\$ -	\$ -	\$ -	\$ 11.00	\$ 11.00
2845-14	2		\$ -	\$ -	\$ -	\$ -	\$ 14.00	\$ 14.00	\$ 28.00
2845-20	2		\$ -	\$ -	\$ -	\$ 39.00	\$ -	\$ 14.00	\$ 53.00
2815-10	2		\$ -	\$ -	\$ 41.00	\$ -	\$ -	\$ -	\$ 41.00
2815-19	2		\$ -	\$ -	\$ 41.00	\$ 41.00	\$ -	\$ -	\$ 82.00
2815-8	1		\$ -	\$ -	\$ 110.00	\$ -	\$ -	\$ -	\$ 110.00
2835-19	2		\$ -	\$ 41.00	\$ 41.00	\$ -	\$ -	\$ -	\$ 82.00
2835-7	2		\$ 41.00	\$ 41.00	\$ 41.00	\$ 41.00	\$ 16.00	\$ -	\$ 180.00
2845-11	2		\$ -	\$ -	\$ 41.00	\$ -	\$ -	\$ -	\$ 41.00
2845-15	2		\$ -	\$ 41.00	\$ 41.00	\$ 41.00	\$ -	\$ -	\$ 123.00
2845-7	2		\$ -	\$ -	\$ -	\$ -	\$ 7.00	\$ -	\$ 7.00
			\$ 209	\$ 205	\$ 753	\$ 235	\$ 107	\$ 178	\$ 1,687

 = Pink shaded fill box equals refund undeliverable.

March 16, 2009

Norman L. Jones III
Direct Dial: (612) 604-6605
njones@winthrop.com

Mayor Craig Klausing
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113

RE: Summary of Data on Centennial Gardens project FMR Compliance

Dear Mayor Klausing:

At and following the City Council meeting of March 9, 2009, I was asked to present data relating to the number of households experiencing an overcharge above FMR levels and the dollar amounts involved. Full detailed rent and refund data is contained in a large spreadsheet provided by the owner's compliance consultant Juanita Pekay to City staff at the end of February. However, I attach a spreadsheet which was prepared just to reflect refund data and which is a bit more accessible. In an effort to provide a more accessible summary of certain data from those sheets, we have incorporated certain data into a compliance summary chart on the following page.

Our conclusion, based on the positions and approach stated previously, is that a total of 15 households were overcharged a total of \$908 over a period of three months.

City staff has suggested that we present data based on a more conservative approach that Section 8 voucher payments count as "Rent" for purposes of the FMR statute. We do not subscribe to that interpretation. However, as an accommodation, we present that interpretation in the final two columns on the chart on the following page.

These final two columns also are the same as the refunds issued last November to 31 households for a total of \$1,687. These refunds were issued prior to the owner considering how to treat Sec. 8 voucher payments. Incidentally, this was the basis for the "31 households affected" statement in the owner's prior letter, mentioned at the City council meeting. If the owner were to recalculate those refunds today, the amounts would be less now that the owner realizes the treatment of Section 8 voucher payments.

Month	Total units at or below FMR (assuming Sec. 8 voucher payments NOT includable in Rent)	% at or below FMR (assuming Sec. 8 voucher payments NOT includable in Rent)	Number of Households Overcharged (assuming Sec. 8 voucher payments NOT includable in Rent)	\$ of Overcharge (assuming Sec. 8 voucher payments NOT includable in Rent)	Number of Households Overcharged (assuming Sec. 8 voucher payments ARE includable in Rent)	\$ of Overcharge (assuming Sec. 8 voucher payments ARE includable in Rent)
January 2008	109	57.4%	-	-	-	-
February 2008	107	56.3%	-	-	-	-
March 2008	100	52.6%	-	-	-	-
April 2008	91	47.9%	-	-	-	-
May 2008	77	40.5%	-	-	-	-
June 2008	40	21.1%	-	-	6	\$ 209
July 2008	36	18.9%	2	\$ 82	5	\$ 205
August 2008	24	12.6%	14	\$ 753	14	\$ 753
September 2008	34	17.9%	4	\$ 155	6	\$ 235
October 2008	41	21.6%	-	-	8	\$ 107
November 2008	41	21.6%	-	-	14	\$ 178
December 2008	67	35.6%	-	-	-	-
Total	767 occupied months 64 (avg.)	33.6% (avg.)	20 occupied months 15 households	\$ 908	53 occupied months 31 households	\$ 1,687

We tried to see how to put these amounts in perspective against the accomplishments of the larger project, as follows.

Assuming Section 8 voucher payments are includable as rent (City staff conservative approach):
\$1,687 amounts to a 0.305% overcharge on a total of \$552,240 rent paid on FMR units for the year. This also amounts to a \$2.20 per month overcharge on average for FMR qualified units

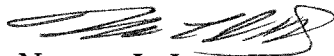
(\$1,687 / 767 FMR occupied months). The total overcharges affected 53 occupied months, compared to 767 occupied months (6.9%). To put the penalty in perspective, a \$60,000 penalty would be 3,356% of the amount of the \$1,687 overcharge.¹

Perhaps it is worth considering that (i) for the most of the year, the complex far exceeded the minimum number of FMR units, (ii) refunds to tenants were accomplished very quickly by November 13, 2008 (with a few exceptions), or about two weeks after the owner received advice as to the resolution of the utility allowance issue (this is an indication of how eager the owner was to correct the situation), (iii) even though refunds were never expected to be a cure for noncompliance, they were done to "balance the scales" and make sure any harm to tenants was wiped clean, and (iv) the noncompliance was an accident. It is hard to see what a penalty is supposed to accomplish in this case, except punish people who are trying their hardest to comply. Given how the owner understood the statute until October 2008, it would be hard to see how the owner could have acted in any way faster or differently than it did.

Thank you for your consideration and please let me know if you have any questions regarding this matter.

Very truly yours,

WINTHROP & WEINSTINE, P.A.



Norman L. Jones III

cc: Mary Ippel, Esq.
Terry McNellis

4338153v2

¹ The same analysis, assuming Section 8 voucher payments are **NOT** includable as "rent" (our position): \$908 amounts to a 0.164% overcharge on a total of \$552,240 rent paid on FMR units for the year. This also amounts to a \$1.18 per month overcharge on average for FMR qualified units (\$908 / 767 FMR occupied months). The total overcharges affected 20 occupied months, compared to 767 occupied months (2.6%). A \$60,000 penalty would be 6,607% of the amount of the \$908 overcharge.

Centennial Commons -- Refund Data

Unit #	# of Bdrms	Tenant	June Rebate	July Rebate	August Rebate	Sept Rebate	Oct Rebate	Nov Rebate	Rent Rebate
1400-15	1							11	11
1400-3	1				34	34	14	11	93
1420-12	1	Second Occupant						11	11
1420-12	1	First Occupant	35						35
1425-5	1							11	11
2815-15	2				20		14	14	48
2815-21	1		10						10
2815-23	2	Second Occupant						14	14
2815-23	2	First Occupant			41				41
2815-6	2				41				41
2825-12	2					39	14	14	67
2825-12	2		41	41	41				123
2825-16	1				110				110
2825-18	2	Second Occupant					14	14	28
2825-18	2	First Occupant	41						41
2825-20	2							14	14
2835-13	1				110				110
2835-2	2	Second Occupant					14	14	28
2835-2	2	First Occupant	41	41					82
2835-24	1							11	11
2835-5	1							11	11
2845-14	2						14	14	28
2845-20	2					39		14	53
2815-10	2				41				41
2815-19	2				41	41			82
2815-8	1				110				110
2835-19	2			41	41				82
2835-7	2		41	41	41	41	16		180
2845-11	2				41				41
2845-15	2			41	41	41			123
2845-7	2						7		7
			\$ 209	\$ 205	\$ 753	\$ 235	\$ 107	\$ 178	\$ 1,687

 = Shaded fill box denotes that the refund was undeliverable.

Attachment J

Centennial Gardens

Compliance with 20% of units with Fair Market Rent

Total Amount of Units: 190

20% = 38

Section 8 included in rent amount (Tenant payment, certain utilities, and Section 8 voucher)

	<u>Jun-08</u>	<u>Jul-08</u>	<u>Aug-08</u>	<u>Sep-08</u>	<u>Oct-08</u>	<u>Nov-08</u>	<u>Dec-08</u>	<u>Jan-09</u>	<u>Feb-09</u>
# of units in Compliance	35	27	9	15	20	14	44	44	46
% of units in Compliance	18%	14%	5%	8%	11%	7%	23%	23%	24%

Section 8 not included in rent amount (Tenant payment and certain utilities)

	<u>Jun-08</u>	<u>Jul-08</u>	<u>Aug-08</u>	<u>Sep-08</u>	<u>Oct-08</u>	<u>Nov-08</u>	<u>Dec-08</u>	<u>Jan-09</u>	<u>Feb-09</u>
# of units in Compliance	40	36	24	34	41	41	44	44	46
% of units in Compliance	21%	19%	13%	18%	22%	22%	23%	23%	24%

Period of non-compliance

Senator
John Marty

Senate
State of Minnesota

February 23, 2009

Mayor Klausing and Roseville City Council
2660 Civic Center Drive
Roseville, MN 55113

RE: Centennial Gardens Noncompliance:

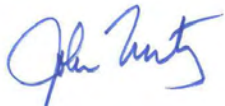
Dear Mayor Klausing and City Council Members:

I urge you to issue Gardens East Limited Partnership a letter of noncompliance for rent levels at Centennial Gardens Apartments in Roseville. Not only has the noncompliance been demonstrated, but it has had a significant impact on the residents of the property.

When Gardens East came to the city asking for public funds, they argued that they needed the money to create affordable housing. In reality, they raised rents for virtually all the units, in direct contradiction to their promise.

I strongly disagree with the staff contention that the damages from noncompliance are "insignificant," and therefore eligible for a fine waiver. The residents of these properties need affordable housing because they have **very** low incomes. Any increase in their rents will cause hardship. In fact, seven rent-capped households moved out after the rent was increased. For these low income residents, this caused a housing crisis. That is certainly a "significant" impact.

Sincerely,



John Marty

REQUEST FOR COUNCIL ACTION

Date: 03/23/09
Item No.: 12.f

Department Approval

Acting City Manager Approval

P. Trudgeon

Christopher K. Miller

Item Description: Consider Acquisition of portions of property located at 2690, 2700, 2770-2800, and 2814 Cleveland Ave.; 1947 County Road C, 2680-2690 Prior Ave., and 2785 Fairview Ave., City of Roseville for road and construction purposes

BACKGROUND

The City is in the process of negotiating with the property owners within the Twin Lakes redevelopment area to acquire portions of their property for road and infrastructure purposes.

Prior to the March 23, 2009 Regular Meeting, the City Council will be meeting in closed Executive Session to discuss the possible acquisition of portions of 2690, 2700, 2770-2800, and 2814 Cleveland Ave.; 1947 County Road C, 2680-2690 Prior Ave., and 2785 Fairview Ave., City of Roseville.

As a result of the Executive Session, the City Council may be taking formal action in regards to the purchase of the aforementioned properties.

POLICY OBJECTIVE

The action being considered will lead to the construction of infrastructure in the Twin Lakes redevelopment area. Twin Lakes has long been indentified in the Roseville Comprehensive Plan as in important redevelopment area for the City.

BUDGET IMPLICATIONS

The costs for the acquisition of the property needed for the roads and utilities and the construction of the infrastructure will come from a variety of funding sources, including the required contribution from Metro Transit, a Department of Employment and Economic Development grant, and existing TIF balances.

REQUESTED COUNCIL ACTION

Will be based on City Council discussion in the March 23, 2009 Executive Session

Prepared by: Patrick Trudgeon, Community Development Director (651) 792-7071
Attachments: None

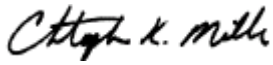
ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: 03/09/09

Item No.: 13.a

Department Approval

City Manager Approval




Item Description: Discussion on the 2009 Utility Rates

BACKGROUND

On November 17, 2008, the City Council adopted the 2009 Utility Rates. With this action, the Council adopted a new rate structure that was designed to achieve two newly-established outcomes. They included:

- ❖ Providing long-term financial sustainability for the City's water, sewer, and stormwater operations
- ❖ Encouraging water conservation in conjunction with the goals and strategies outlined in the City's Imagine Roseville 2025 initiative, as well as a new State Law.

Since adopting the new rates, the City has expectedly received a number of inquiries on the impact of the new rates, and whether the conservation measures will achieve the desired outcome. Copies of these inquiries are attached. The remainder of this report addresses these inquiries.

Desired Outcome #1 – Ensuring Financial Sustainability

The 2010-2019 Financial Plan identifies a funding gap of over \$18 million over the next 10 years for the planned replacement of City water and sewer infrastructure. Simply put, the 'base fee' portion of the City's rate structure has proven to be inadequate in funding this need. It is an accepted practice to structure the base fee in such a manner that can account for fixed costs such as capital replacements. It is also widely accepted that similar customers, such as single-family households, be charged the same base fee because the cost of providing infrastructure to the home is relatively the same.

Historically however, and for reasons that aren't entirely known, the City's base fee was set at a level that was insufficient in generating enough revenue to maintain and replace the infrastructure. The difference had to be made up with the revenue derived from 'usage fees'. However, this practice creates inequities in how the City's infrastructure is funded. Because infrastructure funding is now tied to usage, those that consume a lot of water are paying a greater share for the infrastructure than those that consume relatively little.

In other words, an implicit (hidden) subsidy was in place. In effect, 4-person households were subsidizing the costs for 2-person households. Under this scenario, if higher volume households began reducing water consumption, funding for infrastructure replacement would be diminished and the financing gap noted above would increase.

To remedy this financial uncertainty and disparity, the City adjusted its base fee to ensure that it had the necessary funds to replace the infrastructure when needed. And because the cost of providing water and sewer service to each home is relatively the same, the base fee was applied equally to all homes - as it was done in the past. Having transparency and equity was considered an important factor in ensuring that households realized true savings as they adjusted their consumption behavior. With this action the City was able to reduce the usage rate which now reflects only the direct cost of actually pumping water to the home.

Desired Outcome #2 – Encourage Water Conservation

As noted above, the 2009 Rate Structure was designed to encourage water conservation in such a way that would not only reflect the goals and strategies outlined in the Imagine Roseville 2025 initiative, but also to adhere to a new state law that required water service providers to encourage water conservation.

It should be noted that the 2009 conservation-based rates are designed primarily to address *excessive* water usage. It is not unusual to see a 4 or 5 person household use 20-30,000 gallons per quarter for general use such as personal hygiene or cooking (as evidenced by the household's winter usage). In recognition of this, the 2009 rate structure was designed to encourage conservation without unduly penalizing households for basic water use.

The new law did not mandate how each service provider should structure their rates, but it did offer examples that are commonly in use, such as using increasing block rates and seasonal rates. The new rate structure adopted by the Council employs both of those measures.

In analyzing customer usage behaviors, it was evident that Roseville residents were already consuming less water than residents in many other communities. This was presumably due to the fact that relatively few residential properties in Roseville have irrigation systems, which is in contrast to some 2nd and 3rd ring suburbs. It could also stem from having a relatively smaller population per household.

Because many Roseville residents have already implemented water conservation measures, it is conceivable that the new conservation-based rate structure may produce a relatively small amount of water reduction in Roseville. At this time, we cannot determine the effectiveness of the changes. We would need to observe consumption behavior over a longer period of time, perhaps 2 years or longer. Even then, it will be problematic in pinpointing the effectiveness of the change. For example, it will be difficult to ascertain whether a particular household curbed its summer usage because it was making a conscious effort to conserve water used for irrigation purposes, or because we simply had more rain.

2009 Rate Structure

The 2009 rate structure for households with comparisons to 2008 is as follows:

Water Base Rate – per quarter

Category	2008 Base Rate	2009 Base Rate
Residential	\$ 13.00	\$ 27.75
Residential – Sr. Rate	7.90	18.00

Water Usage Rate

Category	2008 Usage Rate	2009 Usage Rate
Residential; Up to 30,000 gals./qtr	\$ 2.35	\$ 1.85
Residential; Over 30,000 gals./qtr – winter rate	2.35	2.00
Residential; Over 30,000 gals./qtr – summer rate	2.35	2.10

Sanitary Sewer Base Rate

Category	2008 Base Rate	2009 Base Rate
Residential	\$ 13.35	\$ 23.35
Residential – Sr. Rate	8.30	14.55

Sanitary Sewer Usage Rate

Category	2008 Usage Rate	2009 Usage Rate
Residential	\$ 1.55	\$ 1.20

The 2009 rate structure employs two significant changes; a tiered or increasing block, water rate, and a summer usage rate. The tiered water rate is designed to encourage households to take year-round measures such as; installing water-saving devices, and taking shorter showers. Having a higher summer usage rate should encourage households to reduce the water used for irrigation purposes.

POLICY OBJECTIVE

An annual review of the City's utility rate structure is consistent with governmental best practices to ensure that each utility operation is financially sound. In addition, moving to a conservation-based rate structure is consistent with the goals and strategies identified in the Imagine Roseville 2025 initiative, and complies with new state laws.

FINANCIAL IMPACTS

The impacts from the 2009 rate structure will vary significantly depending on each households water usage. *Attachment B* presents 4 different scenarios based on varying usage. For lower-volume users, the percentage increase is higher than for moderate or high volume users. The reason for this is because of the elimination of the implicit subsidy that was in place under the old rate structure. Eliminating this subsidy (inequity) was mentioned above and is explained in greater detail in *Attachment A*, which is an article that was recently posted on the City's website and was delivered to individual homes via their utility bill.

STAFF RECOMMENDATION

Not applicable.

102 **REQUESTED COUNCIL ACTION**
103 Not applicable. For information purposes only

104
Prepared by: Chris Miller, Finance Director
Attachments: A: Supplemental Explanation of Rate Changes
B: 2009 Rate Structure Financial Impact Scenarios
C: Minnesota DNR Pamphlet on Conservation Rates (by request of Councilmember Ihlan)
D: Correspondence from Senator Marty's Office
E: Correspondence from Councilmember Roe

105
106 Council Member Roe:
107 Attachment A: Roe 2/25/09 email "More on Conservation Rate Proposal" with two charts
108
109 Council Member Ihlan:
110 Attachment A: Ihlan 3/04/09 memo "Water Billing Structure and How to Achieve Conservation Rates"
111 B: 11/17/08 RCA "Adopting the 2009 Utility Rate Adjustment"

2009 Utility Rate Changes

In the January/February 2009 issue of the Roseville City News, an article was published regarding the City's change to a conservation-based rate structure. This article has generated some questions from residents who wanted to learn more about the impacts on homeowners. The information presented below addresses those questions and provides additional information on how the new rate structure works.

The change to a conservation-based rate structure was in response to requirements set forth under a new State Law, but also reflects the societal belief that water is a limited resource and as such, the City ought to encourage conservation measures. The concept of encouraging water conservation was also emphasized by citizens and stakeholders during the Imagine Roseville 2025 process.

Under the new rate structure, a typical home would see an increase of 5% from 2008; as measured over an entire calendar year. This is comparable to increases in prior years. However, those households that typically have less-than-average water usage, say 10-15,000 gallons per quarter, will see a higher percentage increase. This paradox did not go unnoticed by City Officials. The reason is due to an implicit subsidy that was present under the old rate structure. In short, higher-volume users subsidized lower-volume users – and had been for decades. For some homeowners, the subsidy amounted to \$10 per quarter or more. Under a conservation-based rate structure, this subsidy must be eliminated. To explain further, we must look at how the City accounts for its water and sewer operations.

Like most municipalities, the City incurs both fixed and variable costs in providing water and sewer services to homeowners. The City's rate structure was designed to recoup these costs using both a fixed or 'base' fee that is charged equally to all homeowners, as well as a variable or 'usage' fee that fluctuates depending on how much water each household uses.

Conceptually, the base fee should be set at an amount that is commensurate with the cost of simply ensuring that water and sewer services is available; i.e., to maintain existing water and sewer mains. Historically however, and for reasons that aren't entirely known, the City's base fee was set at a level that was insufficient in generating enough revenue to maintain these mains including those that lead up to individual homes. The difference had to be made up with the usage fee.

This rate-setting practice doesn't necessarily present a problem as long as households continue to use the same amount of water they always have. However, under a conservation-based rate structure households are encouraged to use less water, which in turn means that they will pay less in usage fees. But because the usage fees helped defray the costs to maintain and replace water and sewer infrastructure, a decline in water consumption would result in fewer monies available to replace that infrastructure. To avoid this, the City needed to increase the base fee to an amount that was sufficient to meet the City's infrastructure needs. At the same time, this enabled the City to lower the usage fee because it no longer had to help fund infrastructure and could now be used exclusively to pay for the variable costs.

With the 2009 Utility Rate Structure, the City's base fee now reflects the true cost of making water and sewer service available, and the usage fee reflects the sole cost of actually purchasing the water and treating the wastewater. With these changes, the savings realized from homeowners' water conservation efforts will now be transparent.

For most homeowners the 2009 Rate structure will amount to an increase of approximately \$5-15 on your quarterly bill, assuming your household consumption is unchanged. Homeowners can minimize this increase by employing water conservation measures such as; fixing any water leaks, reducing the water used for lawn and garden irrigation, taking shorter showers, and installing newer household appliances that are designed to minimize water use.

If you have any further questions on the impact of these rate changes, please contact Chris Miller, Finance Director by email at: chris.miller@ci.roseville.mn.us, or by phone at: 651-792-7031.

