



AGENDA
REGULAR MEETING OF THE CITY COUNCIL OF
THE CITY OF WHITE BEAR LAKE, MINNESOTA
TUESDAY, FEBRUARY 11, 2020
7:00 PM IN THE COUNCIL CHAMBERS

1. CALL TO ORDER AND ROLL CALL

2. APPROVAL OF AGENDA

3. APPROVAL OF THE MINUTES

A. [Minutes of the Regular City Council Meeting on January 28, 2020](#)

4. VISITORS AND PRESENTATIONS

A. Susan Vento - Metropolitan Council Representative

B. John Haine - Cummins project to evaluate electric vehicle charging stations

5. PUBLIC HEARINGS

6. LAND USE

A. Consent

1. [Consideration of a request by Walser Polar Chevrolet for a one year time extension of approved Conditional Use Permit and Variances for 1801 County Road F](#)

B. Non-Consent

1. [Consideration of a Planning Commission recommendation regarding a request by Richard Herod III for a Conditional Use Permit and Variance \(20-1-CUP and 20-1-V\)](#)

2. [Consideration of a Planning Commission recommendation regarding a request by Twin Cities Petroleum for two variances \(20-2-V\)](#)

7. UNFINISHED BUSINESS

8. ORDINANCES

9. NEW BUSINESS

A. [Resolution approving Community Development Grant Funding for Pioneer Manor window replacement project](#)

B. [Resolution awarding Pioneer Manor window replacement project](#)

- C. [Resolution affirming the Ramsey Washington Suburban Cable Commission's determination that preliminary assessment of the Comcast franchise should not be renewed](#)
- D. [Resolution extending the current Comcast Franchise Agreement](#)
- E. [Resolution accepting bids and awarding contract for the Centerville Road Water Tower Reconditioning, City Project Nos.: 19-20](#)

10. CONSENT

- A. [Acceptance of Minutes: November and December Environmental Advisory Commission, November Park Advisory Commission, January Planning Commission, November White Bear Lake Conservation District](#)
- B. [Resolution authorizing the use of Memorial Beach for non-exclusive, for-profit events](#)

11. DISCUSSION

12. COMMUNICATIONS FROM THE CITY MANAGER

13. ADJOURNMENT

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**MINUTES
REGULAR MEETING OF THE CITY COUNCIL
OF THE CITY OF WHITE BEAR LAKE, MINNESOTA
TUESDAY, JANUARY 28, 2019
7:00 P.M. IN THE COUNCIL CHAMBERS**

1. CALL TO ORDER AND ROLL CALL

Mayor Jo Emerson called the meeting to order at 7:00 p.m. Councilmembers Doug Biehn, Kevin Edberg, Steven Engstran, Dan Jones and Bill Walsh were present. Staff members present were City Manager Ellen Hiniker, City Engineer Paul Kauppi, Community Development Director Anne Kane, City Clerk Kara Coustry and City Attorney Troy Gilchrist

PLEDGE OF ALLEGIANCE

2. APPROVAL OF MINUTES

A. Minutes of the Regular City Council Meeting on January 14, 2020

It was moved by Councilmember **Biehn**, seconded by Councilmember **Jones**, to approve the Minutes of the Regular City Council Meeting on January 14, 2020.

Motion carried unanimously.

3. APPROVAL OF THE AGENDA

City Manager Hiniker pulled the Housing Market Analysis presentation from 4A and replaced it with a presentation by Trane.

It was moved by Councilmember **Walsh** seconded by Councilmember **Biehn**, to approve the agenda as amended.

Motion carried unanimously.

4. VISITORS AND PRESENTATIONS

A. Trane Presentation

City Manager Hiniker reported that Trane Companies has completed a preliminary assessment of energy performance of the Sports Center and other City buildings. She explained this is one of Trane Company's services, but through the Climate-Smart collaboration Trane worked with the City to assess its building efficiencies as a demonstration project to show what kind of work can be done to make buildings more efficient. Ms. Hiniker wished to highlight this work along with Trane's partnership with Century College and the White Bear Lake Area School District.

Thomas Huberty, Account Executive with Trane introduced Sophie Davis, an intern with Trane and a junior from the White Bear Lake School District. He also introduced Jeff Seewald, Senior Engineer with Trane. Mr. Huberty explained that Trane has taken on some initiatives including student internships and the development of a manufacturing career pathway with Century College.

Mr. Seewald explained that Trane, being locally based, sees opportunities for community outreach through student internships with the High School and development of a manufacturing career pathway with Century College. Mr. Seewald stated that Sophie is highly involved with Race2Reduce, where she expanded the focus from water conservation to include energy reduction and other resources as well.