City of Roseville
Impact of New Rate Structure

Scenario #1

<u>Service</u>	<u>Rate</u>	2008			
		Qtr 1 <u>Charge</u>	Qtr 2 <u>Charge</u>	Qtr 3 <u>Charge</u>	Qtr 4 <u>Charge</u>
Water - base fee	\$ 13.00	\$ 13.00	\$ 13.00	\$ 13.00	\$ 13.00
Water - usage fee - under 30K gals.	2.35	28.20	28.20	70.50	70.50
Water - usage fee - over 30K gals.	2.35	-	-	11.75	11.75
Sanitary Sewer - base fee	13.35	13.35	13.35	13.35	13.35
Sanitary Sewer - usage fee	1.55	18.60	18.60	52.70	52.70
Total Charges		\$ 73.15	\$ 73.15	\$ 161.30	\$ 161.30

Cumulative Charges \$ 468.90

	<u>Usage</u>
Usage - 1st Quarter (1,000's)	12
Usage - 2nd Quarter	12
Usage - 3rd Quarter	34
Usage - 4th Quarter	34
Average	23

<u>Service</u>
Water - base fee
Water - usage fee - under 30K gals.
Water - usage fee - over 30K gals.
Sanitary Sewer - base fee
Sanitary Sewer - usage fee
Total Charges

2009 Old Rate Structure					
<u>Rate</u>	Qtr 1	Qtr 2	Qtr 3	Qtr 4	<u>Charge</u>
	<u>Charge</u>	<u>Charge</u>	<u>Charge</u>	<u>Charge</u>	
\$ 13.65	\$ 13.65	\$ 13.65	\$ 13.65	\$ 13.65	\$ 13.65
2.47	29.61	29.61	74.03	74.03	74.03
2.47	-	-	12.34	12.34	12.34
14.02	14.02	14.02	14.02	14.02	14.02
1.63	19.53	19.53	55.34	55.34	55.34
	\$ 76.81	\$ 76.81	\$ 169.37	\$ 169.37	

Cumulative Charges \$ 492.35
\$ Difference 23.45
% Difference 5.0%

2009 New Rate Structure					
<u>Rate</u>	Qtr 1	Qtr 2	Qtr 3	Qtr 4	<u>Charge</u>
	<u>Charge</u>	<u>Charge</u>	<u>Charge</u>	<u>Charge</u>	
\$ 27.75	\$ 27.75	\$ 27.75	\$ 27.75	\$ 27.75	\$ 27.75
1.85	22.20	22.20	55.50	55.50	55.50
2.10	-	-	10.50	10.50	10.50
23.35	23.35	23.35	23.35	23.35	23.35
1.20	14.40	14.40	40.80	40.80	40.80
	\$ 87.70	\$ 87.70	\$ 157.90	\$ 157.90	

Cumulative Charges \$ 491.20
\$ Difference 22.30
% Difference 4.8%

City of Roseville
Impact of New Rate Structure

Scenario #2

<u>Service</u>	<u>Rate</u>	2008			
		Qtr 1	Qtr 2	Qtr 3	Qtr 4
		<u>Charge</u>	<u>Charge</u>	<u>Charge</u>	<u>Charge</u>
Water - base fee	\$ 13.00	\$ 13.00	\$ 13.00	\$ 13.00	\$ 13.00
Water - usage fee - under 30K gals.	2.35	21.15	21.15	61.10	61.10
Water - usage fee - over 30K gals.	2.35	-	-	-	-
Sanitary Sewer - base fee	13.35	13.35	13.35	13.35	13.35
Sanitary Sewer - usage fee	1.55	13.95	13.95	40.30	40.30
Total Charges		\$ 61.45	\$ 61.45	\$ 127.75	\$ 127.75

Cumulative Charges \$ 378.40

	<u>Usage</u>
Usage - 1st Quarter (1,000's)	9
Usage - 2nd Quarter	9
Usage - 3rd Quarter	26
Usage - 4th Quarter	26
Average	18

<u>Service</u>
Water - base fee
Water - usage fee - under 30K gals.
Water - usage fee - over 30K gals.
Sanitary Sewer - base fee
Sanitary Sewer - usage fee
Total Charges

2009 Old Rate Structure					
<u>Rate</u>	<u>Qtr 1</u>	<u>Qtr 2</u>	<u>Qtr 3</u>	<u>Qtr 4</u>	<u>Charge</u>
\$ 13.65	\$ 13.65	\$ 13.65	\$ 13.65	\$ 13.65	\$ 13.65
2.47	22.21	22.21	64.16	64.16	64.16
2.47	-	-	-	-	-
14.02	14.02	14.02	14.02	14.02	14.02
1.63	14.65	14.65	42.32	42.32	42.32
	\$ 64.52	\$ 64.52	\$ 134.14	\$ 134.14	

Cumulative Charges \$ 397.32
\$ Difference 18.92
% Difference 5.0%

2009 New Rate Structure					
<u>Rate</u>	<u>Qtr 1</u>	<u>Qtr 2</u>	<u>Qtr 3</u>	<u>Qtr 4</u>	<u>Charge</u>
\$ 27.75	\$ 27.75	\$ 27.75	\$ 27.75	\$ 27.75	\$ 27.75
1.85	16.65	16.65	48.10	48.10	48.10
2.10	-	-	-	-	-
23.35	23.35	23.35	23.35	23.35	23.35
1.20	10.80	10.80	31.20	31.20	31.20
	\$ 78.55	\$ 78.55	\$ 130.40	\$ 130.40	

Cumulative Charges \$ 417.90
\$ Difference 39.50
% Difference 10.4%

City of Roseville
Impact of New Rate Structure

Scenario #3

<u>Service</u>	<u>Rate</u>	2008			
		Qtr 1	Qtr 2	Qtr 3	Qtr 4
		<u>Charge</u>	<u>Charge</u>	<u>Charge</u>	<u>Charge</u>
Water - base fee	\$ 13.00	\$ 13.00	\$ 13.00	\$ 13.00	\$ 13.00
Water - usage fee - under 30K gals.	2.35	14.10	14.10	39.95	39.95
Water - usage fee - over 30K gals.	2.35	-	-	-	-
Sanitary Sewer - base fee	13.35	13.35	13.35	13.35	13.35
Sanitary Sewer - usage fee	1.55	9.30	9.30	26.35	26.35
Total Charges		\$ 49.75	\$ 49.75	\$ 92.65	\$ 92.65

Cumulative Charges \$ 284.80

	<u>Usage</u>
Usage - 1st Quarter (1,000's)	6
Usage - 2nd Quarter	6
Usage - 3rd Quarter	17
Usage - 4th Quarter	17
Average	12

<u>Service</u>
Water - base fee
Water - usage fee - under 30K gals.
Water - usage fee - over 30K gals.
Sanitary Sewer - base fee
Sanitary Sewer - usage fee
Total Charges

2009 Old Rate Structure					
<u>Rate</u>		Qtr 1	Qtr 2	Qtr 3	Qtr 4
		<u>Charge</u>	<u>Charge</u>	<u>Charge</u>	<u>Charge</u>
\$ 13.65	\$ 13.65	\$ 13.65	\$ 13.65	\$ 13.65	\$ 13.65
2.47	14.81	14.81	41.95	41.95	
2.47	-	-	-	-	
14.02	14.02	14.02	14.02	14.02	
1.63	9.77	9.77	27.67	27.67	
		\$ 52.24	\$ 52.24	\$ 97.28	\$ 97.28

Cumulative Charges \$ 299.04
\$ Difference 14.24
% Difference 5.0%

2009 New Rate Structure					
<u>Rate</u>		Qtr 1	Qtr 2	Qtr 3	Qtr 4
		<u>Charge</u>	<u>Charge</u>	<u>Charge</u>	<u>Charge</u>
\$ 27.75	\$ 27.75	\$ 27.75	\$ 27.75	\$ 27.75	\$ 27.75
1.85	11.10	11.10	31.45	31.45	
2.10	-	-	-	-	
23.35	23.35	23.35	23.35	23.35	
1.20	7.20	7.20	20.40	20.40	
		\$ 69.40	\$ 69.40	\$ 102.95	\$ 102.95

Cumulative Charges \$ 344.70
\$ Difference 59.90
% Difference 21.0%

City of Roseville
Impact of New Rate Structure

Scenario #4

<u>Service</u>	<u>Rate</u>	2008			
		Qtr 1	Qtr 2	Qtr 3	Qtr 4
		<u>Charge</u>	<u>Charge</u>	<u>Charge</u>	<u>Charge</u>
Water - base fee	\$ 13.00	\$ 13.00	\$ 13.00	\$ 13.00	\$ 13.00
Water - usage fee - under 30K gals.	2.35	35.25	35.25	70.50	70.50
Water - usage fee - over 30K gals.	2.35	-	-	28.20	28.20
Sanitary Sewer - base fee	13.35	13.35	13.35	13.35	13.35
Sanitary Sewer - usage fee	1.55	23.25	23.25	65.10	65.10
Total Charges		\$ 84.85	\$ 84.85	\$ 190.15	\$ 190.15

Cumulative Charges \$ 550.00

	<u>Usage</u>
Usage - 1st Quarter (1,000's)	15
Usage - 2nd Quarter	15
Usage - 3rd Quarter	42
Usage - 4th Quarter	42
Average	29

<u>Service</u>
Water - base fee
Water - usage fee - under 30K gals.
Water - usage fee - over 30K gals.
Sanitary Sewer - base fee
Sanitary Sewer - usage fee
Total Charges

2009 Old Rate Structure					
<u>Rate</u>	Qtr 1	Qtr 2	Qtr 3	Qtr 4	
	<u>Charge</u>	<u>Charge</u>	<u>Charge</u>	<u>Charge</u>	
\$ 13.65	\$ 13.65	\$ 13.65	\$ 13.65	\$ 13.65	
2.47	37.01	37.01	74.03	74.03	
2.47	-	-	29.61	29.61	
14.02	14.02	14.02	14.02	14.02	
1.63	24.41	24.41	68.36	68.36	
	\$ 89.09	\$ 89.09	\$ 199.66	\$ 199.66	

Cumulative Charges \$ 577.50

\$ Difference 27.50

% Difference 5.0%

2009 New Rate Structure					
<u>Rate</u>	Qtr 1	Qtr 2	Qtr 3	Qtr 4	
	<u>Charge</u>	<u>Charge</u>	<u>Charge</u>	<u>Charge</u>	
\$ 27.75	\$ 27.75	\$ 27.75	\$ 27.75	\$ 27.75	
1.85	27.75	27.75	55.50	55.50	
2.10	-	-	25.20	25.20	
23.35	23.35	23.35	23.35	23.35	
1.20	18.00	18.00	50.40	50.40	
	\$ 96.85	\$ 96.85	\$ 182.20	\$ 182.20	

Cumulative Charges \$ 558.10

\$ Difference 8.10

% Difference 1.5%

Conservation Rates

Minnesota Statutes, section 103G.291, was amended in 2008 to include a requirement for public water suppliers serving more than 1,000 people to adopt a water rate structure that encourages conservation:

Minnesota Statutes, section 103G.291, subd. 4. **Conservation rate structure required.** (a) For the purposes of this section, "conservation rate structure" means a rate structure that encourages conservation and may include increasing block rates, seasonal rates, time of use rates, individualized goal rates, or excess use rates. The rate structure must consider each residential unit as an individual user in multiple-family dwellings.

(b) To encourage conservation, a public water supplier serving more than 1,000 people in the metropolitan area, as defined in section 473.121, subdivision 2, shall use a conservation rate structure by January 1, 2010. All remaining public water suppliers serving more than 1,000 people shall use a conservation rate structure by January 1, 2013.

(c) A public water supplier without the proper measuring equipment to track the amount of water used by its users, as of the effective date of this act, is exempt from this subdivision and the conservation rate structure requirement under subdivision 3, paragraph (c).

In addition, *Minnesota Statutes*, section 103G.291, was further amended to read:

Subd. 3. **Water supply plans; demand reduction.** (c) Public water suppliers serving more than 1,000 people must employ water use demand reduction measures, including a conservation rate structure, as defined in subdivision 4, paragraph (a), unless exempted under subdivision 4, paragraph (c), before requesting approval from the commissioner of health under section 144.383, paragraph (a), to construct a public water supply well or requesting an increase in the authorized volume of appropriation. Demand reduction measures must include evaluation of conservation rate structures and a public education program that may include a toilet and showerhead retrofit program.

Public water suppliers serving more than 1,000 residents will need to adopt a conservation rate structure before requesting well construction approval for a public water supply well or before requesting an increase in permitted volume for their water appropriation permit.

Examples of Conservation Rates:

Below are examples of rate structures that encourage conservation. Many variations and combinations of these examples are possible.

NOTE: Rate structures often include a service charge (base rate) and a volume based charge. Service charges may cover fixed costs (capital improvements) and the volume charge is often for operation and maintenance costs. Volume charges usually use units of 1,000 gallons or 100 cubic feet (748 gallons).

Increasing Block Rates: Cost per unit increases as water use increases within specified "blocks" or volumes. The increase in cost between each block should be significant enough (25% or more and 50% between the last two steps) to encourage conservation.

Example:

0-6,000 gallons	= \$2.50/1000 gallons.
6,000-12,000 gallons	= \$3.15/1000 gallons.
12,000-24,000 gallons	= \$4.00/1000 gallons.
Above 24,000 gallons	= \$6.00/1000 gallons.

Seasonal Rates: The rate per unit increases in the summer to encourage the efficient use of water during peak demand periods caused by outdoor water uses. Seasonal rates can take the form of a surcharge added to the normal rate or a separate fee schedule for winter and summer periods.

Example:

Surcharge method	- \$1.00/1000 gallons is added on top of the regular fee schedule for all water use between May 1 and October 1.
------------------	--

Time of Use Rates: Water rates are higher at times of the day when water use demands are high. This rate requires specialized meters that can monitor water use during specified segments of time, for instance, every 15 minutes.

Example: Water rates are reduced by \$0.75 for customers that agree not to use water for certain purposes or over a set volume of water during certain times of the day or periods of high water demands.

Individualized Goal Rate (Water Budget Rate): A rate with tailored allocations developed for each customer. The rates increase as the allocation is used or exceeded by the customer. The allocation is generally based upon winter or January use.

Example: A family of four used 6,200 gallons in January. Summer use is higher than January use so a factor is applied to determine a summer allocation ($1.5 \times 6,200$ gallons = 9,300 gallons).
 0-6,000 gallons = \$2.50/1000 gallons.
 6,000-9,300 gallons = \$2.75/1000 gallons.
 9,300-18,600 gallons = \$4.00/1000 gallons. (Allocation is exceeded.)
 Above 18,600 gallons = \$6.00/1000 gallons.

Excess Use Rates: Cost per unit increases greatly above an established level in order to trigger a strong price signal that discourages excessive use. This rate is similar to an increasing block rate but with much higher charges for the larger volume blocks.

Example: 0-6,000 gallons = \$2.50/1000 gallons
 6,000-12,000 gallons = \$3.15/1000 gallons
 12,000-24,000 gallons = \$5.00/1000 gallons (Excessive Use Rate)
 Above 24,000 gallons = \$7.50/1000 gallons (Excessive Use Rate)

Multiple-Family Dwellings: Total water use in a multiple-family dwelling, which has only one water meter for the entire dwelling, may exceed that of a single-family dwelling. The statute does not require individual water meters for each residential unit within a multiple-family dwelling; however, the required conservation rate at which the multiple-family dwelling's water use is billed must consider the number of residential units within that multiple-family dwelling.

Example: A four-plex uses a total of 18,000 gallons per month or approximately 4,500 gallons per residential unit. Water use for each residential unit falls within the first block (0-6,000 gallons) of the above Excess Use Rate example. A rate of \$2.50/1000 gallons would apply up to a total use of 24,000 gallons for the multiple-family dwelling. Thereafter, the rate increases according to the rate schedule, always considering each residential unit as an individual user.

Non-conservation rate examples:

Declining (Decreasing) Block Rates: The cost per unit of water (cubic foot or gallon) decreases as the water use increases beyond the basic block. This rate structure provides no incentive to conserve because the cost of water per unit decreases with increased use.

Flat Rates: A set fee allows the use of an indefinite amount of water. This rate structure is used where water is unmetered and provides no incentive to conserve water because cost is unrelated to volume used.

Uniform Rates: The cost per unit is the same regardless of the volume used. This rate structure is considered conservation neutral.

Service Charge (Base Rate) that includes a Minimum Water Volume: The inclusion of a minimum volume of water in the service charge (base rate) discourages conservation especially if the minimum volume exceeds average customer usage.

Senator
John Marty

Senate
State of Minnesota

February 23, 2009

Mayor Klausing and Roseville City Council
2660 Civic Center Drive
Roseville, MN 55113

RE: New Utility Billing Formula

Dear Mayor Klausing and City Council Members:

A recent letter to Roseville residents included with water bills mentions a state environmental law requiring municipalities across Minnesota to promote water conservation through rate structure and uses this law as justification for the new rate structure chosen by the city. However, the change in rates move the city further away from a conservation-based system than the old rates, in **direct violation** of the law's intent. In effect, the cost increases fall disproportionately on the shoulders of residential customers who conserve while wasteful consumers and larger commercial customers may actually see their bills decrease.

The intent of Minnesota's new water conservation law is to protect our one of our most precious natural resources by increasing costs as usage goes up. The Department of Natural Resources says that is achieved by creating a billing system with multi-tiered rates with a 25% to 50% rate difference between **each** tier. In this area, Roseville's new structure fails on all accounts: 1. there are only two billing levels, 2. commercial customers are excluded from usage-based rates, and 3. the difference between the two tiers is nominal.

Furthermore, small-volume consumers see only a nominal savings if they are in the lowest category because a disproportional amount of their bill is a flat fee, subverting the financial incentive to save water. In this case, the large fixed-rate makes small-users pay far more per 1000 gallons used than larger customers (please see attached chart). Under the new rate structure a residential customer in Roseville using 5000 gallons pays \$7.40 per 1000 gallons of water. In contrast, a customer using 50,000 gallons pays only \$2.55 per gallon. This directly violates the intent of the state law.

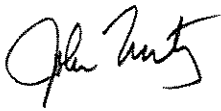
As you can see in the attached chart, customers that use more than 50,000 gallons or more per billing period will actually see their bills decrease under the new system. This is because the majority of the increases were applied to the flat rate instead of the usage-based rate.

I strongly urge the City of Roseville to remedy these issues so that the rate system encourages conservation of resources instead of encouraging wasteful use. Among the city's options would be to

1. create more usage-tiers,
2. increase the difference between each tier to at least 25% to 50%, and/or
3. reduce the revenue collected from the base-rate while increasing the revenue collected from tiered-consumption rates.

Again, I hope the city will revise the new rate structure to protect our environment and water resources.

Sincerely,

A handwritten signature in black ink, appearing to read "John Marty". The signature is stylized with a large, looped "J" and a cursive "Marty".

John Marty

2009

5,000				10,000				20,000				30,000 Winter				50,000 Winter				100,000 Winter			
Flat Fee	Usage Fee	Total Cost	Per Gallon Cost	Flat Fee	Usage Fee	Total Cost	Per Gallon Cost	Flat Fee	Usage Fee	Total Cost	Per Gallon Cost	Flat Fee	Usage Fee	Total Cost	Per Gallon Cost	Flat Fee	Usage Fee	Total Cost	Per Gallon Cost	Flat Fee	Usage Fee	Total Cost	Per Gallon Cost
\$ 27.75	\$ 9.25	\$ 37.00	\$ 7.40	\$ 27.75	\$ 18.50	\$ 46.25	\$ 4.63	\$ 27.75	\$ 37.00	\$ 64.75	\$ 3.24	\$ 27.75	\$ 60.00	\$ 87.75	\$ 2.93	\$ 27.75	\$ 100.00	\$ 127.75	\$ 2.55	\$ 27.75	\$ 200.00	\$ 227.75	\$ 2.28
\$ 18.00	\$ 9.25	\$ 27.25	\$ 5.45	\$ 18.00	\$ 18.50	\$ 36.50	\$ 3.65	\$ 18.00	\$ 37.00	\$ 55.00	\$ 2.75	\$ 18.00	\$ 60.00	\$ 78.00	\$ 2.60	\$ 18.00	\$ 100.00	\$ 118.00	\$ 2.36	\$ 18.00	\$ 200.00	\$ 218.00	\$ 2.18
Non-Residential																							
\$ 27.75	\$ 12.00	\$ 39.75	\$ 7.95	\$ 27.75	\$ 24.00	\$ 51.75	\$ 5.18	\$ 27.75	\$ 48.00	\$ 75.75	\$ 3.78	\$ 27.75	\$ 72.00	\$ 99.75	\$ 3.33	\$ 27.75	\$ 132.50	\$ 160.25	\$ 3.21	\$ 27.75	\$ 265.00	\$ 292.75	\$ 2.93
\$ 35.00	\$ 12.00	\$ 47.00	\$ 9.40	\$ 35.00	\$ 24.00	\$ 59.00	\$ 5.90	\$ 35.00	\$ 48.00	\$ 83.00	\$ 4.15	\$ 35.00	\$ 72.00	\$ 107.00	\$ 3.57	\$ 35.00	\$ 132.50	\$ 167.50	\$ 3.35	\$ 35.00	\$ 265.00	\$ 300.00	\$ 3.00
\$ 55.00	\$ 12.00	\$ 67.00	\$ 13.40	\$ 55.00	\$ 24.00	\$ 79.00	\$ 7.90	\$ 55.00	\$ 48.00	\$ 103.00	\$ 5.15	\$ 55.00	\$ 72.00	\$ 127.00	\$ 4.23	\$ 55.00	\$ 132.50	\$ 187.50	\$ 3.75	\$ 55.00	\$ 265.00	\$ 320.00	\$ 3.20
\$ 105.00	\$ 12.00	\$ 117.00	\$ 23.40	\$ 105.00	\$ 24.00	\$ 129.00	\$ 12.90	\$ 105.00	\$ 48.00	\$ 153.00	\$ 7.65	\$ 105.00	\$ 72.00	\$ 177.00	\$ 5.90	\$ 105.00	\$ 132.50	\$ 237.50	\$ 4.75	\$ 105.00	\$ 265.00	\$ 370.00	\$ 3.70
\$ 210.00	\$ 12.00	\$ 222.00	\$ 44.40	\$ 210.00	\$ 24.00	\$ 234.00	\$ 23.40	\$ 210.00	\$ 48.00	\$ 258.00	\$ 12.90	\$ 210.00	\$ 72.00	\$ 282.00	\$ 9.40	\$ 210.00	\$ 132.50	\$ 342.50	\$ 6.85	\$ 210.00	\$ 265.00	\$ 475.00	\$ 4.75
\$ 420.00	\$ 12.00	\$ 432.00	\$ 86.40	\$ 420.00	\$ 24.00	\$ 444.00	\$ 44.40	\$ 420.00	\$ 48.00	\$ 468.00	\$ 23.40	\$ 420.00	\$ 72.00	\$ 492.00	\$ 16.40	\$ 420.00	\$ 132.50	\$ 552.50	\$ 11.05	\$ 420.00	\$ 265.00	\$ 685.00	\$ 6.85

2008

5,000				10,000				20,000				30,000				50,000				100,000			
Flat Fee	Usage Fee	Total Cost	Per 1000 Gallon Cost	Flat Fee	Usage Fee	Total Cost	Per 1000 Gallon Cost	Flat Fee	Usage Fee	Total Cost	Per 1000 Gallon Cost	Flat Fee	Usage Fee	Total Cost	Per 1000 Gallon Cost	Flat Fee	Usage Fee	Total Cost	Per 1000 Gallon Cost	Flat Fee	Usage Fee	Total Cost	Per 1000 Gallon Cost
\$13.00	\$ 11.75	\$ 24.75	\$ 4.95	\$13.00	\$ 23.50	\$ 36.50	\$ 3.65	\$ 13.00	\$ 47.00	\$ 60.00	\$ 3.00	\$ 13.00	\$ 70.50	\$ 83.50	\$ 2.78	\$ 13.00	\$ 117.50	\$ 130.50	\$ 2.61	\$ 13.00	\$ 235.00	\$ 248.00	\$ 2.48
\$7.90	\$ 11.75	\$ 19.65	\$ 3.93	\$7.90	\$ 23.50	\$ 31.40	\$ 3.14	\$ 7.90	\$ 47.00	\$ 54.90	\$ 2.75	\$ 7.90	\$ 70.50	\$ 78.40	\$ 2.61	\$ 7.90	\$ 117.50	\$ 125.40	\$ 2.50	\$ 7.90	\$ 235.00	\$ 242.90	\$ 2.42
Non-Residential																							
\$17.05	\$ 11.75	\$ 28.80	\$ 5.76	\$17.05	\$ 23.50	\$ 40.55	\$ 4.05	\$ 17.05	\$ 47.00	\$ 64.05	\$ 3.20	\$ 17.05	\$ 70.50	\$ 87.55	\$ 2.91	\$ 17.05	\$ 117.00	\$ 134.05	\$ 2.68	\$ 17.05	\$ 235.00	\$ 252.05	\$ 2.52
\$25.50	\$ 11.75	\$ 37.25	\$ 7.45	\$25.50	\$ 23.50	\$ 49.00	\$ 4.90	\$ 25.50	\$ 47.00	\$ 72.50	\$ 3.62	\$ 25.50	\$ 70.50	\$ 96.00	\$ 3.20	\$ 25.50	\$ 117.00	\$ 142.50	\$ 2.85	\$ 25.50	\$ 235.00	\$ 260.50	\$ 2.61
\$50.95	\$ 11.75	\$ 62.70	\$ 12.54	\$50.95	\$ 23.50	\$ 74.45	\$ 7.44	\$ 50.95	\$ 47.00	\$ 97.95	\$ 4.90	\$ 50.95	\$ 70.50	\$ 121.45	\$ 4.04	\$ 50.95	\$ 117.00	\$ 167.95	\$ 3.36	\$ 50.95	\$ 235.00	\$ 285.95	\$ 2.86
\$102.10	\$ 11.75	\$ 113.85	\$ 22.77	\$102.10	\$ 23.50	\$ 125.60	\$ 12.56	\$ 102.10	\$ 47.00	\$ 149.10	\$ 7.46	\$ 102.10	\$ 70.50	\$ 172.60	\$ 5.75	\$ 102.10	\$ 117.00	\$ 219.10	\$ 4.38	\$ 102.10	\$ 235.00	\$ 337.10	\$ 3.37
\$204.10	\$ 11.75	\$ 215.85	\$ 43.17	\$204.10	\$ 23.50	\$ 227.60	\$ 22.76	\$ 204.10	\$ 47.00	\$ 251.10	\$ 12.56	\$ 204.10	\$ 70.50	\$ 274.60	\$ 9.15	\$ 204.10	\$ 117.00	\$ 321.10	\$ 6.42	\$ 204.10	\$ 235.00	\$ 439.10	\$ 4.39
\$408.15	\$ 11.75	\$ 419.90	\$ 83.98	\$408.15	\$ 23.50	\$ 431.65	\$ 43.17	\$ 408.15	\$ 47.00	\$ 455.15	\$ 22.76	\$ 408.15	\$ 70.50	\$ 478.65	\$ 15.96	\$ 408.15	\$ 117.00	\$ 525.15	\$ 10.50	\$ 408.15	\$ 235.00	\$ 643.15	\$ 6.43

----- Forwarded Message -----

From: "dan roe" <dan.roe@comcast.net>

To: "bill malinen" <bill.malinen@ci.roseville.mn.us>

Sent: Tuesday, February 24, 2009 5:49:32 PM GMT -06:00 US/Canada Central

Subject: Water rate structure

Bill,

As I reflected on Senator Marty's letter and attachment, as well as my thoughts on the issue, a couple of conclusions came to mind:

First, I think we should, as a policy matter, target more than only 10-15% of residential water users for higher rates under our rate structure. We should target all of the above-average users with the increased rates. Then, over time we should, as the average continues to (hopefully) decrease with usage, look at decreasing the break point in our rate structure.

Second, I think it IS unfair that a small number of high users actually pay less in total in 2009 under the new rate structure than in 2008 (for the same usage). That is because we are trying to collect more \$\$ overall to cover predicted infrastructure costs, and all should participate in that.

Finally, in order to achieve the 2 objectives above, the math tells me that we should look at a break-point of 20,000 gallons/quarter rather than 30,000. (Closer to the average of 22,000.) We should also, on the basis of having all users pay at least about 5% more in order to be fair, change the upper tier winter rate from \$2.00/1000 gallons to \$2.40. The summer rate can still be a 10% premium on that rate, or \$2.65/1000 gallons.

As I run a couple of examples on this basis, the total amount paid by users in 2009 versus 2008 goes up for all users. The 2008-2009 change is the same for below-average users as it is under our adopted rates, but for those users over average they will still see an increase over 2008, rather than the current situation where their cost per quarter actually goes down. The table below is strictly winter rates.

Usage/qtr: Total Cost	2009 Current Total Cost 2008 Total Cost	My 2009 Proposed
5000gal	\$37 (\$12.25 or 50% incr)	\$37 (\$12.25 or
50% incr)	\$24.75	
10000gal	\$46.25 (\$9.75 or 27% incr)	\$46.25 (\$9.75 or 27%
incr)	\$36.50	
15000gal	\$55.50 (\$7.25 or 15% incr)	\$55.50 (\$7.25 or 15%
incr)	\$48.25	
20000gal	\$64.75 (\$4.75 or 8% incr)	\$64.75 (\$4.75 or
8% incr)	\$60.00	
25000gal	\$74.00 (\$2.25 or 3% incr)	\$76.75 (\$5.00 or
7% incr)	\$71.75	
30000gal	\$83.25 (\$0.50 or 0% incr)	\$88.75 (\$5.25 or
6% incr)	\$83.50	

35000gal incr)	\$93.25 (\$2.00 or 2% DEC) \$95.25	\$100.75 (\$5.50 or 6%
40000gal incr)	\$103.25 (\$3.75 or 4% DEC) \$107.00	\$112.75 (\$5.75 or 5%
45000gal incr)	\$113.25 (\$5.50 or 5% DEC) \$118.75	\$124.75 (\$6.00 or 5%
50000gal incr)	\$123.25 (\$7.25 or 6% DEC) \$130.50	\$136.75 (\$6.25 or 5%
55000gal incr)	\$133.25 (\$9.00 or 6% DEC) \$142.25	\$148.75 (\$6.50 or 5%

Granted, if only 10%-15% of users use more than 30,000 gallons per quarter, only a relative few would be impacted by my suggested change. However, out of fairness, they SHOULD have an increase, rather than a decrease, between 2009 and 2008.

Also, as we move into future years, I would like to have more analysis of applying a conservation rate structure to non-residential users, since they should have incentives to conserve water as well. (Besides the summer premium.)

Lastly, I would appreciate a staff analysis of how the language in the statute dealing with multi-family housing rates is met by our structure, or might have to be adjusted. I don't know whether our multi-family buildings use single large meters that fall under non-residential rates, or if there are small meters for each unit, based on our terminology in the rate structure of "residential" versus "non-residential." If they have large meters, do the equivalent block rates work out in conformance with statute?

Please include this suggestion with the information that we consider at our March 9th discussion of the conservation water rates. (Including any staff analysis.) If the table in this email comes out garbled, let me know and I can send a PDF or something.

Thanks,

Dan Roe
Roseville City Councilmember
Phone 651-487-9654
Email dan.roe@comcast.net

Chris Miller

From: Bill Malinen
Sent: Wednesday, February 25, 2009 11:21 AM
To: Chris Miller
Subject: FW: more on conservation rate proposal

Attachments: rate comparison chart.pdf



rate comparison
chart.pdf (13 ...

Please review and comment.

-----Original Message-----

From: dan.roe@comcast.net [mailto:dan.roe@comcast.net]
Sent: Wednesday, February 25, 2009 9:32 AM
To: Bill Malinen
Subject: more on conservation rate proposal

Bill,

Per the attached charts, I have slightly revised my proposal to shift the break point between tiers from 20,000 gallons/qtr to 25,000 gallons/qtr.

That is because, at 20,000 gal/qtr, the summer rate differential from 2008 gets to be 8% to 11% for average to high users, which is, I think, too great of a differential.

By changing the break point to 25,000 gal/qtr, the winter differential for those users goes down to 3% to 5%, but with the summer differential of up to 7% this should average to something more around 5% for those users over the course of a year.

As always, feel free to let me know if either you or the staff have any questions or comments on my proposal.

I look forward to the discussion on the 9th.

Regards,

Dan Roe
Roseville City Councilmember
Phone 651-487-9654
Email dan.roe@comcast.net

WATER RATES
Conservation Rate Structure Analysis

Residential Rates

	<u>2008</u>	<u>2009</u>	<u>% diff</u>	<u>2009 Roe1</u>	<u>% diff</u>	<u>2009 Roe2</u>	<u>% diff</u>
Base Rate	\$13.00	\$27.75		\$27.75		\$27.75	
Per 1000 gal - Tier I	\$2.35	\$1.85		\$1.85		\$1.85	
Per 1000 gal - Tier II (winter)	\$2.35	\$2.00	8%	\$2.40	30%	\$2.40	30%
Per 1000 gal - Tier II (summer)	\$2.35	\$2.10	5%	\$2.65	10%	\$2.65	10%
Tier I / Tier II Break Point (gal)	0	30,000		20,000		25,000	

Winter Comparison

<u>Quarterly Usage (gallons)</u>	<u>2008 Total</u>	<u>2009 Total</u>	<u>(\$ diff)</u>	<u>(% diff)</u>	<u>2009 Roe1</u>	<u>(\$ diff)</u>	<u>(% diff)</u>	<u>2009 Roe2</u>	<u>(\$ diff)</u>	<u>(% diff)</u>
0	\$13.00	\$27.75	\$14.75	113%	\$27.75	\$14.75	113%	\$27.75	\$14.75	113%
2500	\$18.88	\$32.38	\$13.50	72%	\$32.38	\$13.50	72%	\$32.38	\$13.50	72%
5000	\$24.75	\$37.00	\$12.25	49%	\$37.00	\$12.25	49%	\$37.00	\$12.25	49%
7500	\$30.63	\$41.63	\$11.00	36%	\$41.63	\$11.00	36%	\$41.63	\$11.00	36%
10000	\$36.50	\$46.25	\$9.75	27%	\$46.25	\$9.75	27%	\$46.25	\$9.75	27%
12500	\$42.38	\$50.88	\$8.50	20%	\$50.88	\$8.50	20%	\$50.88	\$8.50	20%
15000	\$48.25	\$55.50	\$7.25	15%	\$55.50	\$7.25	15%	\$55.50	\$7.25	15%
17500	\$54.13	\$60.13	\$6.00	11%	\$60.13	\$6.00	11%	\$60.13	\$6.00	11%
20000	\$60.00	\$64.75	\$4.75	8%	\$64.75	\$4.75	8%	\$64.75	\$4.75	8%
22500	\$65.88	\$69.38	\$3.50	5%	\$70.75	\$4.88	7%	\$69.38	\$3.50	5%
25000	\$71.75	\$74.00	\$2.25	3%	\$76.75	\$5.00	7%	\$74.00	\$2.25	3%
27500	\$77.63	\$78.63	\$1.00	1%	\$82.75	\$5.13	7%	\$80.00	\$2.38	3%
30000	\$83.50	\$83.25	(\$0.25)	0%	\$88.75	\$5.25	6%	\$86.00	\$2.50	3%
32500	\$89.38	\$88.25	(\$1.13)	-1%	\$94.75	\$5.38	6%	\$92.00	\$2.63	3%
35000	\$95.25	\$93.25	(\$2.00)	-2%	\$100.75	\$5.50	6%	\$98.00	\$2.75	3%
37500	\$101.13	\$98.25	(\$2.88)	-3%	\$106.75	\$5.63	6%	\$104.00	\$2.88	3%
40000	\$107.00	\$103.25	(\$3.75)	-4%	\$112.75	\$5.75	5%	\$110.00	\$3.00	3%
42500	\$112.88	\$108.25	(\$4.63)	-4%	\$118.75	\$5.88	5%	\$116.00	\$3.13	3%
45000	\$118.75	\$113.25	(\$5.50)	-5%	\$124.75	\$6.00	5%	\$122.00	\$3.25	3%
47500	\$124.63	\$118.25	(\$6.38)	-5%	\$130.75	\$6.13	5%	\$128.00	\$3.38	3%
50000	\$130.50	\$123.25	(\$7.25)	-6%	\$136.75	\$6.25	5%	\$134.00	\$3.50	3%

WATER RATES
Conservation Rate Structure Analysis

Residential Rates

	<u>2008</u>	<u>2009</u>	<u>% diff</u>	<u>2009 Roe1</u>	<u>% diff</u>	<u>2009 Roe2</u>	<u>% diff</u>
Base Rate	\$13.00	\$27.75		\$27.75		\$27.75	
Per 1000 gal - Tier I	\$2.35	\$1.85		\$1.85		\$1.85	
Per 1000 gal - Tier II (winter)	\$2.35	\$2.00	8%	\$2.40	30%	\$2.40	30%
Per 1000 gal - Tier II (summer)	\$2.35	\$2.10	5%	\$2.65	10%	\$2.65	10%
Tier I / Tier II Break Point (gal)	0	30,000		20,000		25,000	

Summer Comparison

<u>Quarterly Usage (gallons)</u>	<u>2008 Total</u>	<u>2009 Total</u>	<u>(\$ diff)</u>	<u>(% diff)</u>	<u>2009 Roe1</u>	<u>(\$ diff)</u>	<u>(% diff)</u>	<u>2009 Roe2</u>	<u>(\$ diff)</u>	<u>(% diff)</u>
0	\$13.00	\$27.75	\$14.75	113%	\$27.75	\$14.75	113%	\$27.75	\$14.75	113%
2500	\$18.88	\$32.38	\$13.50	72%	\$32.38	\$13.50	72%	\$32.38	\$13.50	72%
5000	\$24.75	\$37.00	\$12.25	49%	\$37.00	\$12.25	49%	\$37.00	\$12.25	49%
7500	\$30.63	\$41.63	\$11.00	36%	\$41.63	\$11.00	36%	\$41.63	\$11.00	36%
10000	\$36.50	\$46.25	\$9.75	27%	\$46.25	\$9.75	27%	\$46.25	\$9.75	27%
12500	\$42.38	\$50.88	\$8.50	20%	\$50.88	\$8.50	20%	\$50.88	\$8.50	20%
15000	\$48.25	\$55.50	\$7.25	15%	\$55.50	\$7.25	15%	\$55.50	\$7.25	15%
17500	\$54.13	\$60.13	\$6.00	11%	\$60.13	\$6.00	11%	\$60.13	\$6.00	11%
20000	\$60.00	\$64.75	\$4.75	8%	\$64.75	\$4.75	8%	\$64.75	\$4.75	8%
22500	\$65.88	\$69.38	\$3.50	5%	\$71.38	\$5.50	8%	\$69.38	\$3.50	5%
25000	\$71.75	\$74.00	\$2.25	3%	\$78.00	\$6.25	9%	\$74.00	\$2.25	3%
27500	\$77.63	\$78.63	\$1.00	1%	\$84.63	\$7.00	9%	\$80.63	\$3.00	4%
30000	\$83.50	\$83.25	(\$0.25)	0%	\$91.25	\$7.75	9%	\$87.25	\$3.75	4%
32500	\$89.38	\$88.50	(\$0.88)	-1%	\$97.88	\$8.50	10%	\$93.88	\$4.50	5%
35000	\$95.25	\$93.75	(\$1.50)	-2%	\$104.50	\$9.25	10%	\$100.50	\$5.25	6%
37500	\$101.13	\$99.00	(\$2.13)	-2%	\$111.13	\$10.00	10%	\$107.13	\$6.00	6%
40000	\$107.00	\$104.25	(\$2.75)	-3%	\$117.75	\$10.75	10%	\$113.75	\$6.75	6%
42500	\$112.88	\$109.50	(\$3.38)	-3%	\$124.38	\$11.50	10%	\$120.38	\$7.50	7%
45000	\$118.75	\$114.75	(\$4.00)	-3%	\$131.00	\$12.25	10%	\$127.00	\$8.25	7%
47500	\$124.63	\$120.00	(\$4.63)	-4%	\$137.63	\$13.00	10%	\$133.63	\$9.00	7%
50000	\$130.50	\$125.25	(\$5.25)	-4%	\$144.25	\$13.75	11%	\$140.25	\$9.75	7%

MEMORANDUM

TO: MEMBERS OF THE ROSEVILLE CITY COUNCIL
FROM: AMY IHLAN
SUBJECT: WATER BILLING STRUCTURE AND HOW TO ACHIEVE
CONSERVATION RATES
DATE: MARCH 4, 2009

Based on the DNR's guidelines and the suggestions from Senator John Marty, I would like to have council discussion and direct staff to formulate amendments to the city's water billing structure to comply with state law requiring a billing structure "that encourages conservation." To create a conservation rate structure that meets state law requirements, we need to consider the following amendments to our new utility billing rates:

1. Create additional usage tiers or "blocks" with greater cost increases between blocks. The DNR Conservation Rate guidelines state that:

The increase in cost between each block should be significant enough (25% or more and 50% between the last two steps) to encourage conservation.

Roseville's residential billing rates include only two usage "blocks", and the increase in cost between them is less than 10%, not significant enough to encourage conservation by the DNR's standards. We should consider creating more usage blocks with significant cost increases between them, so that residents who conserve water and stay within the lower usage tiers will be rewarded by paying significantly less than residents who don't. For example, we could look at rate structures that create additional usage blocks under 30,000 gallons, with the highest rate for usage of more than 30,000 gallons (and increasing by at least 50% over the next highest rate).

2. There are no usage blocks for commercial properties. We should also create a tiered usage block rate structure for commercial properties that meets DNR guidelines. If there is a large disparity in water use among business, the tiers should reflect the range of usage so that small users pay significantly less than large users do.

It's questionable whether a higher summer rate will be any kind of meaningful incentive to conserve for commercial property owners. Is there any evidence that commercial water usage tends to increase in the summer by the same percentage that residential use increases?

3. We might also want to review the base rates in light of the DNR's statement that:

Rate structures often include a service charge (base rate) and a volume based charge. Service charges may cover fixed costs (capital improvements) and the volume charge is often for operation and maintenance costs.

Given that we are more than doubling base rates, we should make sure that we are raising them no more than necessary to cover capital costs. Maintenance and operating costs can properly be funded by the volume/usage rates.

ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: 11/17/08
Item No.: 12.a

Department Approval

City Manager Approval

Christopher L. Miller

W. J. Mahonen

Item Description: Adopting the 2009 Utility Rate Adjustments

BACKGROUND

Over the past several months, City Staff has been reviewing the City's utility operations to determine whether rate adjustments are necessary for 2009. In addition, Staff has also assessed the changes necessary to implement a conservation-based rate structure. The analysis included the City's water, sanitary sewer, storm water drainage, and solid waste recycling operations.

The analysis entailed a review of:

- ☐ Fixed costs including personnel, supplies and maintenance, and depreciation
- ☐ Variable costs including the purchase of water from the City of St. Paul, water treatment costs paid to the Metropolitan Council, and recycling contractor costs.
- ☐ Capital replacement costs
- ☐ Current customer base, rates, and rate structure

On September 15, 2008, the City Council adopted the 2009 Preliminary Budget for each of the operations noted above. The remainder of this report summarizes the rate adjustment necessary to accommodate the budget, and scheduled capital replacements over the next 10 years.

Water Operations: The City's water operation provides City customers with safe potable water, as well as on-demand water pressure sufficient to meet the City's fire protection needs. The City purchases its water supply from the City of St. Paul, which remains the single largest operating cost to the water operation. It is estimated that our wholesale water purchase costs will increase approximately 3-4%. In addition, the City's internal operating costs are expected to increase by approximately 5% due to higher motor fuel, insurance, and other operating costs.

To facilitate a change to a conservation-based rate structure, significant changes in the water rates need to occur. In essence, the portion of the rates designed to offset the City's fixed water costs need to increase substantially. However, the variable rate portion can be lowered. Greater detail is provided below.

The Water Fund is in a relatively weak financial position compared to other utility funds and even the City's General Fund. Sustained increases in water rates will be needed for the foreseeable future to improve this condition.

33 Sanitary Sewer Operations: The City maintains a sanitary sewer collection system to ensure the general
34 public's health and general welfare. The single largest operating cost to the sanitary sewer operation is the
35 treatment costs paid to the Metropolitan Council Environmental Services Division (MCES). The MCES
36 has notified us that our treatment costs are expected to increase by approximately 4% in 2009. In addition,
37 the City's internal operating costs are expected to increase by approximately 5% reflecting higher motor
38 fuel, insurance, and other operating costs.

39
40 Like the water operation; to facilitate a change to a conservation-based rate structure, significant changes in
41 the sanitary sewer rates need to occur. The portion of the rates designed to offset the City's fixed sanitary
42 sewer costs need to increase substantially, whereas the variable rate portion can be lowered.

43
44 The Sanitary Sewer Fund is in good financial condition which has allowed for lower-than-inflation rate
45 increases over the last 5 years. However, planned capital replacements over the next 10 years will
46 necessitate a rate increase in 2009.

47
48 Storm Water Drainage Operations: The City provides for the management of storm water drainage to
49 prevent flooding and pollution control, as well as street sweeping and the leaf pickup program. The storm
50 sewer costs are expected to be higher than in previous years, due to an increase in the planned capital
51 replacement of stormwater systems, as well as higher costs for motor fuel, depreciation, and other operating
52 costs.

53
54 Like the Sanitary Sewer Fund, the Storm Water Drainage Fund is in good financial condition which has
55 allowed for lower-than-inflation rate increases over the last 5 years. However, planned capital
56 replacements over the next 10 years will necessitate rate increases in 2009.

57
58 Recycling Operations: The recycling operation provides for the contracted curbside recycling pickup
59 throughout the City. The primary operating cost is the amounts paid to a contractor to pickup recycling
60 materials. Thanks to strong revenue sharing dollars being recouped, no rate increase will be needed for
61 2009 for single family homeowners. However, based on current amounts charged by Eureka for multi-
62 family homes, a rate increase will be needed.

63 64 Water Conservation Measures

65 Based on an analysis of the City's water customers, it appears that the Roseville residents are already
66 consuming less water than residents in many other communities. This is likely due to the fact that
67 relatively few residential properties in Roseville have irrigation systems, which is in contrast to some 2nd
68 and 3rd ring suburbs. It may also be the result of having a relatively lower population per household.
69 However, there are additional measures that can be taken to encourage water conservation even further.

70
71 To provide an even greater incentive to conserve water, Staff is recommending two changes to the City's
72 water rate structure; a tiered water rate structure, and a summer usage rate

73
74 Currently, all water users pay the same rate regardless of the amount they use. It is recommended that a
75 tiered rate be implemented that would charge residential users that consume in excess of 30,000 gallons per
76 quarter, a 10% rate premium. Based on current customer behavior, this would impact 10-15% of the City's
77 residential customers. A tiered rate for commercial customers is not recommended given the large disparity
78 in usage among those customers. A tiered water rate would encourage households to take year-round
79 measures such as; installing water-saving devices, and taking shorter showers.

It is also recommended that the City implement a summer usage rate that would also carry a 10% premium. For residential properties, this would apply for all usage in excess of 30,000 gallons per quarter during the summer months. By applying it only to usage in excess of 30,000 gallons, we ensure that those households that do not water their lawn aren't penalized by paying more for general household use. For commercial properties, it would apply to all usage during the summer months. A summer usage rate would encourage both residential and commercial properties to reduce the water used for irrigation purposes.

POLICY OBJECTIVE

An annual review of the City's utility rate structure is consistent with governmental best practices to ensure that each utility operation is financially sound. In addition, moving to a conservation-based rate structure is consistent with the goals and strategies identified in the Imagine Roseville 2025 initiative.

FINANCIAL IMPACTS

Based on the 2009 Preliminary Budget and the Staff-recommended rate increases, a typical homeowner will pay approximately \$130 per quarter, an increase of \$6.35 or 5%. Additional detail is shown in the tables below.

Based on the 2009 recommended rates, the following impact will be realized on an average users' quarterly utility bill.

Single Family Homes

Service	2008	2009	\$ Change	% Change
Water – base fee	\$ 13.00	\$ 27.75	\$ 14.75	
Water – usage fee	51.70	40.70	(11.00)	
Sanitary Sewer – base fee	13.35	23.35	10.00	
Sanitary Sewer – usage fee	34.10	26.40	(7.70)	
Storm Sewer	5.45	5.75	0.30	
Recycling	5.90	5.90	-	
Total	\$ 123.50	\$ 129.85	\$ 6.35	5.1 %

** Based on an average consumption of 22,000 gallons per quarter.

Single Family Homes – with Utility Discount

Service	2008	2009	\$ Change	% Change
Water – base fee	\$ 7.90	\$ 18.00	\$ 10.10	
Water – usage fee	35.25	27.75	(7.50)	
Sanitary Sewer – base fee	8.30	14.55	6.25	
Sanitary Sewer – usage fee	23.25	18.00	(5.25)	
Storm Sewer	5.45	5.75	0.30	
Recycling	5.90	5.90	-	
Total	\$ 86.05	\$ 89.95	\$ 3.90	4.5 %

** Based on an average consumption of 15,000 gallons per quarter.

Discount is approximately 38% less than the standard rate.

Commercial Property

Service	2008	2009	\$ Change	% Change
Water – base fee	\$ 25.50	\$ 55.00	\$ 29.50	
Water – usage fee	470.00	480.00	10.00	
Sanitary Sewer – base fee	29.15	51.00	21.85	
Sanitary Sewer – usage fee	550.00	550.00	-	
Storm Sewer	252.45	266.40	13.95	
Recycling	-	-		
Total	\$ 1,327.10	\$1,402.40	\$ 75.30	5.7 %

** Based on an average consumption of 200,000 gallons per quarter, with a 1 ½" meter, and occupying 3 acres.

STAFF RECOMMENDATION

Based on the increasing costs noted above, and in an effort to implement a conservation-based rate structure, Staff is recommending rate adjustments as shown in the attached resolution.