Mr. Seewald mentioned Trane did a preliminary assessment of all City buildings and found opportunities for energy improvements. He compiled all findings and highlighted potential projects that could be implemented amounting in a cost of \$490K - \$612K and an annual energy savings indicating a break even after approximately ten years.

He provided a more detailed assessment of the White Bear Lake Sports Center, which revealed the electric preheat operation, which heats incoming air, was on continuously and ventilation was not optimized to occupancy. He reviewed the methods used to identify these findings, which included visualization of electric interval data (every 15 minutes) and data logging of equipment to measure CO2 and electric currents. Sophie explained the assessed data using each of these methods.

Mr. Seewald provided some key takeaways as a result of this assessment. He noted that some of the equipment in the Sports Center was not set up properly. He suggested applying controls and data collection to ensure continued ongoing optimized performance of the Sports Center and other municipal buildings.

In response to Councilmember Walsh both Ms. Hiniker and Mr. Kauppi explained there is no blame to place regarding the Sports Center as commissioning is not always established up front for projects due to its cost component. Instead, once projects are completed and if performance is still not realized, commissioning might then be employed as was conducted by Trane in this case.

In response to Councilmember Edberg, Mr. Seewald stated that \$7,000 in annual savings were identified at the Sports Center, just in the electric preheat operation of the building. He noted more savings could be realized, but this had the largest impact.

Mayor Emerson thanked Trane and Sophie for their report.

5. PUBLIC HEARINGS

Nothing scheduled

6. LAND USE

Nothing scheduled

7. UNFINISHED BUSINESS

Nothing scheduled

8. ORDINANCES

Nothing scheduled

9. NEW BUSINESS

- A. Resolution receiving feasibility report and ordering a public hearing for 2020 Street Reconstruction Project 2020 Mill and Overlay Project, City Projects Nos. 20-01, 20-04, 20-06 & 20-13

City Engineer Kauppi stated that neighborhood meetings for proposed 2020 street projects were conducted in November. He explained that 1.2 miles of road are proposed for reconstruction this year, which will result in 93% of the streets in White Bear Lake being reconstructed with an urban street section, curb and gutter and full pavement replacement. He reported all but six miles of roads in the City are completed with full system completion anticipated within 5-10 years working through the CIP.

Mr. Kauppi said this year's street reconstruction is estimated to cost \$1.8 million in the feasibility study and will cover Cottage Park and Bellaire Avenue areas. The mill and overlay portion covers 3.3 miles and is estimated to cost \$2.2 million. He explained the trend moving forward will be more to maintain the roads rather than to reconstruct.

Mr. Kauppi explained that the feasibility reports revealed both projects are necessary, cost effective and feasible for 2020. For this reason, he asked Council to adopt the resolution to receive the feasibility reports and set the public improvement hearing for February 26, 2020.

Councilmember Jones asked for as much information as possible about the sidewalk improvements as constituents have already contacted him. Mr. Kauppi stated the sidewalks on Elm, Highland and Bellaire are in the Comprehensive Plan as part of the network the City hopes to someday achieve. Mr. Kauppi noted only 10 out of 70 people showed up to the Elm Street neighborhood meeting with only a handful against that sidewalk. He added that specific notices were mailed containing maps locating the new sidewalk in an effort to provide a head-up to residents.

Councilmember Edberg asked; should the sidewalks be completed and why? Mr. Kauppi stated the Comprehensive Plan is the guiding document that staff references to ask whether it makes sense. He stated the Bellaire sidewalk makes sense as it is a major roadway connecting County Road E and already contains intermittent sidewalk segments. He reviewed the Elm Street sidewalk and identified a school and park to the west, as well as a major north/south corridor along White Bear Avenue, so it makes sense to connect those. He said, the Highland Avenue sidewalk does not make sense unless Elm Street gets the sidewalk.

Councilmember Engstran said he is hearing both sides from his constituents.

Mayor Emerson mentioned that Elm Street residents have asked why sidewalks are being added to the side of the street with shorter yards. Mr. Kauppi stated this area is a newer development with generally the same sized yards and setbacks. He mentioned the south side was not chosen for sidewalk primarily due to utility power lines that could go nowhere else, and the slopes of the driveways given the topography. Mr. Kauppi added that generally the people getting the sidewalk are opposed to it, but the benefit to the neighborhood as a whole and the connectivity also needs to be considered.