REQUESTED COUNCIL ACTION

Adopt the attached resolution establishing the 2009 Utility Rates.

Prepared by: Chris Miller, Finance Director

Attachments: A: Resolution establishing the 2009 Utility Rates

EXTRACT OF MINUTES OF MEETING OF THE
CITY COUNCIL OF THE CITY OF ROSEVILLE

* * * * *

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Roseville, County of Ramsey, Minnesota was duly held on the 17th day of November, 2008 at 6:00 p.m.

The following members were present:
and the following were absent:

Member introduced the following resolution and moved its adoption:

RESOLUTION _____

RESOLUTION ESTABLISHING THE 2009 UTILITY RATES

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Roseville, Minnesota, the water, sanitary sewer, storm drainage, and recycling rates be established for 2009 in accordance with Schedule A attached to this Resolution.

The motion for the adoption of the foregoing resolution was duly seconded by member

and upon a vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

WHEREUPON, said resolution was declared duly passed and adopted.

148 State of Minnesota)
149) SS
150 County of Ramsey)

151
152 I, undersigned, being the duly qualified City Manager of the City of Roseville, County of Ramsey, State of
153 Minnesota, do hereby certify that I have carefully compared the attached and foregoing extract of minutes
154 of a regular meeting of said City Council held on the 17th day of November, 2008 with the original thereof
155 on file in my office.

156
157 WITNESS MY HAND officially as such Manager this 17th day of November, 2008.

158
159
160
161
162
163
164
165

City Manager

William J. Malinen

Seal

Schedule A

Water Base Rate

Category	2008 Base Rate	2009 Base Rate
Residential	\$ 13.00	\$ 27.75
Residential – Sr. Rate	7.90	18.00
Non-residential		
1.0" Meter	17.05	27.75
1.5" Meter	25.50	35.00
2.0" Meter	50.95	55.00
3.0" Meter	102.10	105.00
4.0" Meter	204.10	210.00
6.0" Meter	\$ 408.15	\$ 420.00

Water Usage Rate

Category	2008 Usage Rate	2009 Usage Rate
Residential; Up to 30,000 gals./qtr	\$ 2.35	\$ 1.85
Residential; Over 30,000 gals./qtr – winter rate *	2.35	2.00
Residential; Over 30,000 gals./qtr – summer rate **	2.35	2.10
Non-Residential – winter rate	2.35	2.40
Non-Residential – summer rate **	\$ 2.35	\$ 2.65

* Residential high water usage rate is 10% higher than basic rate

** Summer rate is 10% higher than highest winter rate for each property category

Sanitary Sewer Base Rate

Category	2008 Base Rate	2009 Base Rate
Residential	\$ 13.35	\$ 23.35
Residential – Sr. Rate	8.30	14.55
Residential – Multi family	9.20	16.10
Non-residential		
5/8" Meter	9.75	17.05
1.0" Meter	19.50	34.15
1.5" Meter	29.15	51.00
2.0" Meter	48.60	85.05
3.0" Meter	97.30	170.30
4.0" Meter	194.70	340.75
6.0" Meter	\$ 389.40	\$ 681.45

Sanitary Sewer Usage Rate

Category	2008 Usage Rate	2009 Usage Rate
Residential	\$ 1.55	\$ 1.20
Non-residential	\$ 2.75	\$ 2.75

Stormwater Rates

Category	2008 Flat Rate	2009 Flat Rate
Single Family & Duplex	\$ 5.45	\$ 5.75
Multi-family & Churches	42.05	44.40
Cemeteries & Golf Courses	4.20	4.45
Parks	12.65	13.35
Schools & Comm. Centers	21.05	22.20
Commercial & Industrial	\$ 84.15	\$ 88.80

Note: Stormwater rates are based on a per lot basis for single-family and duplex properties, and on a per acre basis for all other properties.

Recycling Rates

Category	2008 Flat Rate	2009 Flat Rate
Single Family	\$ 5.90	\$ 5.90
Multi Family (per unit)	\$ 3.25	\$ 4.00

Meter Security Deposit

Category	2008 Flat Rate	2009 Flat Rate
5/8" Meter	\$ 75.00	\$ 75.00
1.0" Meter	120.00	120.00
1.5" Meter	300.00	300.00
2" Meter	\$ 400.00	\$ 400.00

Larger meters and hydrant meters are evaluated on the basis of meter cost and consumption. A deposit is computed accordingly.

ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: 3/23/2009
Item No.: 13.b

Department Approval

Christopher K. Miller

Acting City Manager Approval

Christopher K. Miller

Item Description: Discuss 2009 Budget Adjustment

BACKGROUND

On December 15, 2008, the City Council adopted the Final 2009 Budget. As with previous year's budgets, the 2009 Budget carried a number of revenue and expenditure assumptions which are based on prior years' results, expected trends, and projections based on inputs from a variety of sources. Among the assumptions made was that the City would receive from the State of Minnesota, approximately \$400,000 in Market Value Homestead Credit (MVHC) in 2009. These monies are used to support police, fire, streets, parks & recreation, and administrative and finance functions.

At the time the 2009 Budget was adopted, it was acknowledged that the State of Minnesota was facing a projected budget shortfall but the magnitude of that shortfall and its impact on MVHC was unknown. The fate of the City's MVHC aid is still unknown, but all indications suggest that the City will lose its allotment for 2009 and possibly beyond.

In recognition of the expected loss of MVHC, it is prudent for the City to publicly acknowledge the impact and to make budget adjustment as necessary. While the Council can choose to take any number of actions in response to this, it is suggested that the Council first give consideration to the following options in offsetting the loss:

- 1) Use cash reserves
- 2) Make temporary or short-term budget cuts
- 3) Make structural or long-term budget cuts

Each of these options is discussed further below.

Cash Reserves

MVHC revenues are deposited into the tax-supported programs; primarily the General and Parks & Recreation Funds. For 2009, the City could choose to offset the loss in MVHC by using reserves from these funds. However, both of these funds have cash reserves that are already below industry-recommended levels, as well as the amounts prescribed in the Council-adopted Cash Reserve Policy. In total, the General and Parks & Recreation Funds are approximately \$3 million below recommended levels. Using reserves further will only weaken these Funds' ability to generate interest earnings and respond to contingencies and unforeseen circumstances.

Temporary or Short-Term Budget Cuts

The Council could choose to use short-term measures such as leaving employee positions temporarily vacant, reducing overtime, delaying vehicle and equipment purchases, or reducing Staff training and conferences.

However, this would have the effect of spreading an increased workload over less Staff, and effectively prohibiting the City from realizing the optimal value of its vehicles and equipment. While this approach may offset the loss of MVHC for 2009, it would not necessarily provide a viable option beyond 2009. In short, it would not be sustainable.

Structural or Long-Term Budget Cuts

Finally, the Council could choose structural or long-term measures such as; organizational restructuring that result in the elimination of employee positions, eliminating programs and services, or reducing service levels.

This option presents the most viable option for ensuring financial and operational sustainability. It will better equate the public's ability or willingness to pay for services with the actual demand for those services.

Potential 2009 Budget Cuts

In recognition of the expected loss in MVHC in 2009, and possibly beyond, City Staff has compiled a list of potential spending cuts. These cuts are summarized in *Attachment A*. Bear in mind, that the proposed cuts were based on the premise that the impact from the loss of MVHC should be borne by each department on a proportionate basis based on the 2009 Budget. This represents only one of several formulas that could be used.

City Staff will be present at the meeting to address any Council inquiries and impacts from any spending cuts.

POLICY OBJECTIVE

It is recommended that the City publicly acknowledge the expected loss of MVHC and its potential impact.

FINANCIAL IMPACTS

The City expects to lose \$400,000 in MVHC in 2009, and possibly beyond; creating a budget shortfall in the property tax-supported programs.

STAFF RECOMMENDATION

Not applicable.

REQUESTED COUNCIL ACTION

City Staff is seeking direction on whether to make cost-cutting adjustments to the 2009 Budget.

Prepared by: Chris Miller, Finance Director
Attachments: A: Summary of Potential 2009 Budget Reductions

**Attachment A –
List of Potential 2009 Budget Reductions**

The table below summarizes the potential 2009 Budget Reductions.

Division / Function	Item	Budget Reduction/ Savings
City Council	Advertising	\$ 500
City Council	Conferences	1,000
City Council	Employee recognition	500
City Council	Worksession expenses	200
Human Rights Commission	General expenses	250
Ethics Commission	General expenses	250
Administration	Citywide employee training	4,000
Administration	Employee career dev. training	3,000
Administration	Position advertising	5,000
Administration	Professional services	5,000
Administration	Temporary employees	3,000
Elections	Supplies and materials	960
Legal	Professional services	5,675
Contingency	Reduced contingency	6,967
Finance / Accounting	Reduced reception desk duties	16,260
Central Services	Reduced color copying	2,253
Insurance	Reduced internal charges	2,357
Building Maintenance	Professional services	20,000
Engineering	ROW, erosion control mgmt.	20,000
Street Maintenance	6-month vacancy in Staff position	31,148
Parks & Recreation	Staff reorganization, reduction of 1.5 FTE's	75,000
Parks & Recreation	Program and service level cuts	36,000
Parks & Recreation	Reduce PIP	6,000
Pathway Maintenance	Program and service level cuts	4,124
Boulevard Maintenance	Program and service level cuts	1,767
	Subtotal	\$ 251,211

**Attachment A –
List of Potential 2009 Budget Reductions**

Division / Function	Item	Budget Reduction/ Savings
Police	Leave Police Officer position vacant	\$ 64,539
Police	Lost citation revenue	5,994
Police	Reduction of 2 CSO positions	35,390
Police	Family Violence Network	6,050
Police	Explorer Program	1,285
Police	Junior Badges	1,000
Police	McGruff	1,600
Police	Digital Interview Room equipment	20,000
Police	National Night Out	2,000
Police	City Hall Open House materials	600
Police	Citizen Park Patrol Shirts	300
Police	LEC Range	1,500
Police	Professional services	19,644
Police	Hiring physical / psych tests	2,725
Police	IAWP Conference	1,675
Police	Administrative tickets	1,304
Police	All Other Conferences	8,755
Fire	Reduce on-duty staffing	48,448
	Subtotal	\$ 222,809
	Grand Total	\$ 474,020

As the tables above indicate, City Staff have identified in excess of \$400,000 in recognition of the last-minute cuts that were made to various operating budgets late last year, but were not subject to the same cost-cutting allocation formula that is being used for these purposes.

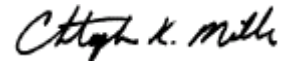
REQUEST FOR COUNCIL ACTION

Date: 03/23/2009
Item No.: 13.c

Department Approval



Acting City Manager Approval



Item Description: 2030 Comprehensive Plan Status Update and Next Steps

1.0 BACKGROUND

- 1.1 On January 26, 2009, the Roseville City Council granted preliminary approval of the 2030 Comprehensive Plan and staff has submitted the plan to the Metropolitan Council for its review of the plan. It is anticipated that the agency will complete its review and that the plan will be brought back to the City Council for final adoption in spring 2009.
- 1.2 State statutes require that City's review their official controls as part of the decennial comprehensive plan updating process and, if necessary, revise these control to make them consistent with the comprehensive plan; the statute allows the city nine months from the date of final adoption to complete this task. The official controls identified in Chapter 11 of the Comprehensive Plan are zoning, subdivision, and related ordinances, public ways and public property, and master plans.
- 1.3 In preparation for the review of the Zoning Code, the City has allocated \$35,000 in its 2009 budget from the Community Development Enterprise Fund to hire a consultant to assist with the revision of the City's Zoning Code. Staff foresees the consultant serving as the zoning expert to help frame the overall code and having City staff to undertake much of the code writing.
- 1.4 Staff has prepared a draft request for qualifications (Attachment A) and has taken it to the Planning Commission for its review. On February 4, 2009, the Planning Commission unanimously passed a motion recommended that the City Council authorize staff to send the request for qualifications to consulting firms. Attachment B are the meeting minutes from the Planning Commission meeting.
- 1.5 Chapter 11 of the 2030 Comprehensive Plan identifies that the City Council needs to determine if any of the pre-2009 master plans should be addressed in the updated comprehensive plan. It states: "For master plans adopted before 2009, the City Council shall review each plan and determine whether each one should be addressed in the Comprehensive plan, and if so, how it will be addressed in the Comprehensive Plan pursuant to this policy."

2.0 POLICY OBJECTIVES

- 2.1 Undertaking a thorough review and updating of the City's official controls at this time will provide an opportunity to better link them to the community goals and objectives identified in both the 2030 Comprehensive Plan and Imagine Roseville 2025.

3.0 FISCAL IMPACTS

31 3.1 The hiring of a consultant was part of the 2009 Community Development budget, \$35,000 was
32 allocated for this purpose. There are not any other anticipated fiscal impacts due to this project.

33 4.0 STAFF RECOMMENDATIONS

34 4.1 Zoning Code Update: The City of Roseville's has not undertaken a comprehensive update or
35 revision of its Zoning Code since its adoption in May 1959. Over time this code has had
36 innumerable revisions to maintain functionality. The result of this is a code that is oftentimes
37 difficult to understand, internally inconsistent, and unwieldy to administer.

38 4.1.1 Staff is recommending that the update to the Zoning Code should implement "form-
39 based" or a hybrid style code for all or a subset of the zoning districts instead of
40 traditional Euclidian zoning. (The current code is a Euclidean-type code). The 2030
41 Comprehensive Plan categorized future land uses based on the desired scale of new
42 development, not on a specific set of uses. The regional business, community business,
43 and neighborhood business lend themselves to utilizing form-based code, which instead
44 of relying on a series of regulations on use, clearly sets forward a set of design
45 regulations that achieve the desired outcomes for the specific district. A restaurant,
46 coffee shop, or retail store could be in any of these categories, but the key is achieving
47 the neighborhood, community, or regional type development how the buildings housing
48 these uses are designed. Attachment C is background information on form-based code.

49 4.1.2 Staff recommends a two-step request for qualifications/request for proposal process
50 would be appropriate for this project. Attachment A is a draft request for qualifications
51 document, which includes a project timeline. Upon receipt qualification packages, staff
52 will review the submission and select up to five firms to seek a full proposal. A request
53 for proposal will be prepared at a later date and brought to the City Council for approval.
54 Based on the proposal packages and interviews, the City Council would authorize the
55 hiring of the preferred consultant.

56 4.1.3 Staff also recommends significant involvement of both the Planning Commission and
57 City Council with the update of the zoning code. Working with the consultant, staff
58 envisions breaking the code into related segments (e.g. residential districts, commercial
59 districts, environmental regulation, etc.). The consultant and staff will work together to
60 create draft sections and bring them to the Planning Commission and City Council.
61 Based on the input revisions would be made and a formal public hearing would be held
62 with the Planning Commission and brought to the City Council for formal adoption.

63 4.2 Master Plan Review: Past Roseville Comprehensive Plans have included, through adoption, an
64 assortment of related planning documents (e.g. master plans, streetscape plans, and roadway
65 plans). At this time, the 2030 Comprehensive Plan does not include any of these documents;
66 however, as described in Item 1.5 of this report, it sets forth a process for the City Council to
67 specifically review pre-2009 master plans for potential inclusion on the Comprehensive Plan
68 Update. The following are the documents that are directed to be reviewed: Twin Lakes Business
69 Park Master Plan, 1998 James Addition Report, Arona/Hamline Master Plan, City Center Plan,
70 and Cornerstone Program.

71 4.2.1 As review of these master plans for inclusion in the 2030 Comprehensive plan is not
72 contingent upon any Metropolitan Council review of the plan, the City Council should
73 undertake determining if and how each of these documents should be addressed in a
74 future revision to the Comprehensive Plan after final adoption of the plan. Staff proposes
75 that it review each of these plans for consistency with the adopted plan and make

76 recommendations to the Council as to their continued relevancy today. Upon
77 determination of relevancy, staff would return to the Council with a recommendation as
78 to how to integrate key items of the plan into the Comprehensive Plan after it has been
79 adopted by the City Council.

80 **5.0 REQUESTED COUNCIL ACTION**

81 5.1 By motion, authorize staff to seek qualifications from consultants to assist with the preparation
82 of revisions to the City's Zoning Code.

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84 Prepared by: Jamie Radel, Economic Development Associate

Attachments: A. Draft Request for Qualifications
B. February 4, 2009 Planning Commission Minutes
C. Background information on form-based code

Zoning Ordinance Update *Request for Qualifications*

City of Roseville, Minnesota

1. Introduction

The City of Roseville is seeking qualifications from consulting teams experienced in the creation and revision of municipal zoning codes. The City has not undertaken a comprehensive rewriting of its zoning code since its adoption in May 1959. Over the last 50 years, innumerable revisions have been cobbled on to the original ordinance; however, the cumulative effect of this process is the creation of a code that is difficult to understand and often cumbersome to administer. A copy of the existing zoning code can be found at www.ci.roseville.mn.us/DocumentView.asp?DID=46.

The goal of this project is to have a zoning code that:

- Promotes high quality residential renovation and development, creative infill projects, and innovative commercial and industrial redevelopment to allow the community to prosper into the future
- Advances the City's efforts to become a more environmentally sustainable community
- Integrates design standards through all zoning districts
- Creates a code that is can be understood by the general public, administrable by City staff and elected officials, and is constant with the City's 2030 Comprehensive Plan

To achieve these goals, the City anticipates that the zoning code must undergo a significant revision, including reorganization of the code, creation of new zoning districts, amendments to existing districts, and an overhaul of the environmental management sections. As part of this updating process, the City would like to explore the use of form-based or a hybrid code in order to better regulate design and land use within several of the future land use categories. As part of its 2030 Comprehensive Plan, the City has created several new future land use categories including Community Mixed Use, Neighborhood Commercial, Community Commercial, Regional Commercial, and Office. As defined, these new categories shift the City's future land use focus from a description of use to a description of development scale and form.

As Roseville is located within the jurisdiction of the Metropolitan Council, the City must make its zoning code consistent with its adopted plan within nine months of its final approval; final approval of the Comprehensive Plan is expected to occur during spring 2009.

2. General Scope of Services

The scope of the project can be summarized in to three main categories:

- General review of the Zoning Code
- Code revision and development
- Code adoption process

A detailed scope of services will be provided as part of the request for proposal process.

The City has budgeted \$35,000 to undertake this work in its 2009 budget. It is anticipated that city staff will work closely with the selected consulting team throughout the revision process in order to complete it in a cost-effective manner.

3. Selection Process and Tentative Timeline

Submittals will be reviewed by a selection committee comprised of city staff. The committee will select a short list of individuals/teams from which to request a full proposal. Qualified individuals/teams will have extensive experience in writing and implementing zoning code, demonstrated experience in both traditional Euclidean and form-based code development, and the ability to work affectively with city staff, advisory commissions, and city councils.

Qualifications Due:	April 15, 2009
Review of Qualifications:	April 16- 21, 2009
Recommendation to Council:	April 27, 2009
RFP to Selected Firms:	April 28, 2009
Proposal Due:	May 22, 2009
Interviews:	May 1-5, 2009
Recommendation to Council:	June 15, 2009
Complete Work:	Winter 2010

4. Submission Requirements and Deadline

The qualifications package is limited to 20 pages and must include:

- A description of the team and the team's capacity to complete the work within the required timeframe
- Project descriptions of similar projects
- Resumes of team members

Send 5 copies and an electronic version of the qualifications package to:

Patrick Trudgeon
Community Development Director
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113

All qualification packages must be received by 4:30 p.m. on Friday, March 13, 2009.

9. Contact Information

If you have questions regarding the request for qualifications, please contact Community Development Director Patrick Trudgeon at pat.trudgeon@ci.roseville.mn.us or at (651) 792-7071.

Extract of February 4, 2009, City of Roseville Planning Commission Meeting

- a. **PROJECT FILE 0017: Review a Request for Qualifications (RFQ) to be sent to several consultants in preparation for rewriting Roseville's Zoning Ordinance.**

Mr. Paschke provided staff's proposed process for a two (2) step Request for Qualifications (RFQ's) for hiring a consultant to assist staff and the Planning Commission with revision of the City's Zoning Code, in accordance with the updated Comprehensive Plan.

Discussion included the role of the Commission and applicable timetables for the consultant and Commission within the proposed work plan and to facilitate public hearings throughout the process and other business before the Commission; and the level of code amendments to be considered with some being more detailed or substantial than other

MOTION

Member Doherty moved, seconded by Member Bakeman to RECOMMEND TO THE CITY COUNCIL to authorize staff to seek qualifications from consultants to assist with the preparation of revisions to the city's zoning code.

Ayes: 7

Nays: 0

Motion carried.

LANDWR

Place Making with Form-Based Codes

MARY E. MADDEN AND
BILL SPIKOWSKI

“Form-based codes” are on the minds of developers, planning professionals, and even citizens.

Most references to them are enthusiastic, but some express fear and trepidation. What are these codes really about?

More user friendly than conventional zoning, form-based codes are written in plain English and make liberal use of matrices, diagrams, and other illustrations.

FORM-BASED CODES ARE land development regulations that emphasize the future physical form of the built environment. This alone sparks public interest in the arcane field of zoning codes. Other enthusiasm stems from a widespread distrust of today's fragmented processes for approving new development—the system is broken on many levels, and new approaches are desperately needed.

Form-based codes are becoming increasingly popular in communities seeking practical ways to grow smarter. Most zoning and subdi-

vision ordinances actually promote the sprawling development patterns that citizens oppose. Developers often agree with the citizens, yet find that mixed uses and pedestrian-friendly streets are difficult, if not illegal, to build.

Large cities have begun to consider form-based codes. In Denver, for instance, officials have started to rewrite their entire zoning code after discovering that it contains disincentives for the very types of development the city is seeking. Miami is in the midst of rewriting its entire code, using form-based

techniques on a larger scale than ever before attempted.

But even with the enthusiasm they currently generate, form-based codes often are not well understood. How exactly do they differ from other regulatory techniques? If a city wants to evaluate form-based coding, what do elected officials, developers, and planning staffers need to know?

The Basics

Form-based code is a new term for the evolving techniques that regulate the development of land for the purpose of achieving a specific urban form. Cities and counties across the country are finding that conventional zoning is not fulfilling this essential goal of town planning.

The failure of zoning to carry out physical plans for a community's future

Building Envelope Standards: Shopfront Colonnade Sites

Height

1. The height of the principal building is measured in stories.

2. Each principal building shall be at least four (4) stories in height, but no greater than ten (10) stories in height, except as otherwise provided on the site plan.

Building Height

1. The height of the principal building is measured in stories.

2. Each principal building shall be at least four (4) stories in height, but no greater than ten (10) stories in height, except as otherwise provided on the site plan.

Siting

1. The building shall be set back from the street by a minimum of ten (10) feet.

2. The building shall be set back from the street by a minimum of ten (10) feet.

Facade

1. The building facade shall be built to the street and shall be at least thirty (30) feet in height.

2. The building facade shall be built to the street and shall be at least thirty (30) feet in height.

Elements

1. The building facade shall be built to the street and shall be at least thirty (30) feet in height.

2. The building facade shall be built to the street and shall be at least thirty (30) feet in height.

Fenestration

1. The building facade shall be built to the street and shall be at least thirty (30) feet in height.

2. The building facade shall be built to the street and shall be at least thirty (30) feet in height.

Use

1. The building facade shall be built to the street and shall be at least thirty (30) feet in height.

2. The building facade shall be built to the street and shall be at least thirty (30) feet in height.

Parking Structure Height

Where a parking structure is within 40 feet of any principal building (such as 20'0" from the portion of the structure that does not extend the building back or forward setback).

Ground Story Height

1. The ground story finished floor elevation shall be equal to or greater than the adjacent street sidewalk elevation up to a maximum finished floor elevation of eighteen (18) feet.

2. The ground story shall have a minimum finished floor elevation of eighteen (18) feet.

3. The maximum story height for the ground story is twenty (20) feet.

Upper Story Height

1. The maximum finished floor elevation for the upper story shall be no greater than the maximum finished floor elevation of the ground story plus twenty (20) feet.

2. The maximum finished floor elevation for the upper story shall be no greater than the maximum finished floor elevation of the ground story plus twenty (20) feet.

Buildable Area

1. The building shall be set back from the street by a minimum of ten (10) feet.

2. The building shall be set back from the street by a minimum of ten (10) feet.

Scale Lot Setbacks

On a lot where a common lot line is shared with a single-family residential zoning district, the principal building shall be set back from the lot line by a minimum of ten (10) feet.

Garage and Parking

1. GARAGE ENTRANCE OR DRIVEWAYS shall be located at least twenty (20) feet away from any street corner or street intersection on the same block, unless otherwise designated on the REGULATORY PLAN.

2. GARAGE ENTRANCE shall have a clear height of no greater than twenty (20) feet and a clear width of no greater than twenty (20) feet.

Colonnades

Where designated on the REGULATORY PLAN, COLONNADES shall:

1. Have a minimum finished floor elevation of eighteen (18) feet (excepting those signs and other lighting as specified in the Code).

2. Have a minimum finished floor elevation of eighteen (18) feet (excepting those signs and other lighting as specified in the Code).

3. Have a minimum finished floor elevation of eighteen (18) feet (excepting those signs and other lighting as specified in the Code).

4. Have a minimum finished floor elevation of eighteen (18) feet (excepting those signs and other lighting as specified in the Code).

5. Have a minimum finished floor elevation of eighteen (18) feet (excepting those signs and other lighting as specified in the Code).

Street Walls

A vehicle entry gate no wider than eighteen (18) feet or a pedestrian entry gate no wider than six (6) feet shall be provided within any required STREET WALL.

TES

should not be surprising, because zoning originated as a means to isolate and segregate land uses. Eighty years after the U.S. Supreme Court authorized local governments to zone land, zoning practice is still mired in solving problems of that era rather than the current one.

Some land uses must be segregated because they create excessive noise or truck traffic. However, many other land uses can coexist and benefit from their proximity to each other, yet are forbidden from doing so because the techniques of zoning by use have become so entrenched as to seem utterly natural to citizens and elected officials alike.

One key to the harmonious mixing of land uses is to arrange them on streets and blocks that function together to create an attractive “public realm.” This realm may be a dignified park or plaza, but it is most often a street of moderate dimensions and traffic flow with sidewalks and rows of street trees.

In urban settings, frontyards are small or nonexistent; in less intensive settings, they are ample and effectively extend the public realm to include the frontyards on both sides. When buildings and the public realm are consistently shaped in this manner, the uses within individual structures are far less important than in conventional suburban configurations.

Form-based codes regulate the key aspects of urban form, such as the height of buildings, how close structures are to the street, and windows and doors on walls facing streets and other public spaces. They also govern the streets themselves so that the streets and buildings work together to create a desirable public realm—adding value to every property in the process.

Form-based codes are sometimes confused with design guidelines, which try to control how buildings look. Design guidelines emerged from the historic preservation world

Downtown Kendall

THIRTY-FIVE YEARS AGO, Dadeland Mall's first buildings emerged on Kendall Drive, a narrow country road just beyond the Miami metropolis. Fast-forward to today, when two transit stops are located within walking distance—but who would walk clear across a mall parking lot in the Florida heat?

Now that the region has sprawled as far as it can go toward the Everglades, great sites like the 338 acres (136.8 ha) that include the 1.4 million-square-foot (130,232-sq-m) Dadeland Mall seem wasted on a low-slung automobile-dominated pattern.

Redevelopment planning was instigated by a local business group, Chamber South. The resulting plan seemed unreal at the time. The parking lots and single-use apartment buildings were gone; the mall remained but was hidden behind new structures.

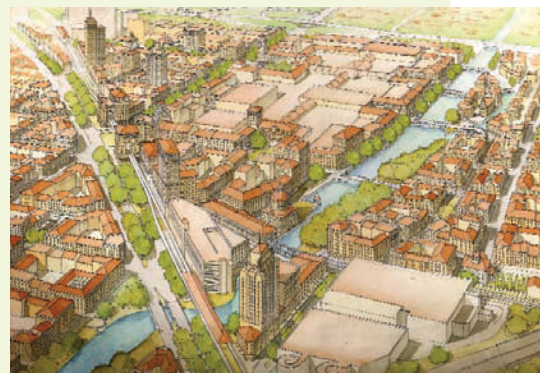
The master plan featured mixed-use buildings fronting on a network of interconnected streets, parking garages placed

and are well suited to evaluating how a renovation or new structure would fit into the context of a historic district. Design guidelines are also used to influence the architectural style of buildings in other contexts.

Design guidelines usually require laborious reviews by public agencies, eliminating the predictability that is the hallmark of a good regulation. Well-written form-based codes are more objective and easier to implement than design guidelines and they avoid most of the types of quarrels that erupt over architectural style.

Beyond Greenfield Development

Initially, form-based codes were developed as sets of instructions for developers to use when developing greenfield sites. Later, they were



The vision for downtown Kendall.

mid-block to replace the vast expanses of surface parking, and the transit stops becoming the focal points with the greatest intensity of development.

To implement this vision, a form-based code was adopted by officials of Miami-Dade County in 1999 to replace the prior suburban zoning. Downtown Kendall is now emerging from the ground, remarkably like the 1998 master plan.

adapted through the planned unit development (PUD) process as a regulatory tool for local governments to ensure that promised development patterns were carried out. Gaithersburg, Maryland, for example, used this approach to accommodate the development of the Kentlands during the late 1980s; there was no other regulatory technique available for creating new traditional neighborhoods in that city.

A dozen years ago, form-based codes began being used in redevelopment and revitalization scenarios. Coding techniques had to evolve once the interests of hundreds of different property owners would be affected. West Palm Beach, Florida, adopted a form-based code in 1994 for its entire downtown.

Columbia Pike

ARLINGTON COUNTY, VIRGINIA, has seen explosive development along the Metro (subway) corridors over the past 30 years, while Columbia Pike, the 3.5-mile (5.6-km) “Main Street” for the southern portion of the county, has languished.

Although it is a historic thoroughfare running from the Pentagon to the Arlington/Fairfax County line, its current form resembles strip commercial zones everywhere: an arterial that carries approximately 30,000 vehicles a day, varying in width from four to six lanes and lined primarily with parking lots and low buildings.

Columbia Pike was the most underdeveloped area in a county that is otherwise

built out. County leaders wanted to encourage economic development and also create a mixed-use pedestrian environment that would allow for future light rail or bus rapid transit.

During an intensive two-year visioning process, the county recognized that its regulations would never produce the desired results, a traditional Main Street. The effort led to the adoption of a form-based code in 2003.

The Columbia Pike code is optional—all existing zoning remains in place—with incentives such as expedited review to encourage its use. Since passage, the vast majority of development proposals have opted to use the new form-based code.

historic form of the older sections of town, rather than the sprawl around the edge, and to rebuild “better than before.”

The next frontier for form-based codes is to carry out regional planning. By extending the tools used to regulate urban form in small areas, regional development patterns can also be coded (for instance, laying out interconnected road networks and allowing for regional stormwater management). It is no longer credible to believe that incremental development decisions are sufficient to shape regional growth patterns.

Form-based codes focus on end results—the creation of desirable physical places. They are ideal for jurisdictions seeking a fundamental change in urban form and character—for instance, when redeveloping areas that have become obsolete or which were poorly planned at the outset.

Whether it is a greyfield conversion of a dead mall or revitalization of an aging commercial corridor, a shared physical vision for the desired character is the essential first step. Form-based codes quantify that vision into physical parameters that replace the pre-existing zoning standards.

Typically, the result is the regulation of private and public development to create valuable public spaces that did not exist before. For instance, overly wide streets can be converted into places where pedestrians and commerce can meet to their mutual benefit; new public spaces such as plazas can create centers of attention in homogeneous subdivisions.

Form-based codes can also be used for finer-grained projects, such as infill redevelopment downtown or in bypassed city neighborhoods, or as a tool for regulating new construction in historic districts. These codes can be written to protect the existing urban fabric, or they can serve to transform it.

National Trends

Cities and counties across the country are replacing parts of their conventional zoning with form-based codes, to enable local governments to carry out visionary place-making plans.

One prominent example is in unincorporated Dade County, Florida, where land around the Dadeland Mall, a regional shopping attraction, is being converted into a downtown for the sprawling community of Kendall.



Existing conditions produced by the conventional system along Columbia Pike.



The effect of new standards for the public realm and private building placement.



An illustrated vision for future private development.

In the wake of Hurricane Katrina, many coastal communities are discovering that their historic cores cannot be rebuilt after disaster strikes. The magnitude of the recovery effort

has led many of them to explore a model form-based code known as the SmartCode to sidestep the need for customized codes for each community. The goal is to re-create the

Another is Columbia Pike, where Arlington County, Virginia, officials seek to revitalize an aging commercial corridor that has seen little development over the past 40 years. Even under the current strong market conditions, redevelopment under existing zoning has proven virtually impossible.

In St. Lucie County, Florida, 28 square miles (72 sq km) on the outskirts of Fort Pierce have been planned by county officials for several new towns and villages. A new form-based code has just been adopted to ensure that the towns and villages are built with traditional neighborhoods while the surrounding countryside is preserved for agriculture and habitat restoration.

Municipal officials in Petaluma, California, have created a new vision for Central Petaluma, which has been dominated by freight transport along the Petaluma River and rail lines. A new form-based code has replaced the city's conventional zoning for the entire area and promotes narrower streets, wider sidewalks, and minimum building heights to create urban character near the historic downtown.

Advantages

More user friendly than conventional zoning, form-based codes are written in plain English and make liberal use of matrices, diagrams, and other illustrations.

Form-based codes are written to fulfill a specific physical vision for a place. Which neighborhood patterns should be retained and protected? Which are obsolete and should be replaced? These decisions need to be based on a broad public consensus.

This "upfront" agreement on the desired future, often reached through a public participation charrette or some other visioning method, allows for the creation of precise and objective codes that can remove much of the politics and uncertainty from the approval process.

A code with clear and concise rules can deliver predictability for both the developer and the community. For fundamental issues about the creation of public spaces, such as avoiding blank walls or parking lots along sidewalks, the rules are very strict. Other issues are truly less important for urban form, such as micromanagement of parking or of what uses can take place in each building

St. Lucie County

WAVES OF DEVELOPMENT across Florida are rendering many communities unrecognizable. As the wave began to displace valuable agricultural lands on the outskirts of Fort Pierce in St. Lucie County, it collided with local residents who understood the damage inherent in poorly planned, widely dispersed development.

After growth was temporarily stopped, residents began to realize it was the form of new development—not growth itself—that was their real concern.

Assisted by the Treasure Coast Regional Planning Council, the community and county officials agreed on a master plan for 28 square miles (72 sq km) of farmland. This plan included several new towns and villages surrounded by countryside that would be preserved for agriculture and habitat restoration. A central backbone system for water management would



TREASURE COAST REGIONAL PLANNING COUNCIL

Concept for Towns/Villages/Countryside plan in St. Lucie County.

replace the current system of straight-line agricultural canals that overdrain the land and pollute the Indian River Lagoon.

A new form-based code has just been adopted to ensure that the towns and villages are built with traditional neighborhoods while the surrounding countryside is permanently preserved through the transfer of development rights.

Central Petaluma

CITY OFFICIALS IN PETALUMA, California, have created a new vision for Central Petaluma, a 400-acre (162-ha) area adjacent to Petaluma's historic downtown.

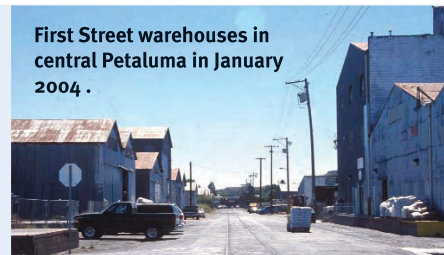
This plan would extend the form and character of the pedestrian-oriented downtown into an area historically occupied by industrial uses that depended on a river-based economy and transport system that no longer exists.

With other parts of Petaluma already built out, this area represented a unique opportunity for new development that could complement the historic downtown and connect it to the river.

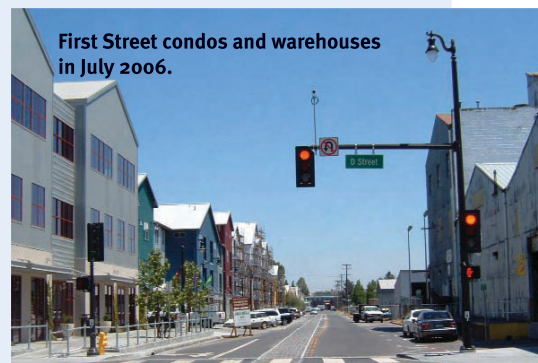
Central Petaluma will contain a range of residential and commercial uses that can coexist in proximity to one another to create a lively urban environment. The historic Petaluma Depot would be restored for passenger service and become the bus transit center while the river itself becomes the focus of civic life.

A new form-based code, based on the model SmartCode, has replaced the city's conventional zoning for the entire area. Dif-

First Street warehouses in central Petaluma in January 2004.



First Street condos and warehouses in July 2006.



FISHER & HALL URBAN DESIGN

ferent sections of the site are coded for varying densities, minimum and maximum building heights, parking areas, and percentages of frontage types. The code clearly describes new streets, open spaces, roads, and even structures facing the river. Of greatest importance, the new code allows for the mixing of stores, homes, and workplaces as found in the historic downtown.

For More Information

- ▷ **Form-based codes:**
www.formbasedcodes.org
- ▷ **Downtown Kendall:** [doverkohl.com/
project_detail_pages/kendall_new.html](http://doverkohl.com/project_detail_pages/kendall_new.html)
- ▷ **Columbia Pike:** See “New Planning Tool Adopted,” *Urban Land*, June 2003, page 32
- ▷ **St. Lucie County:** [tcrpc.org/departments/
studio/st_lucie_charrette/implementation
_schedule.htm](http://tcrpc.org/departments/studio/st_lucie_charrette/implementation_schedule.htm)
- ▷ **Central Petaluma:** [cityofpetaluma.net/
cdd/csp.html](http://cityofpetaluma.net/cdd/csp.html)

over time; those rules are much more lenient than in today’s zoning codes.

A well-written form-based code avoids the typical scenarios facing developers:

- ▷ Wasting time and money on a concept that ends up being unacceptable to a community.
- ▷ Fearing to propose something desirable because too many variances or discretionary approvals would be required.
- ▷ Inquiring as to desirable uses on a site and being told with a shrug to come back with a proposal.

The guessing game is removed when a community writes what is desired into its codes. The new process can replace grueling public hearings in which each proposal is picked apart, redesigned from the dais, or sent back to the drawing board, only to end up with unexpected special conditions or outright denial influenced by whoever shows up at the final public hearing.

When consensus has been built at the beginning of the planning and coding process, and the rules are clear and concise, the approval process can be much quicker, if not absolutely streamlined. As Peter Park, Denver’s planning director, has asked, “Why shouldn’t Denver streamline permitting of development that matches what the city wants?”

Disadvantages

The advantages of form-based codes come with certain costs. Building consensus on a physical vision takes time, patience, and resources—and there is no guarantee of success.

Once a shared vision has been reached, it must be converted into objective code provisions that replace contradictory provisions in the existing ordinances. Without this step, a visionary plan stands little chance of influencing the future of a community.

It is a true test of patience and perseverance for elected officials to stay the course when the inevitable naysayers appear at the last minute and want to rethink the shared vision that they were too busy to help formulate. Developers, who stand to benefit from the new system, often remain silent or even block the new code’s path if they are focused only on their current project rather than the long-term vitality of the community.

Developers who are locked into old development patterns may also object to form-based codes. Change can be difficult; developers of conventional strip centers may admire more intense mixed-use buildings, but fear the risk of a different development pattern or fear out-of-town competitors with more experience with mixed-use buildings or traditional neighborhood development techniques.

The development approval process in much of the United States has proven to be antagonistic, expensive, unpredictable, and unsustainable. Form-based codes are crafted around consensus, straightforward to implement, and built on the ideal of creating places of enduring value. As Arlington developer David DeCamp stated when discussing the Columbia Pike experience, “It helps to begin with the end in mind.”

MARY MADDEN is a principal in the Washington, D.C.-based urban design and town planning firm Ferrell Madden Associates, LLC. **BILL SPIKOWSKI** is a principal in Spikowski Planning Associates, located in Fort Myers, Florida. They are founding board members of the Form-Based Codes Institute.

Date: May 9, 2008

Project Name: Charrette for San Jose District, City of Bisbee

Attention: City of Bisbee: John Charley, Community Development Director; Melanie Greene, Planning Assistant

A PRIMER ON FORM-BASED CODES

“A form-based code is one that is based primarily on “form”—urban form, including the relationship of buildings to each other, to streets and to open space, rather than based primarily on land use. “

A Form-Based Code is a development code that provides the developer/applicant greater flexibility in permitted land uses in exchange for more stringent regulations controlling urban form. These types of codes support mixed-use, pedestrian-friendly and mixed housing development more effectively than conventional codes do because they provide greater guidance on how buildings are expected to face the street, adjacent residential neighborhoods and open spaces. Form-Based Codes are becoming increasingly attractive to municipalities that want greater control over how buildings look and feel. Cities that have adopted Form-Based Codes include Bend and Portland in Oregon; Petaluma, Pleasant Hill, Palo Alto and Hercules in California.

A BRIEF COMPARISON OF CONVENTIONAL CODES AND FORM-BASED CODES

URBAN FORM GENERATING CHARACTERISTICS

CONVENTIONAL CODES

- Include extensive lists of permitted, prohibited and conditional uses by zone. Many land uses in conventional codes lists are outdated and do not reflect the nature of contemporary employment models or dwelling types
- Often disallow a mix of uses
- Prohibit adaptability of buildings to other uses over time
- On zoning maps, land use designations typically begin and end at the center of the street or Right of Way

FORM-BASED CODES

- Consider the building “walls” that frame the Right of Way (often referred to as the “public realm”) as one of the primary determinants of form
- Regulating plan zone designations typically transition at the back of the lot
- The same or similar development standards typically apply to both sides of the street
- Land uses allow a much broader range of uses within a zone or subarea; also allow a greater mix of uses
- Many uses are allowed if they meet performance standards

GRAPHICS AND PROCESS CHARACTERISTICS

CONVENTIONAL CODES	FORM-BASED CODES
• Development standards are not illustrated and in many conventional codes the built result of the development standards is not fully understood and/or has never been tested or modeled • Abstract, hard to understand development standards such as FAR (Floor Area Ratio) are used to measure development capacity on site but do not provide a very clear picture of development that results • Zoning map, land use designations and development standards are the primary tools of the conventional code	• Greater use of graphics to explain community goals and desired urban form to applicants, neighborhood groups and administrators • A Regulating Plan replaces the conventional code zoning map and land use designations; development standards are keyed to the Regulating Plan • Development standards and expected building form is illustrated in plans, sections, 3-D models and/or axonometrics, and photos • Other innovative tools are used by some form-based codes such as Building Types, which codify historic and/or desirable building types. Codes that use this tool include NorthWest Crossing in Bend, Oregon and City of Ventura, California

What are the advantages of Form-Based Codes?

- Form-based codes are better at illustrating community plans and vision
- Building and street design is coordinated
- Urban form is more predictable
- A more gradual transition between adjacent areas with different development intensities is easier to achieve
- Can specify the tapering of height, bulk, massing and lot coverage of buildings toward residential and/or natural edges
- High density development is more carefully designed, attractive and compatible

What are the pitfalls of Form-Based Codes?

- Cities must consider what approving bodies will administer the code and whether current review processes and review bodies will be adequate; rarely is a form-based code able to be administered without some modification
- Some cities have legal restrictions against using illustrations to set development standards; in these cases the illustrations are used to augment text and numerical standards but are not legally binding

What is a Hybrid Code?

- One that incorporates the form-based code approach toward form, but uses the provisions, processes and standards from the current code
- Often take the form of a chapter within the code, similar to a special district or an overlay
- Hybrid codes cross reference other sections of the existing code for development standards such as parking dimensions or landscaping standards

- Hybrid codes are more integrated—not stand alone codes. Some “pure” form-based codes that have been adopted are stand alone codes and because of unresolved administration issues, they are optional for applicants; not mandatory

What are some Form-Based and Hybrid Code fatal flaws?

- When allowed land uses are too complex and don’t allow a mix of uses
- When there is an unresolvable difference between the development capacity allowed by existing zoning and future urban form goals. This is a particular problem with form-based and hybrid codes applied to infill areas
- When there is an unresolvable difference between the existing development standards and future urban form goals
- The vision and plan process must precede the making of a form-based or hybrid code

A BRIEF SUMMARY OF FORM-BASED CODE TYPES

In a form-based code, the development standards that dictate urban form are linked to a Regulating Plan. A Regulating Plan is similar to a zoning map, but with less emphasis on land uses and more emphasis on the building shape, street type and neighborhood character in each zone. Development standards define and shape the public realm by providing pre-set dimensions for every aspect of the site and building.

Form-based codes can take several forms:

- **Street-based** The Regulating Plan locates private realm development standards by street type; that is, the development standards for all site and building characteristics is governed by the site’s relationship to pre-defined street types. In addition to setting the private realm standards, the Regulating Plan defines elements within the public realm (e.g. sidewalks, travel lanes, on-street parking, street trees, street furniture, etc.). This type of form-based code can be useful for areas where streets have not yet been platted.
- **Frontage-based** The Regulating Plan locates private realm design standards by frontage type; that is, the development standards for all site and building characteristics is defined by the edge condition where it meets the primary street (frontage). Frontage-based FBCs may also define street type, but the development standards are not (or not always) tied to street type. This type of form-based code can be useful for areas where streets are already designed and/or built.
- **Street-Frontage Hybrid** Development standards are tied to specific frontage/street combinations.
- **Building Type-based** The Regulating Plan controls the locations of pre-defined building types. The development standards define the configurations, features, and functions of buildings.
- **Transect-based** The Regulating Plan articulates a cross section of street types, frontage types and/or building types along an urban/rural continuum to understand where different uses or building types fit or are inappropriate. The “pure” transect-based FBC uses the SmartCode transect with clearly defined zones from T1 to T6. This system was first created by DPZ (Duany Plater Zyberk).
- **Modified Transect** The concept of the transect is modified to correlate with the existing or zoned local urban to suburban characteristics.

IMPLEMENTATION OPTIONS

Form-based codes replace existing zoning codes and can be either mandatory or optional. There are several options for implementation

- **Integrated** A form-based code can be integrated into the existing code, applied as a “by right” designation to selected zones, and cross-referenced to existing code provisions, such as administrative procedures and/or land uses.
- **Optional parallel** Alternatively, it can take the form of an optional parallel code system--a self-contained special chapter with unique provisions, not cross-referenced to other parts of the code, available as an option in designated zones.
- **Floating zone** Finally, an FBC take the form of a floating zone (either integrated or optional/parallel) which is triggered by an application to rezone a property.

Form-based codes are often confused with design guidelines, however they are not discretionary. While they offer flexibility like design guidelines do, they do so by offering choices between objective standards, rather than by offering multiple ways of meeting an aspirational guideline.