It was moved by Councilmember **Walsh**, seconded by Councilmember **Biehn** to adopt **Resolution No. 12528** receiving feasibility report and ordering a public hearing for 2020 Street Reconstruction Project 2020 Mill and Overlay Project, City Projects Nos. 20-01, 20-04, 20-06 & 20-13

Motion carried unanimously.

Mayor Emerson pointed out that the Public Hearing is scheduled on Wednesday, February 26, 2020.

10. CONSENT

Nothing scheduled

11. DISCUSSION

Nothing scheduled

12. COMMUNICATIONS FROM THE CITY MANAGER

- Strategic Planning 2019 – 2020 provided for the City’s Vision, Mission, Values and Strategic Initiatives, also on the website.
- Mark Meyer was promoted to Public Works Superintendent.
- Climate-Smart Municipalities, a program significantly funded by the Federal Republic of Germany, is hosting delates in Germany on June 13th. The steering committee represents a multitude of community members who will be providing a presentation of action items to the Council on February 26th. Century College will be hosting a climate action event on April 8th and the Mayor and City Manager will speak about Climate-Smart at noon and 5:00 p.m.
- While snow plow events will require more communication with between the Police Department and Ramsey County to identify illegally parked cars, increased coordination between Police and Public Works is paying off. There were over 200 tickets issued to vehicles parked on streets needing plowed and Public Works crews are seeing a notable difference.

- The Water Efficiency Rebate program is available again. Replacement of high flow toilets with WaterSense toilets that flush 1.28 gallons per flush or less may qualify for up to \$200 in rebates. Residents may complete the webform available on the website (whitebearlake.org/rebate).
- In February there will likely be two resolutions before Council regarding Comcast. One to preliminarily deny Comcast's franchise proposal and the other to extend the franchise agreement to allow more time for discussions. The Cable Commission reviewed Comcast's formal proposal utilizing criteria defined in the Federal Cable Act and will be voting on Thursday to preliminarily deny the proposal as recommended by Cable Commission staff and attorneys. Remaining member municipalities are committed to this franchise renewal process, with intentions to reassess the Joint Powers Agreement upon reaching a franchise renewal agreement with Comcast.
- There will be a Town Hall meeting in White Bear Lake City Hall on Saturday, February 15th at 9:00 a.m. at which local legislators will be available for questions regarding the upcoming legislative session.
- Current Charter Section 4.13 states the election of the Council Chair occur every two years following an election year. Staff will forward the Council's request to consider whether to move election of the Chair to an election year. This request would likely be added to the next Charter Commission agenda in September.
- A regular review of compensation for Mayor and Council will be brought forward at a future meeting. Any implementation would not go into effect until 2022.
- LED upgrades have been completed at Public Works, Public Safety and are in process at City Hall. The City received \$11,000 in rebates for implementing the LED program and the payoff to operational costs will be realized in two years. Other environmental related updates were provided by Connie Taillon.
- The organics collection site at the Public Works building is live and being utilized more than expected. The City received an incentive of \$5,600 from Ramsey County for providing the dumpster location.
- Federal Tobacco 21 Law is now in effect, which restricts sale of tobacco products to anyone under the age of 21.
- Community Development Director Kane reported receiving \$425,000 in CDBG funding from Ramsey County for window replacement at Pioneer Manor and project management by Walker Methodist. Bids will be opened next week and staff anticipates consideration of an award of the contract at the February 11th City Council agenda to meet a condensed May 1st timeline for completion.
- Community Development Director Kane reported the City was awarded \$25,000 in grant funding from Ramsey County for the County Road E corridor planning initiative with Vadnais Heights and Gem Lake, which requires matching funds. Planning should kick off this spring.

Tracy Shimek, the City's Housing and Economic Development Coordinator, was instrumental in writing this grant, which Ramsey County reported was by far the best received. Shimek also wrote the grant for CDBG funding for Pioneer Manor.

In response to Councilmember Edberg regarding sidewalks, Mr. Kauppi explained that Public Works staff balances the clearing of sidewalks to the best of their ability and the City is doing what it can within reasonable means to keep sidewalks usable. He noted that other cities who require residents to keep sidewalks clear are fraught with managing the enforcement of this kind of program.

13. ADJOURNMENT

There being no further business before the Council, it was moved by Councilmember **Walsh** seconded by Councilmember **Jones** to adjourn the regular meeting at **8:19** p.m.

Motion carried unanimously.