FORM-BASED CODE EXAMPLES FOR SAN JOSE

NorthWest Crossing Prototype Catalogue, Bend, Oregon

This integrated, mandatory building-type-based code (adopted in 2002) has been used to build out an award-winning 500-acre mixed-use, mixed housing neighborhood on the west side of Bend.

Link:

http://www.northwestcrossing.com/Bend_Oregon_Real_Estate/Building_Guides/Prototype_Handbook/

Hercules, California

This integrated, mandatory street-based code (created in 2001) has been used to build out a new town in this California Bay Area town.

Link: <http://www.formbasedcodes.org/images/CentralHerculesFBC.pdf>

Columbia Pike Form-Based Code, Arlington County, Virginia

This integrated, mandatory street-based code (adopted about 2003) has been used to transform 3.5 miles of auto-oriented, region-serving highway to transit-oriented, pedestrian-friendly commercial mixed-use.

Link:

<http://www.arlingtonva.us/Departments/CPHD/Forums/columbia/current/CPHDForumsColumbiaCurrentCurrentStatus.aspx>

Loma Rica Ranch Specific Plan

This developer-driven form-based code, created in 2007, is a good example of how to use a form-based code to identify distinct, complementary neighborhoods. It includes an Architectural Standards section and a well-developed Open Space and Conservation section.

Link: http://www.cityofgrassvalley.com/services/departments/cdd/SDA_LomaRicaRanch.php

Santa Ana Renaissance Specific Plan, Santa Ana, California

This draft Form-Based Code provides a comprehensive example of form-based code approaches, including standards for open space network, streetscapes, building types and architecture.

Link: http://www.santa-ana.org/news/0710_renaissance.asp

OTHER RESOURCES

Form-Based Codes Institute (FBCI)

<http://www.formbasedcodes.org/>

Cleveland-Marshall College of Law



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Back to the Future: Is Form-Based Code an Efficacious Tool for Shaping Modern Civic Life?

By

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Working Paper

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Back to the Future: Is Form-Based Code an Efficacious Tool for Shaping Modern Civic Life?

Lolita Buckner Inniss*

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Abstract

This Essay serves as a critique of the New Urbanism in general and of form-based code in particular as a tool of the New Urbanism. It may be true that form-based code offers more flexibility than traditional zoning schemes and thus may offer some respite from acknowledged ills such as social and racial divisions created by exclusionary zoning and other tools, and from the relative inutility of single or limited use districts. However, I will argue that these benefits are eclipsed by some of the problems of form based code. Form-based code is frequently hailed as a “back to the future” approach to both urban and suburban living which will cure numerous

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ills such as the physical decay, racial segregation, and economic downturns that are endemic to many United States cities and towns, but it may not be an effective means of addressing the decline of civic life. This is first because form-based code, in advocating for norms to re-create the city of the past, seeks to implement by design what was essentially a spontaneous and self-generated form of social organization driven largely by economic concerns rather than social or political concerns. Next, Urbanism, which is purportedly at the heart of New Urbanist planning schemes such as form-based code, is itself a contested notion, subject to many alternate visions of the city of the past. As a result, the implementation of form-based code premised on New Urbanism may lead to an ersatz Urbanism. Finally, and perhaps most salient among the critiques I present, form-based code's reliance upon the "community" to formulate design standards through the charrette process has the potential to further isolate those who are already disadvantaged.

I. Introduction

Since the 1980s the notion of "New Urbanism" has taken hold as a theory for designing and redesigning towns and cities in the United States and elsewhere. New Urbanism argues for a return to the "traditional" pattern of cities, one that is characterized by mixed uses in densely populated neighborhoods that are pedestrian friendly and offer easy access to workplaces, shopping, and recreation all while maintaining a fixed and widely shared aesthetic sensibility.¹

This eclectic intermingling, it is argued, results in both economic and social vitality. The New Urbanism grows from Urbanism, a movement first seen in the 1920s and 1930s which sought to offer a systematic account of human settlement in dense "urban" living and commercial spaces as opposed to rural, suburban, or exurban areas.² Proponents of New Urbanism believe that this is because the vital mix that defined the cities of old is no longer in

¹ For a discussion of some of the explicit goals of New Urbanism, see Rutherford H. Platt, *Land Use and Society: Geography, Law, and Public Policy* 273-274 (2004).

² See, e.g., Lewis Mumford, *The City in History: Its Origins, Its Transformations, and Its Prospects* 2-10 (1968 Harvest Books) (1961). In his book Mumford seeks to return to the beginnings of the city and calls for an "organic" city in which technological innovation should not take precedence over the essential humanness of civilization: "... We need a new image of order, which shall include the organic and personal , and eventually embrace all the offices and functions of man." *Id.* at 4

place as a result of the implementation of Euclidean zoning schemes. In the case of newer towns, those founded purely on Euclidean principles of separation of use, New Urbanists assert that the vital mix was never there in the first place and that thus such places exist as soulless shells.³ The New Urbanist remedy for this municipal malaise is to put into place the elements deemed crucial for maintaining a thriving civic life.⁴ One recently developed mechanism for achieving the goals of New Urbanism is form-based code.⁵

Form-based code, known in its various incarnations as design-based zoning, community-based urban design, context-based design, smart growth code, or communicative action-based planning,⁶ is a land use regulatory and planning tool which is increasingly used to achieve the goals of New Urbanism in municipalities of various types, sizes, and locales.⁷ In turn, New Urbanism is founded on a core of Urbanism. Urbanism offered a distinct body of mechanisms for normative ordering in the civic environment which, in its earliest incarnations, was not

³ Jane Jacobs, *Great American Cities* 7 (1961). Jacobs, in referring to attempts at urbanization, writes of the “freshly-minted decadence of the new unurban urbanization.” *Id.* Such modern municipalities are further exemplified by monotony, sterility, and vulgarity. *Id.*

⁴ See, e.g. Patsy Healey, *The Communicative Turn in Planning Theory and Its Implications for Spatial Strategy Formation*, in *Readings in Planning Theory* 237 (Scott Campbell ed., 2002).

⁵ *Id.*

⁶ *Id.*

⁷ Some cities and towns that have recently adopted some aspects of form-based code as part of the zoning process include Syracuse, New York; Palo Alto, California; Arlington, Virginia; Petaluma, California; Huntersville, North Carolina; Louisville, Kentucky; and Emmaus, Pennsylvania. Many more are either considering adopting form-based codes or in the process of drafting such codes. See e.g. Jason Miller, *Smart Codes, Smart Places* National Association of Realtors Magazine Summer 2004, Available at <http://www.realtor.org/SG3.nsf/pages/summer04sm?OpenDocument>.

connected to government.⁸ Instead, the cities of old often spontaneously developed, with the buildings, streets, and neighborhoods themselves forming a type of “law.”⁹ Because creating the amenities necessary to implementing New Urbanism often requires substantial changes to infrastructure, form-based code is more frequently utilized in the design of new towns and undeveloped sections of towns and cities, or in efforts to infill or retrofit land in existing urban areas. Form-based code, however, unlike the Euclidean zoning¹⁰ codes that are at the base of most zoning and planning schemes in United States cities and towns,¹¹ focuses not on land use but on the character of development. Instead of attempting to segregate uses across

⁸ Sally Falk Moore, Legal Systems of the World: An Introductory Guide to Classifications, Typological Interpretations and Bibliographical Resources, in *Law and the Social Sciences* 11,15 (Leon Lipson & Stanton Wheeler eds., 1986).

⁹ According to Jacobs, the diversity was generated by the existence of certain design features which in effect generate “law”—the street, the neighborhood, the district, and ultimately the city are organs of self-government in the successful city. Jacobs, *Great American Cities* 117-122 (1961).

¹⁰ Euclidean zoning refers to the segregation of land uses into specified geographic districts and dimensional standards. This form of zoning was upheld by the United States Supreme Court in *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). I address Euclid in further below *infra* at n. 49.

¹¹ Some municipalities implement performance zoning instead of or in addition to Euclidean zoning. Frederick W. Acker, Performance Zoning, 67 *Notre Dame L. Rev.* 363, 364 (1991). Performance zoning employs performance-based or goal-oriented criteria to establish review parameters for proposed development projects in any area of a municipality, such as how a particular project impacts adjacent lands and public facilities. *Id.* at 369. In its most unadulterated form, performance zoning allows for the broadest range of uses and creates a uniform system of performance standards throughout a particular municipality. *Id.* Other municipalities include incentive based zoning as a supplement to Euclidean zoning. See Jerold S. Kayden, The 1991 Bellagio Conference On U.S.-U.S.S.R. Environmental Protection Institution: Market-Based Regulatory Approaches: A Comparative Discussion Of Environmental And Land Use Techniques In The United States, 19 *B.C. Env'tl. Aff. L. Rev.* 565, 568-569 (1992). Incentive zoning is closely related to performance zoning, but is a system by which zoning incentives are provided to developers on the condition that specific physical, social, or cultural benefits are provided to the community. *Id.*

neighborhoods or entire towns, form-based codes look to the scale, shape, scope and specific details of a particular development project.

Also unlike Euclidean zoning codes, form-based codes are most often prescriptive rather than proscriptive or descriptive. Hence, form-based codes tell developers what they can and should build in fine detail rather than telling them what they cannot build or describing generally permitted uses. Because of the level of detail in such codes and the potential curtailment of rights that such codes may mean for property owners, a crucial aspect of the adoption of form-based code is community involvement. This involvement is carried out via the “charrette” process, a series of meetings at which community members and other interested parties are invited to voice their desires for a particular type of project.¹²

¹² Charrette (sometimes spelled “charette”) is an architectural term that refers to a collective workshop process undertaken by designers and planners to reach consensus on the design of a particular project and to sketch out the project’s preliminary form. See Nat’l Charrette Inst., What Is a Charrette?, <http://www.charretteinstitute.org/charrette.html> (last visited November 13, 2006). The charrette has been increasingly used to encourage participation in urban development schemes and has been, states on commentator, a very deliberate part of the federal governments decentralization scheme in federally-sponsored urban development. Audrey G. McFarlane, When Inclusion Leads to Exclusion: The Uncharted Terrain of Community Participation in Economic Development, 66 Brooklyn L. Rev. 861, 863 (2000). In the context of form-based code, the charrette usually involves lay members of a community interested in or affected by a project as well as design and planning professionals. Benjamin E. Northrup & Benjamin J. Bruxvoort Lipscomb, Country and City: The Common Vision of Agrarians and New Urbanists, in *The Essential Agrarian Reader: The Future of Culture, Community, and the Land* 191, 198-199 (Norman Wirzba ed., 2004). It is said to have been conceived in the development of Seaside, Florida, one of the first acknowledged New Urban communities. *Id.* For a general discussion of the charrette in form-based code processes see Charles J. Kibert, Construction Ecology 238-239 (2002); Kenneth Hall & Gerald Porterfield, Community by Design: New Urbanism for Suburbs and Small Communities 51 (2000). See also Thomas L. Daniels, Holding Our Ground: Protecting America’s Farms and Farmland 40 (1997).

This Essay serves as a critique of the New Urbanism in general and of form-based code in particular as a tool of the New Urbanism. It may be true that form-based code offers more flexibility than traditional zoning schemes and thus may offer some respite from acknowledged ills such as social and racial divisions created by exclusionary zoning and other tools, and from the relative inutility of single or limited use districts. However, I will argue that these benefits are eclipsed by some of the problems of form based code. Form-based code is frequently hailed as a “back to the future” approach to both urban and suburban living which will cure numerous ills such as the physical decay, racial segregation, and economic downturns that are endemic to many United States cities and towns, but it may not be an effective means of addressing the decline of civic life. I identify three reasons for this.

First, form-based code, in advocating for norms to re-create the city of the past, seeks to implement by design what was essentially a spontaneous and self-generated form of social organization driven largely by economic concerns rather than social or political concerns. Next, Urbanism, which is purportedly at the heart of New Urbanist planning schemes such as form-based code, is itself a contested notion, subject to many alternate visions of the city of the past. As a result, the implementation of form-based code premised on New Urbanism may lead to an ersatz Urbanism. Finally, and perhaps most salient among the critiques I present, form-based code’s reliance upon the “community” to formulate design standards through the charrette process has the potential to further isolate those who are already disadvantaged. While form based code is not intended as a tool to forward political interests in and of itself, in the context of urban planning the charrette may easily be transformed into a mechanism of “responsibilitization”—the politically inspired move away from formal systems and the thrust of

autonomy on those who previously lacked such autonomy. This may result in further isolating the most disadvantaged residents of towns and cities.

In order to illustrate the critiques I raise, I first consider the historic evolution from traditional land use planning schemes to zoning and planning and form-based code systems, and discuss some of the reasons for the evolution in land use planning devices. Next, I will discuss form-based code and the communal charrette process which is central to it. Finally, I illustrate my critique of communal planning with reference to a recent paradigm: the attempt to implement form based code principles in the rebuilding of New Orleans in the aftermath of Hurricane Katrina.

II. The Antecedents of United States Zoning and Urban Planning and the Rise of Form-Based Code

Traditional zoning schemes are land use regulatory tools which typically prescribe designated land uses within a community with an ultimate goal of restraining density and separating primary uses.¹³ Zoning is one of several legal devices for implementing the proposals and objectives for land development as outlined in a city's comprehensive plan, which is its statement of the city's goals, objectives, principles, guidelines, policies, standards, and strategies for the growth and development of the community. Notwithstanding its ubiquity as a tool of planners, zoning is, within the scope of Anglo-American law and urban planning theory,

¹³ Jay Wickersham, *Jane Jacobs's Critique of Zoning: From Euclid to Portland and Beyond*, 28 B.C. Envtl. Aff. L. Rev. 547, 553 (2001).

relatively new, having been first articulated near the end of the nineteenth century.¹⁴ Well before zoning arose as a planning tool, American cities were developed in response to market rather than social forces, and mechanisms for development were typically found in private law solutions. Zoning followed these private land use arrangements, and in the late twentieth century, with the bloom well off the rose of zoning, there arose New Urbanist devices such as form based code.

A. The Economic Impetus of City Formation

Until the late nineteenth century, much of the population of the United States lived outside of the cities in relatively low density rural areas. Only five United States cities, New York, Philadelphia, Baltimore, Boston, and Charleston, had populations over 20,000, and these cities developed around ports that supported commerce.¹⁵ Most of the persons living in early American cities were associated in some respect to the manufacture, marketing, and distribution of goods which were the *raison d'être* of the cities.¹⁶ As one commentator has observed, urbanization was structured around an ideological and cultural paradigm called “privatism,” where the focus was on the accretion of individual wealth.¹⁷ United States cities were created, organized, and to a great extent defined, not as communities of social or political participation, but as a “fusion of money-

¹⁴ For a general discussion of the roots of planning, see Jon A. Peterson, *The Birth of City Planning in the United States, 1840-1917* 1-28 (2003).

¹⁵ Alexander von Hoffman & John Felkner, Joint Center For Housing Studies, Harvard University No. W02-1, *The Historical Origins and Causes of Urban Decentralization in the United States* 4 (Cambridge, Massachusetts 2002), available at http://www.jchs.harvard.edu/publications/communitydevelopment/von_hoffman_w02-1.pdf.

¹⁶ *Id.*

¹⁷ Timothy J. Gilfoyle, *Urbanization*, in *A Companion to 19th-Century America* 152, 156 (William L. Barney ed., 2001).

making, accumulating citizens.”¹⁸ This meant that much of the land in urban and near-urban areas in the United States was owned or controlled by either an “old money” elite or by wealthy tradesmen and shopkeepers.¹⁹ These persons occupied the most usable, desirable, and ultimately most expensive land at the center of cities.²⁰ Poorer persons who managed to live in the city occupied side alleys and less desirable lowlands or thoroughfares at the sufferance of the wealthy.²¹ Because making improvements to the built environment was often considered a private concern, the poor had little voice in the development of the cityscape and received few of the benefits of such development.²² For example, in much of nineteenth century Chicago, physical improvements were the responsibility of individual property owners, and thus landless citizens were often without amenities such as sidewalks and sewers.²³ There were no fixed, clearly articulated standards of development but rather ad hoc solutions achieved via private arrangements among land owners.

B. Private Land Use Agreements as Planning Devices

Members of the urban land owning classes frequently relied in the first instance upon the implicit understandings of their class regarding land use standards.²⁴ If these informal agreements failed, they also had access to the formal legal tools that had long been a part of

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See Priscilla Ferguson Clement, *Welfare and the Poor in the 19th Century City: Philadelphia 1800 to 1854* 24-25 (1985).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

Anglo-American jurisprudence: express private agreements and nuisance law to police land use. Private land use agreements typically contained prescriptions on actions related to land or placed affirmative duties upon the parties in relation to their control or ownership of land, and were usually seen in the form of easements or covenants which could be invoked in the event of a breach.²⁵ Nuisance law generally allowed persons to address harmful actions by neighbors or others which were not covered by pre-existing agreements.²⁶ These traditional land use control mechanisms had significant limits, however, which became all too obvious in the dawn of the twentieth century.

First, private land use agreements were not always in place before a problem arose and hence could not be called upon to resolve such problems. Next, even though using nuisance law required no prior agreement between the parties, there were some land uses which, while objectionable to others, did not meet the traditional standard for nuisance.²⁷ A nuisance occurs when one landowner uses her land so as to unreasonably interfere with another landowner's use and enjoyment of her land.²⁸ The key is reasonableness, which varies from case to case and is highly fact-specific. Uses that merely offend the aesthetic sensibilities of one party are not necessarily nuisances, a limitation which often substantially reduced the potency of the nuisance

²⁵ Michael D. Bayles, *Principles of Law: A Normative Analysis* 111-113 (1987).

²⁶ William J. Novak, *The People's Welfare: Law and Regulation in Nineteenth Century America* 61-62 (1996); *see also* Bayles, *supra* note 25, at 235-236.

²⁷ *See e.g.*, Jesse Dukeminier & James E. Krier, *Property* 951-952 (2002) citing Elmer S. Forbes, *Rural and Suburban Housing*, in *Proceedings of the Second National Conference on Housing* (1912) (discussing the harms caused by the locating of Chinese laundries, garages, and other unpleasantness near the expensive homes of wealthy landowners).

²⁸ Bayles, *supra* note 25, at 235-236.

doctrine. This was of particular concern to the traditional landed classes since, in the period near the turn of the nineteenth century, many social codes that often kept the urban poor and working classes well away from the rich were broken. This meant that some wealthy landowners were confronted with behaviors by nearby landowners that, while possibly annoying or even offensive to certain personal or community norms, were not actionable.

Next, in the large cities with industrial or commercial concerns in close proximity to carriage trade areas or exclusive residential areas, the annoyances sometimes arose not from nearby landowners but from those whose proximity allowed them to simply pass by. For example, merchants on New York's Fifth Avenue decried the possibility that the immigrant masses employed in nearby businesses could walk on the streets at lunchtime, destroying the exclusive character of their businesses, and in the view of the merchants, reducing property values accordingly.²⁹ Nuisance law could offer no remedy for such problems. In addition, because nuisance is a post hoc remedy and can only be invoked after a problem arises, and because it is highly fact specific, it was difficult for landowners to predict when or if their own actions would be the subject of nuisance claims.³⁰ This uncertainty left landowners who sought to put their land to new or different uses facing the possibility that the projects in which they invested could be halted by the application of nuisance law.

Finally, besides these limits of private land use arrangements, by the early twentieth century, notions of the permanence of social class, the concentration and retention of wealth in a

²⁹ Peter Hall, *Cities of Tomorrow* 61 (2002).

³⁰ Dukeminier *supra* note 27, at 952.

relative few, and social exclusivity, gave way, if not factually then ideologically, to broad notions of equality not only in social relations but in legal relations.³¹ This was especially true as it concerned land ownership and use. The firmly fixed but invisible geographic boundaries and land use norms that had for generations divided rich from poor and immigrant strivers from old money aristocrats and wealthy merchants were quickly dissolving in the stew of modern urban life. These limits to traditional law, combined with the widespread socioeconomic transformation seen at the beginning of the twentieth century meant that a new mechanism was required to control land use. This new mechanism was zoning. New York is generally said to have had the first city-wide zoning code, adopted in 1916.³² A number of cities soon followed suit, and much of the zoning enabling legislation originally adopted prior to 1924 was based on the New York general city enabling act.³³

C. The Rise of Zoning Codes

Zoning codes were in many cases meant to counter the ills of the urban environment in the United States which arose from the Second Industrial Revolution, dating from roughly 1850 until the beginning of the nineteenth century.³⁴ This period was heralded by unprecedented

³¹ This transition from status bound relations to greater personal legal autonomy for the individual is perhaps most famously summed up by English jurist Henry Sumner Maine who in 1861 described this process as the move from status to contract. John R. Sutton, *Law/Society: Origins, Interactions, and Change* 26-31 (2001). Sutton also reflects upon the work of Emile Durkheim, Auguste Comte, Ferdinand Tonnies, and other middle and late nineteenth century social and legal theorists who considered the effects of urbanization and modernization on social and legal relations. *Id.* at 31-34.

³² John Barry Cullingworth, *The Political Culture of Planning: American Land Use Planning in Comparative Perspective* 16 (1993).

³³ *Id.* at 27.

³⁴ See e.g. Stephanie B. Kelly, *Community Planning: How To Solve Urban Environmental Problems* 68 (2004); see also Paul Wheeler, *An Architectural Perspective on the Future of the*

innovation, technological advances, and notions of limitless abundance.³⁵ It was also characterized by previously unseen levels of pollution and other environmental degradation.³⁶ This was, moreover, a time of seismic socioeconomic change, vastly altered mores, and an associated anomie, all of which caused the period to be described by various commentators as both the beginning of and the beginning of the end of the “American” way of life.³⁷ This vast schism in the perceptions of early twentieth century life grew largely from the growth in social mobility that accompanied the changes of this period.³⁸ While social mobility was arguably one of the hallmarks of life in the United States because it resulted in a broadening of the middle class and the rise of a new wealthy class, social mobility was at the same time the bane of many members of the long established landed upper classes. Explicit, legislated urban planning was a means of mediating the burgeoning class conflict in American cities.³⁹ Because some of the world’s older cities had already begun to confront this challenge, many looked to Europe for answers and especially to the land use mechanism being developed in parts of England which came to be known as the Garden Cities movement.

Workplace, in *Building the Knowledge Economy: Issues, Applications, Case Studies* 1131 (Paul Cunningham et al. eds., 2003).

³⁵ Thomas C. Shevory, *Body/Politics: Studies in Reproduction, Production, and (Re)Construction* 24 (2000).

³⁶ Kelly, *supra* at note 34.

³⁷ Barry W. Johnson & Martha Briton Eller, *Federal Taxation of Inheritance and Wealth Transfers*, in *Inheritance and Wealth in America* 66 (Robert Keith Miller & Stephen J. McNamee eds., 1998).

³⁸ *Id.*

³⁹ *Id.*

The Garden Cities movement, developed by English social reformer Ebenezer Howard, is said to have served as the ideological roots of planning and ultimately of zoning.⁴⁰ Howard developed his proposals to improve the lives of London inhabitants, advocating for a resettling of some of London's inhabitants into small, new towns in the countryside where they could avoid the harsh, crowded conditions of the large city. These new cities were characterized by an effusion of single family houses, surrounded by gardens. Howard's idea had several unique aspects. First, it called for a strict segregation of uses and a permanent belt of open land which would limit the growth of the new city.⁴¹ It dispensed with private ownership and called for municipal ownership of the entire tract, which would then be distributed via leaseholds to inhabitants.⁴² It further called for limits on population, the development of industries able to support the population, and made provision for the founding of new communities as original garden cities became fully inhabited.⁴³

A number affluent, influential, and socially conscious Americans helped to bring Howard's ideas to the attention of American city planners. Many of these the planners adopted some of Howard's ideas in their efforts to design the new city of the twentieth century.⁴⁴ One result was the creation of the City Beautiful movement, premised on the notion that civic

⁴⁰ See generally Ebenezer Howard, *Garden Cities of Tomorrow* (F.J. Osborn ed., M.I.T. Press 1965; originally published in 1902 as *Garden Cities of Tomorrow*; first published in 1898 as *Tomorrow: A Peaceful Path to Real Reform*).

⁴¹ Lewis Mumford, Introduction: The Garden City Idea and Modern Planning, *in* Howard, *supra* note 40, at 29, 34.

⁴² *Id.* at 35

⁴³ *Id.*

⁴⁴ Peterson, *supra* note 14, at 232.

revitalization, and ultimately social progress, could be achieved by beautification and sanitation regimes with attention to landscape design, municipal improvement and civic configuration, also captured some of Howard's ideas.⁴⁵ The most noteworthy of Howard's ideas to be embraced by American civic planners, which was also in many ways the culmination of the City Beautiful movement, was the adoption of segregated uses and the preference for single family homes.⁴⁶ Inspired by Howard's ideas, and in response to concerns with building uniformity, public health, safety and welfare, starting in the late 1800s in the United States, cities and towns began to develop zoning codes.⁴⁷ Zoning has been hailed as the single most important innovation promoted by American planners in the years prior to World War I.⁴⁸ In 1926, the legality of zoning was established in *Village of Euclid v. Ambler Realty*.⁴⁹

In *Euclid*, Ambler Realty Company, which owned land in the Village of Euclid, Ohio, situated just outside of Cleveland, Ohio, sought to enjoin the Village of Euclid from enforcing a comprehensive zoning ordinance. Euclid's zoning ordinance rendered one portion of Ambler's tract useable for only single or two family homes, another portion for single or two family homes

⁴⁵ William H. Wilson, *The Ideology, Aesthetics and Politics of the City Beautiful Movement*, in *The Rise of Modern Urban Planning, 1800-1914* 165, 166 (Anthony Sutcliffe ed., 1980).

⁴⁶ Peterson *supra* note 14, at 308.

⁴⁷ *Id.* at 308-309.

⁴⁸ *Id.* at 308

⁴⁹ 272 U.S. 365 (1926). For a broad discussion of the *Euclid* case and of Euclidean zoning in general, see Richard Chused, *Symposium On The Seventy-Fifth Anniversary Of Village Of Euclid v. Ambler Realty Co.: Euclid's Historical Imagery*, 51 Case W. Res. 597 (2001).

and limited auxiliary uses,⁵⁰ and only a third portion open to a broad number of residential, commercial, and industrial uses.⁵¹ Ambler alleged that it had held the land for a number of years for the purposes of developing it as industrial land, and that if put to industrial use the land would be worth four times as much than if it was zoned residential.⁵² Thus, Ambler argued, the zoning constituted an unconstitutional taking under the Fourteenth Amendment of the United States Constitution.⁵³

At the trial court, the United States District Court for the Northern District of Ohio held that the ordinance was unconstitutional and void, and enjoined its enforcement.⁵⁴ Euclid sought review. The United States Supreme Court upheld the zoning as based on the Village's inherent police power.⁵⁵ While the Court found that the exact line between the legitimate and illegitimate use of the police power could not be clearly delineated as it varies with facts and circumstances, the Court nonetheless held that zoning can be based on more than the narrow prevention of common law nuisance.⁵⁶ The Court held that before a zoning ordinance can be declared unconstitutional, the provisions must be clearly arbitrary and unreasonable, having no substantial

⁵⁰ Euclid at 380-381. Permitted auxiliary uses included churches, schools, cultural, and recreational use.

⁵¹ *Id.*

⁵² *Id.* at 384-385.

⁵³ *Id.* at 385.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Euclid at 388 citing *Welch v. Swasey*, 214 U.S. 91 (1909); *Hadachek v. Los Angeles*, 239 U.S. 394 (1915); *Reinman v. Little Rock*, 237 U.S. 171 (1915); *Cusack v. City of Chicago* 242 U.S. 525, 529-530 (1917). Before Euclid, cases had supported the municipal use of the police power to prohibit uses which could cause nuisances.

relationship to the public health, safety, morals, or general welfare. *Euclid* settled the constitutionality of comprehensive zoning. Since *Euclid*, zoning ordinances bear the presumption of validity. When they are subject to challenge, it is only under the rational basis standard. In the aftermath of *Euclid*, legislated land use via zoning quickly became the norm in United States towns and cities.

While zoning was not meant to supplant private land use arrangements, in many instances it did just that, offering broad, legislatively created standards which were often used in lieu of and not in addition to private land use arrangements. It was ostensibly a collectivist approach to the system of land use planning whereby some of the “sticks,” or parts of the sticks, in the famed “bundle of sticks” metaphor of property rights are transferred to a municipal entity for reallocation to the entire community.⁵⁷ However, zoning represents contradictory norms and impulses, as it may be viewed at once as elitist and embracing a communitarian ethic. This is because zoning’s preference for separation of uses, particularly dividing residential from commercial or industrial, and low density residential uses from high density uses made it a versatile tool for enshrining race-based privilege and perpetuating disadvantage.⁵⁸

Indeed, in the earliest days of zoning, communities often implemented blatantly racist zoning schemes, the first of which was seen in Baltimore, Maryland in 1910 in an ordinance

⁵⁷ One observer describes zoning’s effect on the common law bundle of sticks as being akin to a set of quivers that constrain the sticks. John G. Francis & Chuck Easttom, *Land Wars: The Politics of Property and Community* 113 (2003). Yet another commentator conceived of the bundle as consisting of green sticks and red sticks as part of a traffic signal metaphor, with green sticks representing rights or “go”, and red sticks signifying “stop” or duties. Rutherford H. Platt, *Land Use and Society: Geography, Law, and Public Policy* 93-100 (1996).

⁵⁸ Jane M. Jacobs & Ruth Fincher, *Cities of Difference* 52 (1998).

which zoned for all white or all black blocks.⁵⁹ A number of American cities followed suit.⁶⁰ Though there were a number of challenges to the practice, these challenges met with mixed success.⁶¹ Finally, the practice of explicitly racial zoning was struck down in *Buchanan v. Warley*,⁶² wherein the United States Supreme Court held that a Louisville, Kentucky ordinance requiring residential segregation based on race violated the Fourteenth Amendment of the United States Constitution. Unlike prior state court rulings that had overturned racial zoning ordinances on takings clause grounds due to those ordinances' failures to grandfather land owned prior to enactment, the Court in *Buchanan* ruled that the motive of the Louisville ordinance, race, was an insufficient purpose to make the law constitutional.⁶³ In the aftermath of *Buchanan*, however, cities often sought to create legally defensible racial zoning ordinances.⁶⁴

In recent decades, as obvious displays of racial bias have become not only illegal but socially unacceptable, traditional zoning schemes have eschewed explicit racial references. Nonetheless, modern zoning schemes still frequently served as tools of social exclusion. This is especially true when implemented in newer towns and suburbs where they have the effect of excluding persons based on socioeconomic status with requirements such as minimum lot sizes

⁵⁹ Christopher Silver, The Racial Origins of Zoning in American Cities, in *Urban Planning and the African American Community* 23, 27 (June Manning Thomas & Marsha Ritzdorf eds., 1997).

⁶⁰ Racial zoning was seen throughout the South in cities such as in Richmond, Virginia, Charlotte, North Carolina and Atlanta, Georgia. It was also implemented in Northern cities such as Chicago, Illinois and in the far West in some California cities. *Id.* at 25-28.

⁶¹ Some state court rulings overturned racial zoning ordinances on takings clause grounds due to those ordinances' failures to grandfather land owned prior to enactment.

⁶² 245 U.S. 60 (1917).

⁶³ *Id.* at 82.

⁶⁴ Silver, *supra* at 32.

which have the effect of increasing the cost of housing so that it is beyond the means of lower-income households.⁶⁵

In the years since the widespread adoption of zoning as the principal tool of city planners, there has been a sea change in the challenges facing the American city. First, in a number of older American cities in the Northeast and Midwest, a significant problem is growing depopulation rather than overcrowding.⁶⁶ Next, many cities, rather than remaining centers for capital production and accumulation, have become post-industrial specters of their former selves, often largely populated by members of racial and ethnic minority groups employed in low-wage

⁶⁵ See *e.g.* S. Burlington County NAACP v. Mount Laurel, 336 A.2d 713 (N.J. 1975) (hereinafter Mt. Laurel I); S. Burlington County NAACP v. Mount Laurel, 456 A.2d 390 (N.J. 1983) (hereinafter Mt. Laurel II). In Mt. Laurel I, the New Jersey Supreme Court ruled that municipalities had a constitutional obligation to provide a "fair share" of low- and moderate-income housing. The decision responded to a variety of zoning practices in rural and suburban communities that were designed to exclude affordable housing from these areas. The court found that exclusionary zoning went against the communities' obligations to provide for the welfare of not only the town but the general region. In Mt. Laurel II, the New Jersey Supreme Court discussed the fact that municipalities were failing to address the sorts of exclusionary zoning practices which had been the basis of Mt. Laurel I. Hence, the New Jersey Supreme Court reaffirmed the principles of the earlier decision and required municipalities to implement a variety of "affirmative" governmental mechanisms. One of the most noteworthy aspects of the decision was the Court's provision of a "builder's remedy," which allowed builders or landowners who wanted to provide low- and moderate-income housing in a jurisdiction to sue a municipality to obtain approval notwithstanding existing zoning standards for an area.

⁶⁶ See M. Christine Boyer, *Dreaming the Rational City: The Myth of American City Planning* 237 (1986). The "rust belt" phenomenon, the deindustrialization, decay and depopulation of older United States cities has been produced by a number of factors, among them the loss of manufacturing jobs and their partial replacement by knowledge-intensive white collar jobs often requiring post-secondary education. John D. Kasarda, *Cities as Places Where People Live and Work: Urban Change and Neighborhood Distress*, in *Interwoven Destinies: Cities and the Nation* 81, 83 (Henry Cisneros ed., 1993). This has meant that already present poorly educated inner city residents were excluded from employment. *Id.* The decline of these Northeastern and Midwestern cities has, however, to a great extent been paralleled by the almost exponential growth of "sun belt" cities in the South and Southwest. Eli Ginzberg, *The Changing Urban Scene: 1960-1990 and Beyond*, in *Interwoven Destinies: Cities and the Nation* 31, 35-37 (Henry Cisneros ed., 1993).

clerical, retail or nonunionized manufacturing or altogether unemployed.⁶⁷ In many of America's oldest cities, thriving middle-class communities of the early and mid-twentieth century have given way to an ever-burgeoning group of have-nots. In an effort to diagnose and treat the malady of the declining American urban area, New Urbanist planners have increasingly turned to the pre-zoning city of the past as a model. Form-based code is one mechanism for this look backward.

D. Form-based Code as New Urbanist Tool

Form-based code is part of a broader movement in planning theory which focuses on “communication, collaboration, mediation and diversity.”⁶⁸ Indeed, in recent years the use of words such as “radical”⁶⁹ or “insurgent”⁷⁰ in association with planning schemes has signaled a fundamental alteration in the way that planning functions are carried out. Governmental authorities will no longer exercise an exclusive monopoly over the process;⁷¹ rather, the idea is

⁶⁷ Boyer *supra* at 271. Consider the example of Cleveland, Ohio, which was once hailed as one of the wealthiest cities in the United States. See e.g. Herbert Harwood, *Invisible Giants: The Empires of Cleveland's Van Sweringen Brothers* 1 (2003). Cleveland was the birthplace and longtime home to John D. Rockefeller, Sr., the founder of the Rockefeller empire. See generally Ron Chernow, *Titan: The Life of John D. Rockefeller, Sr.* (1998). Despite this glorious past, Cleveland was ranked the poorest city in the United States in 2004 and again in 2006. See Diane and Galnincea Suchetka, Barbara, *Cleveland: Poorest Big City in the U.S.*, *The Plain Dealer*, August 30, 2006; Robert L. Smith & Dave Davis, *Cleveland No.1 in Big-City Poverty*, *Sports Final Edition*, National A1 (2004).

⁶⁸ John Friedmann, *The Prospect of Cities* 101 (2002).

⁶⁹ See e.g. John Friedmann, *Planning in the Public Domain: From Knowledge to Action* 412 (1987).

⁷⁰ Leonie Sandercock, *Cosmopolis II: Mongrel Cities in the Twenty-First Century* 47 (2003).

⁷¹ Friedmann, *The Prospect of Cities* *supra* note 68, at 101.

to include a broad cross-section of the populace at the ground level.⁷² These ideas have been propagated by a number of planning experts.⁷³ Though form-based code is seen in various iterations in United States municipalities, it is typified by the presence of most or all of the following fixed characteristics: a controlling regulating plan, a framework of urban regulations, regulations defining streets and related passageways, landscape regulations, and finally architectural regulations.⁷⁴ Perhaps the most defining features of form-based code are its design-based rather than use-based standard for development and its reliance on the community in conjunction with city officials and planning professionals to articulate the nature of the design.⁷⁵ This means that the characteristics which define a form-based code regime are often presented as “empty boxes” to be filled at the discretion of the multiple actors involved in reaching consensus. Form-based code, with its attention to detail on the most local level, appears to be the ultimate tool of the New Urbanism movement. New Urbanism, however, is a movement which is itself subject to critique because of its uncertain foundations and unsubstantiated claims.

New Urbanism, while seemingly a single strand of American planning founded upon assertions about the nature and scope of “traditional” American Urbanism, is actually a compilation of multiple viewpoints and approaches to civic planning.⁷⁶ New Urbanism

⁷² *Id.*

⁷³ See e.g. Sandercock, *supra* note 70.

⁷⁴ Robert J. Sitkowski & Ohm. Brian W., Formed Based Land Development Regulations, *The Urban Lawyer*, Winter 2006, at 163.

⁷⁵ Kenneth Hall & Gerald Porterfield, *Community by Design: New Urbanism for Suburbs and Small Communities* 51 (2000).

⁷⁶ Emily Talen, *New Urbanism and American Planning: The Conflict of Cultures* 4-5 (2005).

represents an effort to create a fuller and more nuanced framework for urban living.⁷⁷ This has often meant calls for a return to the United States cities and towns of the pre-zoning nineteenth century, where, for example, much of the population lived in or around a defined center in densely built enclaves. Walking was one of the principal means of transportation, and most jobs were within city limits. These burghs, we are given to understand, were exemplary in both form and function. New Urbanism mediates for a return to this traditional way of living by implementing zoning and planning norms that will create or recreate such communities. Though sometimes known by other names such as Neotraditional Planning, Traditional Neighborhood Development, Transit-based Development, and even New Suburbanism, in every incarnation New Urbanism extols the virtues of the cities and towns of former times.⁷⁸ There are numerous critiques of Urbanism which have been launched in the years since the inception of the movement.⁷⁹ Three of these critiques are particularly salient. First, it is not clear that there is a single type of traditional Urbanism. Next, traditional urban form was for the most part serendipitous, arising more in response to the economic needs, geographic positioning and demographic characteristics of the particular urban locale. Finally, it is not clear that the New Urbanist vision adequately addresses the way that people want to live now.

1. Multiple Strands of Urbanism

There is perhaps no single variety of “traditional” Urbanism back to which the New Urbanism may hearken. Urbanism has, according to one scholar, suffered a continual crisis of

⁷⁷ *Id.*

⁷⁸ J. Barry Cullingworth & Roger Caves, *Planning in the USA: Policies, Issues, and Processes* 138 (2003).

⁷⁹ See Talen *infra* note 76.

definition.⁸⁰ Most would agree that the broad concept of Urbanism described life in the city environment as opposed to suburban or rural life. But there the consensus ends. It has been argued that Urbanism, rather than being descriptive of one movement, is really an amalgam of multiple and sometimes competing “cultures.”⁸¹ One of these cultures calls for attention to the built environment on a micro scale, focusing, for example, on particular recreational spaces or educational facilities.⁸² Another form of Urbanism looked to macro-developmental approaches for the creation and maintenance of the urban environment, with attention to broad land use norms or on large-scale local and regional transit systems.⁸³ Some views on Urbanism have actually been *exurban* in view, looking to the areas beyond the city as the ultimate in desirable human habitats.⁸⁴ Finally, some types of Urbanism have been more ecologically focused, and have looked to ways to reconcile the built environment with the natural environment.⁸⁵

To recognize the existence of competing impulses ever-present in the Urbanism movement, which sometimes threatened to undermine the very reason for such a movement, one need only consider that the great names in urban planning, such as Ebenezer Howard, Frank Lloyd Wright, and Le Corbusier, were themselves staunchly opposed to the cities of their times.

⁸⁰ Talen, *supra* note 76, at 1.

⁸¹ Emily Talen describes the “connections and conflicts” between what she sees as the various approaches to urbanism in the United States as “cultures. Talen, *supra* note 76, at 2.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

All three envisioned urban utopias that would constitute radical reconstructions of the city so as to eliminate features that they believed to be baneful, such as high density and mixed uses.⁸⁶

Yet, these very features are now extolled as virtues of the “traditional” urban environment and the goal of most New Urbanist planning.

2. Accidental Urbanism

Even where specific notions of traditional Urbanism can be articulated as the basis of a distinct New Urbanism, it is important to recognize that regardless of form, traditional Urbanism, was, for the most part, accidental. The irony of New Urbanism is that it trades on the accidental development of the past and attempts to make it manifest via an explicit, highly stylized planning scheme such as form-based code. With New Urbanism, as with some of the urban utopia movements of the late nineteenth and early twentieth centuries, the past is appropriated to legitimate the roots of what was and is a very new endeavor. New Urbanism seeks to rationalize a desire for that which was never necessarily intended to exist in any particular form.⁸⁷ So-called best practices in urban planning and urban living are often based on revisionist high points of the past which glide over flaws in order to sustain the myth of our ideal urban past.⁸⁸ Perhaps most damning to the goal of reinstating the urban past is that it is none too clear that this represents the way that people in current cities want to live.

⁸⁶ Robert Fishman, *Urban Utopias in the Twentieth Century: Ebenezer Howard, Frank Lloyd Wright, Le Corbusier* 3-4 (1982).

⁸⁷ Robert Freestone, *Learning From Planning's Histories*, in *Urban Planning in a Changing World: The Twentieth Century Experience* 1,2 (Robert Freestone ed., 2000).

⁸⁸ *Id.*

3. New Urbanism and the Way We Want to Live

The operative assumption, and one even born out by periodic polls conducted in various regions, is that the New Urbanism represents the way that Americans want to live.⁸⁹ There is little proof, however, that the various constituencies of today's cities, suburban towns or larger, inner ring suburbs hanker for a particular New Urban vision or for any at all. As one scholar has written, the ideology of New Urbanism is both "utopian" and "deeply fraught."⁹⁰ This is reflected in a rhetoric which assumes that the United States in general and its cities in particular are populated by like-minded persons who share a desire for "community" but who "have only the dimmest idea of what that means in terms of physical design."⁹¹ Though the New Urbanism movement pulls within its fold persons from varying social, economic, and racial backgrounds, it is none too clear that the "traditional" city that they all remember is the same one. "Well-founded" communities, it has been pointed out, often exclude, frequently by defining themselves against others and ultimately serve as barriers to rather than sources of social change.⁹² Though rarely acknowledged, the collective memory out of which new Urbanism has been created is contested and contingent.

To summarize, urban land use planning in the United States began as a mostly private system of land use regulation which, after the turn of the nineteenth century, ultimately evolved

⁸⁹ Peter Calthorpe & William Fulton, *The Regional City: New Urbanism & the End of Sprawl* 130 (2001).

⁹⁰ David Harvey, *The Spaces of Utopia*, in *Between Law and Culture: Relocating Legal Studies* 105 (David Theo Goldberg et al. eds., 2001).

⁹¹ James Howard Kunstler, *Home From Nowhere: Remaking Our Everyday World for the 21st Century* 194 (1996).

⁹² Harvey, *supra* note 90, at 105.

into widespread zoning schemes that all but replaced private land use schemes as a means of planning. Form-based code, a principal tool of New Urbanism, represents the next step in the evolution of land use planning; like zoning, this tool comes at time of massive social and economic change in the American urban environments. In such a context, the word community becomes even more a contested notion. For this reason, one of the most noteworthy features of the form based code, the community consultative process via the charrette, becomes a subject for significant critique.

III. The Charrette and the Nature of the “Community” in the Process of Developing the Form-Based Code

In writing about the communal nature of the city and the development of neighborhoods, Jane Jacobs expressed skepticism about the notion held by traditional planners that there was a sufficient commonality between people living in the same geographical area of a city so as to assume them to be allies for purposes of creating and maintaining successful cities.⁹³ She suggested, for example, that the several thousand residents of a particular section of a large city have no “innate degree of natural cross connection”⁹⁴ such as that presumed by traditional planners, and that hence, city planning which seeks to foster the growth of neighborhoods can have only limited success.⁹⁵ These observations remain true, and the differences between and among the residents in any particular section of a city remain one of the biggest challenges to

⁹³ Jacobs, *Great American Cities*, at 114-116.

⁹⁴ *Id.* at 115

⁹⁵ *Id.*

promoting communal interactions or obtaining communal consensus. As Jacobs understood, there is not necessarily a pre-existing body of persons who make up the community. Instead, there are often interest groups and these interest groups may serve as proxies for the community as a whole even while actively excluding some elements of the community.⁹⁶ Such groups may wield power in ways that corrupt or deform processes of group decision-making. Moreover, the decision to vest individuals in a community with a significant amount of neighborhood design autonomy may be politically inspired. It is for these reasons that the role of the charrette in implementing design-based code should be the subject of some concern.

A. The Multiple Strands of “Community” and the Charrette as a Tool of an Entrenched Elite

As some experts on form-based code have observed about traditional planning tools, there are assumptions, sometimes unstated, made about a wide set of communal and societal relations such as gender, racial, economic, and familial interactions.⁹⁷ These assumptions become embedded as norms in the framework of such planning processes and systems, and shift the balance of power resulting in the domination and marginalization of some groups. A shift to form-based code’s charrette process comprised of “rational” face-to-face meetings has the risk of replicating existing power dynamics, since the dominant are often better equipped to manage and

⁹⁶ Community Practice: Theories and Skills for Social Workers, David A Hardcastle, Patrice R. Powers and Stanley Wencour 112 (1997). As another observer wrote in 1953, it would be “naïve” to assume that club or community groupings will “open their membership to many elements in the community, including Negro citizens, labor, women and others.” Floyd Hunter, Community Power Structure: A Study of Decision Makers 259 (1969 University of North Carolina Press)(1953). These observations often prove as true now as they did in the middle of the last century.

⁹⁷ Sandercock, *supra* note 70.

control such processes. Because form-based code focuses on localized developments and the character of those developments, it potentially allows empowered elites not only to retain control of the planning process but to custom tailor their own neighborhoods without concern for the needs of the broader municipality. In the absence of a strong central municipal government to manage community design with an eye towards broad societal concerns such as environmental impact, the charrette could become a means of further disempowering the already disenfranchised.⁹⁸

The charrette process used in form-based code schemes is an example of what several planning scholars call “collaborative planning” or “communicative planning.” Such processes rely upon what has been called “inclusive argumentation.” One of the significant concerns of turning over a neighborhood to the form-based code process is whether such a process can or will take into account broader concerns such as environmental impact and infrastructure needs as well as issues of social equity and differential access to power. It has been observed, for example, that planning and zoning are not disconnected from political and social context, notwithstanding the effusions of “supply side” planning theorists who view such endeavors as essentially unproblematic.⁹⁹

⁹⁸ A number of scholars have written about the way that the privilege is often maintained in legal and law-like systems in the face of “delegalizing” or “deformalizing” processes. *See e.g.* Richard Abel, *Delegalization: A Critical Review of Its Ideology, Manifestations and Social Consequences*, in *Alternative Legal Forums and Alternatives to Law* 27 (Erhard Blankenburg et al. eds., 1980); *see also* Marc Galanter, *Why the Haves Come Out Ahead*, 9 *Law and Society Review* 95 (1974).

⁹⁹ Freestone at 2.

In the area of planning, there has long been insufficient attention to and a deep ambivalence about what is in many cases a clear cut differential in power or access to power.¹⁰⁰ Hence, what is needed is a focus on what has been described as the “dark side” of traditional land use planning.¹⁰¹ This would mean, for example, considering “demand side” planning concerns, acknowledging and even engaging the disorder of actual planning and design outcomes, and the lived experiences of participants in such processes. There is, in contrast to the utopian, apolitical and idealized history of zoning and planning, a “noir” history, one which addresses the very real fact that planning has been, and continues to be in a number of cases, a tool of social oppression.¹⁰² This is frequently true because planning projects are driven by elites.

B. Fears of “Responsibilitization” and the Establishment of “Government at a Distance”

¹⁰⁰ Bent Flyvbjerg, Bringing Power to Planning Research: One Researcher's Story, in Planning in a Global Era 117 (Andy Thornley & Yvonne Rydin eds., 2003).

¹⁰¹ Yiftachel *supra* at 396.

¹⁰² *Id.*; see also Oren Yiftachel, Planning and Social Control: Exploring the "Dark Side," 12 Journal of Planning Literature 395 (1998). As Yiftachel writes,

Most accounts of planning neglect to explain its frequent application for purposes of (deliberate) social control, as expressed in the oppression of peripheral groups. This is not to claim, of course, that planning is inherently regressive, but rather that its well-documented progressive potential should also be understood as having a more sinister accompanying 'dark side'. This dark side is particularly evident when planning is used by 'ethnic states' as part of their territorial policies, but is also rife in western societies governed by formal democratic principles of governance. *Id.* at 395

Control by elites remains a problem in the case of a relatively new planning or regulatory tool such as form-based code. This is true because form-based code relies upon what has been called “responsibilitization”—the politically inspired imposition of autonomy upon those who had previously lacked such autonomy.¹⁰³ Responsibilitization is seen in a number of areas, such as criminal enforcement via third party policing.¹⁰⁴ It is part of a broader societal move away from Keynesian welfarism,¹⁰⁵ which was exemplified by provision of services, and towards neo-liberal governance.¹⁰⁶ The key feature of neo-liberal governance is the way in which individuals are incorporated into the process of managing their own lives as an enterprise via rational

¹⁰³ Jane I. Collins, Transnational Labor Process and Gender Relations: Women in Fruit and Vegetable Production in Chile, Brazil and Mexico, in *Perspectives on Las Américas: A Reader in Culture, History, and Representation* 160, 167 (Félix V. Rodríguez & Matthew C Guttman eds. 2003).

¹⁰⁴ Lorraine Mazerolle & Janet Ransley, *Third Party Policing* 52 (2006). One frequently discussed form of responsibilitization is third party policing. Third party policing is a style of policing involving many different persons or entities, such as private individuals or community groups, who exercise regulatory control. *Id.* at 2. Those involved may be willing or unwilling partners. *Id.* This is because included within the regulatory framework for such policing schemes are mechanisms for the police to coerce participation by the threat of civil or administrative sanctions for the failure to participate. Kristian Williams, *Our Enemies In Blue: Police And Power In America* 241-242 (2004). Continued crime after the implementation of this form of responsibilitization is often seen not as a failure of police but of the citizens who are made “partners” in third party policing. *Id.* In like manner, turning planning processes over to citizens, particularly those ill-equipped to manage such processes, may easily make citizens rather than government liable for planning failure.

¹⁰⁵ John Maynard Keynes was a social democrat who greatly influenced the formation of the welfare state after World War II as a direct affront to the economic liberalism that had flourished in the United States from the 1800s until the early 1900s. Keynes’s theories challenged the notion that economic liberalism, characterized by an unrestrained market, little government intervention in economic and social policy, and reliance upon individual private initiative, was best for the success of a nation. See e.g. Sanford F. Schram, *Praxis for the Poor: Piven and Cloward and the Future of Social Science in Social Welfare* 213 (2002).

¹⁰⁶ *Id.* at 23

decision making.¹⁰⁷ Neo-liberalism engages in the “valorization of the self-actualized subject.”¹⁰⁸ This goal is typically achieved by two dominant modes of neoliberal practice: "government at a distance" wherein there is top-down reform of state apparatuses based on a market model.¹⁰⁹ This reform generally takes the form of deregulation and privatization.¹¹⁰ The second takes a bottom-down approach which centers on building the "social capital" of the individual.¹¹¹

The government at a distance model tries to improve government by partnering with private actors and bringing market behavioral and discursive practices into the government. An example of this is the way in which public school boards have had to be "competitive" and have called superintendents "CEOs."¹¹² The social capital model operates at the level of the individual and civil society and encourages individuals, and the communities to which they belong, to be responsible, autonomous and ultimately self-governing.¹¹³ Through such programs

¹⁰⁷ Alizon Draper & Judith Green, Food Safety and Consumerism: Constructions of Choice and Risk, in *Welfare of Food: Rights and Responsibilities in a Changing World* 54, 66 (Elizabeth Dowler & Catherine Jones Finer eds., 2003).

¹⁰⁸ Sean Patrick Eudaily, *The Present Politics of the Past: Indigenous Legal Activism and Resistance to (Neo)Liberal Governmentality* 52 (2004), citing Mitchell Dean, *Governmentality: Power and Rule in Modern Society* 155 (1999).

¹⁰⁹ Eudaily, *supra* note 108, at 52.

¹¹⁰ *Id.*, *citing* Bradford at 204.

¹¹¹ *Id.* *citing* Dean at 152.

¹¹² A number of large urban school districts have renamed their school superintendents CEOs (Chief Executive Officers), apparently in an effort to bring some of the virtues of private industry into what are often dysfunctional public school systems. *See e.g.* Virginia P. Collier et al., *The Superintendent as CEO: Standards-Based Performance* 1-3 (2005).

¹¹³ Eudaily, *supra* note 108, at 53.

neo-liberal government can achieve its objectives all while reducing its commitment to formal governance and resource provision.¹¹⁴ Form-based code closely resembles this social capital model and thus may be located in the arsenal of neo-liberal weaponry for revising government.

Form-based code, like many other neoliberal tools, typically implies the resituating of the boundaries between public responsibility and private duty, the citizen as client and customer in a marketplace responsible for their own happiness, success, and health.¹¹⁵ In such regimes, elites with education, money, and experience in formal processes are often able to take charge of the design process, resulting in the same sorts of outcomes that urban renewal undertaken under a broad neoliberal scheme wrought: fewer communities of color, fewer poor people, and fewer services for the members of those communities who remained after such processes were implemented.¹¹⁶

Because zoning and planning schemes are developed in a political process which is theoretically accessible to all, and because such schemes are broadly applicable to a municipality and because of its emphasis on health, safety, and welfare, zoning may also be viewed as broadly democratic and communitarian. In seventy-plus years since zoning schemes have been in use, the latter view seems to have won out in an ideological sense. This is in part because in many large urban areas, those who were historically disenfranchised such as racial minorities have taken control of the civic governments responsible for zoning and planning. It is just now, however, that zoning is in some circles is becoming suspect and disfavored. Form-based code

¹¹⁴ *Id.*

¹¹⁵ Peter Brand & Michael J. Thomas, *Urban Environmentalism* 94 (2005).

¹¹⁶ Rachel Weber, *Extracting Vale From the City: Neoliberalism and Urban Development*, in *Spaces of Neoliberalism* 172, 183-187 (Neil Brenner & Nick Theodore eds., 2003).

has the potential to allow those without official political power in a city to control their own small fiefdom without effecting widespread changes to the benefit of all. A case in point is the city of New Orleans in the aftermath of Hurricane Katrina.

B. The Form-Based Code Process and the Case of Hurricane Katrina

On August 29, 2005, Hurricane Katrina, a massive category four¹¹⁷ storm, hit New Orleans, Louisiana and the surrounding Gulf Coast area, causing a level of destruction not experienced in the area in decades.¹¹⁸ Approximately eighty percent of New Orleans was flooded., with some of the most severe damage occurring in the Lower Ninth Ward, Central City, and the Seventh Ward, all areas heavily populated by African-Americans.¹¹⁹ In the period since Hurricane Katrina, poor black victims have been the slowest to return to New Orleans.¹²⁰ There are a number of the reasons for inability of poor black Katrina victims to return to New

¹¹⁷ Hurricane intensity is measured on the Saffir-Simpson Hurricane Scale. The scale ranges from 1 to 5, with 1 having the least intensity and wind speeds between 74 and 95 miles per hour, and 5 being the most intense with wind speeds greater than or exceeding 156 miles per hour. Hurricane Katrina was a Category 4 storm at 140 miles per hour. For a discussion of the development and use of the Saffir-Simpson Hurricane Scale, see Judith A. Howard & Ernest Zebrowski, *Category 5: The Story of Camille, Lessons Unlearned from America's Most Violent Hurricane* 211-235 (2005).

¹¹⁸ Prior to Katrina, the last storm to cause significant damage to New Orleans was Hurricane Betsy in 1965. However, it is generally asserted that no storm besides Katrina has wielded such destructive force in the United States since the 1928 Okeechobee hurricane, also known as the San Felipe hurricane, which killed over 3,000 people in Florida and Puerto Rico, and many hundreds more on the Caribbean island of Guadeloupe. The Okeechobee hurricane caused over 800 million dollars in damage in today's dollars. See generally Eliot Kleinberg, *Black Cloud: The Great Florida Storm of 1928* (2003).

¹¹⁹ New Orleans is divided into 17 wards. The Ninth ward, located in the easternmost downriver portion of the city is the largest of these wards and is arguably the most famous ward.

¹²⁰ William H. Frey & Audrey Singer, *Katrina and Rita Impacts on Gulf Coast Populations: First Census Findings*, in *The Brookings Institution: Cities and Suburbs* (last modified 2006, June) (last visited November 28, 2006) <http://www.brookings.edu/metro/pubs/20060607_hurricanes.htm>. Full report on file with the author.

Orleans.¹²¹ Perhaps chief among them is the absence of habitable dwellings, which has been exacerbated by the failure of local authorities to take full charge of the planning process and thereby create a framework for rebuilding.

Recently New Orleans officials chose to forego traditional comprehensive planning seen under a Euclidean zoning scheme in favor of a planning process that will delegate responsibility to fifteen planning teams who will be guided by groups of residents from various parts of New Orleans.¹²² Although the grand scheme calls for all of the individual neighborhood plans to be incorporated into a single master plan at some point, thus far there are no comprehensive guidelines being promulgated for the design of the neighborhoods. In the absence of new, broadly applicable standards, residents are free to rebuild in exactly the same manner that caused many properties to sustain serious and in some cases irreparable damage.¹²³ Groups of residents, while ostensibly empowered to affect their own neighborhoods or their own houses, are not empowered to undertake the sort of broad structural and environmental remediation needed to avoid future disasters.¹²⁴

Moreover, even if such consultations were able to reflect the views of the broader constituency, there is some concern that residents would avoid doing so in lieu of promoting

¹²¹ For a fuller discussion of the housing-related problems of poor blacks in New Orleans in the Aftermath of Hurricane Katrina, see Lolita Buckner Inniss, *A Domestic Right of Return? Race, Rights and Residency in New Orleans in the Aftermath of Hurricane Katrina*, forthcoming ____ Boston College Third World Law Journal (2007).

¹²² Nicolai Ouroussoff, *In New Orleans, Each Resident is Master of the Plan to Rebuild*, N.Y. Times (New York), August 8, 2006, The Arts, at B1.

¹²³ *Id.*

¹²⁴ *Id.*

their own parochial concerns based on commonalities like race, class, and economic status.¹²⁵ Indeed, it has been observed that community consultations in the context of civic planning are rarely able to capture the views of the most disempowered groups.¹²⁶ This last point is one of particular concern in New Orleans. New Orleans was a hotbed of race and class divisions before the hurricane and certainly remains so afterward. Moreover, New Orleans city planning processes, like those in many United States Southern cities, had long been dominated by elites; this was due in part to those cities' antebellum social structures.¹²⁷ It has been asserted that one of the principal reasons that post-Hurricane New Orleans opted for the community guided plan was that efforts to develop a comprehensive city-wide plan were challenged for failing to take into account racial and economic diversity.¹²⁸ By delegating the responsibility for planning to the resident-led design teams, the city was able to abdicate the broader responsibility that it would have had under a traditional Euclidean scheme.

Though a number of areas sustained significant damage in Hurricane Katrina and in Hurricane Rita, the storm that came less than a month later, some of the greatest damage occurred in low-lying predominantly black areas such as the Lower Ninth Ward and the Seventh Ward.¹²⁹ These areas also had the highest rates of poverty and the fewest resources in

¹²⁵ Ourousoff *supra*.

¹²⁶ John Friedmann, *The Prospect of Cities*, *supra* note 68, at 101.

¹²⁷ David R. Goldfield, *Planning For Urban Growth in the Old South*, in *The Rise of Modern Urban Planning, 1800-1914* 11, 12-15 (Anthony Sutcliffe ed., 1980).

¹²⁸ Ourasoff *supra*.

¹²⁹ New Orleans is divided into seventeen wards. The Ninth Ward, located in the easternmost downriver portion of the city, is the largest of these wards and is arguably the most famous ward.

general.¹³⁰ Many of the residents are little equipped to undertake the necessary measures to plan for the rebuilding of their neighborhoods. Already it has been observed that residents in affluent neighborhoods have been the best organized and thus best able to take advantage of the form-based process.¹³¹ This suggests that the neighborhoods that suffered disproportionately in Hurricane Katrina because of location and infrastructure disadvantages may risk having those same disadvantages carried over in the form-based code process. Yet, because such processes are to a great extent self-regulated, there is no central authority to whom they can turn for relief.

IV. Conclusion

There is no doubt that form-based code may hold promise for the revitalization of old cities and for the creation of new ones. Jane Jacobs, a critic of traditional planning and zoning schemes, announced at the outset of *The Death and Life of Great American Cities* that the book was intended as “an attack on current city planning and rebuilding.”¹³² Writing in 1961, Jacobs was speaking of the highly formulaic Euclidean-based zoning that was at the heart the planning schemes in United States cities, and of the explicit goals of such schemes were manifold – slum clearance followed by the creation more middle and upper income housing areas, and cultural,

The Seventh Ward, located near downtown New Orleans extending from Esplanade Avenue to Elysian Fields, is one of the lesser known areas of New Orleans, yet one of the hardest hit by the flooding in the aftermath of Hurricane Katrina. See Rod Amis, *Katrina and the Lost City of New Orleans* 64- (2005)

¹³⁰

¹³¹ Ourossoff at B1

¹³² Jacobs, *Great American Cities*, *supra* note ____ at 1.

civic, and commercial centers to serve the new populations.¹³³ Such explicit civic planning, wrote Jacobs, often failed.¹³⁴ This was because it failed to take into account that there was order underlying even the seeming unplanned disorder of successful cities, order that resulted from “an intricate and close grained diversity of uses.”¹³⁵ Form based is a New Urbanist tool whose goal is to reinstate form and utility based cityscapes of the pre-zoning period of American cities.

Form-based code, however, attempts to reproduce traditional city diversity in all of its meanings by moving away from a formal rational legal system¹³⁶ of traditional Euclidean zoning and planning and towards a more substantively rational law¹³⁷ growing out of self-government. Form-based code, however, is not “un-planning, it is alternate planning by persons who in many cases may not be accountable. As such it offers a flawed answer to the problems of a more formal, centralized zoning and planning regime. As Arthur Stinchcombe writes in *When Formality Works*,¹³⁸ there is an increased assault upon formality in legal and social systems because of misconceptions about how formality functions.¹³⁹ Formality in the context of traditional zoning is not the source of ill-functioning cities, social exclusion or the skewed power dynamics that are often seen in American cities . Rather, these ills and especially the creation

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Jacobs, *Great American Cities*, at 14.

¹³⁶ Formal rationality refers to a system of law which creates and applies a body of universal rules to a particular area of endeavor. See Gunther Teubner, *Substantive and Reflexive Elements in Modern Law*, 17 *Law and Society Review* 239, 240 (1983), citing Rheinstein 1954 64, 39

¹³⁷ Substantively rational law achieves a specific purpose or goal. *Id.* at 240, citing Rheinstein, 63, 303.

¹³⁸ Arthur L. Stinchcombe, *When Formality Works: Authority and Abstraction in Law and Organizations* (2001).

¹³⁹ *Id.* at 2

and maintenance of privilege are accomplished myriad means. What New Urbanists fail to acknowledge is that form-based code, all while promoting an ethic of neighborhood self-government, may itself be co-opted as a tool for perpetuating disadvantage.

Date: 3/23/09

Item: 13.d

Pat Trudgeon

From: Pat Trudgeon
Sent: Monday, March 09, 2009 3:19 PM
To: [REDACTED]
Subject: Twin Lakes Code Enforcement

Twin Lakes Property
Maintenance Code
Enforcement

Hello, I am Patrick Trudgeon, Roseville's Community Development Director. Thank you for passing along your concerns regarding the state of the properties in the Twin Lakes area. It is something that we are aware and monitor as we are able, but your input is valuable as we are not out there all of the time.

Let me first state that City takes violations very seriously and works with all property owners to correct the violations. If a response to our requests for code compliance are not adequate, the City has the ability to abate the problem and/or issue a citation and charge the offending property owner in court. City attention toward the maintenance and upkeep of the properties within Twin Lakes has experienced a series of fits and starts within the past couple of years. Due to expected pending development, the buildings and properties were left in a vacant state, which in turn has led to code violations over time. Being a unique redevelopment area within the City, it is important to provide some background on our efforts in Twin Lakes to hopefully provide context for the matter.

In 2005-06, the City began eminent domain actions to acquire parcels in Twin Lakes for the redevelopment project. As a result of that action, businesses started moving out of the area and property owners cut-off utilities and moth-balled the buildings. Once that occurred, the City started noticing junk being dumped on the property and vandalism (including graffiti) occurring on the property.

In response, the City made inspections in the Spring of 2007 and sent out letters to the property owners noting the violations and requesting compliance and clean-up of the property. At that same time, the Twin Lakes project was unraveling and lawsuits were threatened from the property owners (i.e. that they lost business due to city action). John Stark, the CD Director at the time made a decision to hold off on pro-active enforcement at that time until the future of Twin Lakes became more clear. However, the City still responded to dangerous and immediate problems on the site.

Unfortunately, the Twin Lakes situation did not come any clearer in the next year and with the transition in the leadership of the department, there was not clear direction on the overall cleanup of the area. At the time I can aboard, McGough had proposed a multi-story office campus on the PIK site. Preliminary approval was given last March and final approvals seemed imminent, with construction starting in 2009. Unfortunately, that never occurred.

Nevertheless, there were code enforcement efforts made during that time. Below is a listing of what occurred.

- In 2007, we had 11 active code enforcement cases. All of the cases involved multiple violations, but each one had tall grass violations (over 8" high). Other cases had junk and debris piles on the property. All grass and junk and debris violations were corrected. Several of the cases also had buildings that were unsecured (i.e. open doorways and windows). These items were never satisfactorily corrected.
- In 2008, the City opened 7 code enforcement cases. Similar to 2007, several of the cases dealt with tall grass. Four of the cases involved improper snow storage and unplowed trails. All of these cases were corrected. One case dealt with broken glass in a building, which the City abated.
- In 2009, thru February, we have had 3 code enforcement cases, all dealing with snow not being

3/17/2009

plowed from the trails.

As the City is in the process of acquiring roads, at least one building will come down (Indianhead accessory building) and potentially one more will need to be removed (Cummings).

The background and context provided above is not meant to be an excuse for the state of the properties, but I wanted to share the reasons why the properties remain a problem. At this point, I believe we cannot expect that the market will redevelop the Twin Lakes property anytime soon. Therefore, staff will continue to work with the property owners to enforce the codes and keep a safe and clean area out in Twin Lakes. With spring coming and thus greater access and visibility of the sites, I have instructed the Code Enforcement staff to undertake a systematic inspection of the properties within Twin Lakes and note code any violations. With the results of the inspections, the City will contact the property owners and inform them what violations exist and what corrective action should be undertaken.

Once again, thank you for sharing your concerns about the properties within Twin Lakes. If you have any other questions and/or comments, I would be happy to help you.

Pat

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Date: 3/09/09
Item: 15.a
TL Property Mtnc
Code Enforcement

From: Amy Ihlan [amy@briollaw.com]
Sent: Wednesday, February 25, 2009 11:19 AM
To: Bill Malinen
Cc: Margaret Driscoll; *RVCouncil
Subject: Item Request for Future Agenda -- Twin Lakes Property Maintenance Code Enforcement

Dear Bill and Council,

In light of the e-mail we just received from Ed and Kelly Jaros (see below), I would like to add an agenda item as soon as possible for a future a council meeting, to have council discussion and direction to staff on two issues:

1. Enforcement of city property maintenance codes on derelict buildings in Twin Lakes area
2. Considering strategies to require property owners to demolish vacant and unusable buildings that are creating a nuisance and/or public health and safety issues.

Thanks,

Amy

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Minneapolis, MN 55402
(612)337-8410
Amy@Briollaw.com

Please visit us on the web at www.briollaw.com

-----Original Message-----

From: support@civicplus.com [mailto:support@civicplus.com]
Sent: Wednesday, February 25, 2009 10:32 AM
To: city.council@ci.roseville.mn.us;
margaret.driscoll@ci.roseville.mn.us; bill.malinen@ci.roseville.mn.us
Subject: Online Form Submittal: Contact City Council

The following form was submitted via your website: Contact City Council

Subject: Graffiti, Storm Water runoff containment structures rotting etc on vacant bldg site of former trucking facility near Langton Lake Park

Name:: Ed Jaros

Address:: 1858 County Road C2 W

City:: Roseville

State: : MN

Zip:: 55113

How would you prefer to be contacted? Remember to fill in the corresponding contact information.: Email

Home Phone Number::

Daytime Phone Number::

Email Address:: [REDACTED]

Please Share Your Comment, Question or Concern: Dear Roseville City Council Members,

We are writing to you concerning the vacant buildings that remain at the site of the former trucking facility that backs up to Langton Lake Park. Since these buildings have been vacated there has been much graffiti showing up on the buildings. This can only indicate that persons who we don't want in our neighborhoods are in fact spending time here defacing our city.

Vacant buildings such as these are hazardous. Small children may wander into these properties, they are an attraction to kids as well as vandals, possibly drug deals or gangs or vagrants. Stray animals and rodents may find it inviting as well. At the very least they are an eyesore to people who live in the community. Some of the doors are open and the fence along the park is broken down at least in one area.

Are there any ordinances that require building owners to keep their properties in reasonable repair and prevent them from becoming an eyesore and detracting from our community? Who wants to live down the street from a rundown old building covered by graffiti? Not me, but I do.

There are other issues as well. The storm water run off containment structures are rotting away, the runoff - most likely containing oil, grease and diesel fuel from past maintenance and storage activities goes directly into Langton Lake. Last spring there was such a torrent of water (and who knows what else) running off the property that it eroded a hole through the asphalt of the parking lot. There have also been issues with weeds growing tall and not being mowed. I am sure if I did not mow my lawn someone from the city would tell me I need to.

We would like to email some pictures illustrating some views of these properties taken from one of our great parks that we are so proud of. Please let us know who to email pictures to. There doesn't appear to be a place to attach pictures on your site here.

Thank you for your attention to this matter.

Regards,

Ed and Kelly Jaros
1858 County Road C2 West
Roseville, MN 55113

Additional Information:

Form submitted on: 2/25/2009 10:32:14 AM

Submitted from IP Address: [REDACTED]

Form Address: <http://www.cityofroseville.com/forms.asp?FID=115>