Jo Emerson, Mayor

ATTEST:

Kara Coustry, City Clerk



City of White Bear Lake
Community Development Department

MEMORANDUM

To: Ellen Hiniker, City Manager

From: Samantha Crosby, Planning & Zoning Coordinator

Date: January 29, 2020 for the February 11, 2020

Subject: **Walser Polar Chevrolet - Time Extension**, Case No. 19-1-CUPe & 19-1-Ve

REQUEST

A 12 month time extension of previously approved Conditional Use Permits and Variances to reconstruct the car dealership at the northeast corner of County Road F and Highway 61. Finalizing the shoreline restoration plans has taken longer than anticipated. A building permit was issued just last week, so construction should be commencing very soon if not already. See attached request letter.

SUMMARY

At the time of original approval no one from the public spoke to the matter. The project was recommended by the Planning Commission (5-0) and approved by the City Council on the consent agenda (4-0). Staff has reviewed the surrounding area property owners and no properties have changed hands since the original approval, so no mail notices were sent regarding this extension. In short, no significant changes have transpired since the original approval that would provide cause to re-analyze the request.

RECOMMENDED COUNCIL ACTION

Approval of the attached resolution granting a 12 month time extension.

ATTACHMENTS

Resolution of Approval
Request letter dated December 30, 2019

RESOLUTION NO.

**RESOLUTION APPROVING A TIME EXTENSION FOR
TWO CONDITIONAL USE PERMITS AND ELEVEN VARIANCES
FOR 1801 COUNTY ROAD F
WITHIN THE CITY OF WHITE BEAR LAKE, MINNESOTA**

WHEREAS, a proposal (19-1-CUP & 19-1-V) has been submitted by Walser Automotive Group, requesting a time extension of a previous land use approval from the City of White Bear Lake at the following site:

ADDRESS: 1801 County Road F, East

LEGAL DESCRIPTION: Lots 34-38, Block 1, Richland Acres, Ramsey County, MN (PID # 233022330008)

WHEREAS, THE APPLICANT SEEKS THE FOLLOWING: An 12-month extension of approved Conditional Use Permits and Variances (until March 12, 2021)

Reso #12358, passed March 12, 2019: A Conditional Use Permit for vehicular sales and showroom in the B-3 district, per Code Section 1303.140, Subd.4.h; and a Conditional Use Permit for site plan approval in the Shoreland Overlay district, per Code Section 1303.230, Subd.6; and

- A variance to reduce the minimum building size requirement from 20% of the lot area to 14.2%, per code section 1303.140, Subd.4.h.1.e;
- A variance from the 30% maximum impervious area to allow 81.8% impervious area, per code section 1303.230, Subd.5.a5;
- A 10 foot variance from the 15 foot hard surface setback from the south property line, per code section 1302.050, Subd.4.h.17.a.1;
- A 10 foot variance from the 20 foot hard surface setback from the east property line, per code section 1302.130. Subd.4.e;
- A 5 foot variance from the 5 foot hard surface setback from the building, per code section 1302.050, Subd.4.h.17.a.3;
- A variance from the 50% maximum use of metal panels to allow 88.3% on the west elevation and 55.7% on the south elevation, per code section 1303.140, Subd.6.c;
- A 41 square foot variance from the 35 square foot size maximum for freestanding signage, and a 32 foot variance from the 10 foot height limit for freestanding signage, both per Code Section 1202.040, Subd.2.B, to allow the relocation of the bear sign no closer than 101.8 feet from the OWHL and 125 feet from the west property line.
- A variance from the perimeter landscaping requirements to allow fewer trees and shrubs than required along the west, south, and east property lines, per code section 1302.050, Subd.4.h.16.a.3&4
 - West: 24 trees, 202 shrubs required / 0 trees, 153 shrubs provided
 - South: 23 trees, 192 shrubs required / 0 trees, 141 shrubs provided
 - East: 15 trees, 126 shrubs required / 55 arborvitaes provided; and

WHEREAS, no significant changes have transpired since the original approval; and

WHEREAS, the original approvals expire on March 12, 2020; and

WHEREAS, the City Council has considered the effect of the time extension upon the health, safety, and welfare of the community and its Comprehensive Plan, as well as any concerns related to compatibility of uses, traffic, property values, light, air, danger of fire, and risk to public safety in the surrounding areas;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of White Bear Lake after reviewing the proposal, that the City Council accepts and adopts the following findings in relation to the extension of the Conditional Use Permits:

1. The proposal is consistent with the city's Comprehensive Plan.
2. The proposal is consistent with existing and future land uses in the area.
3. The proposal conforms to the Zoning Code requirements.
4. The proposal will not depreciate values in the area
5. The proposal will not overburden the existing public services nor the capacity of the City to service the area.
6. The traffic generation will be within the capabilities of the streets serving the site.
7. The special conditions attached in the form of conditional use permits are hereby approved.

FURTHER, BE IT RESOLVED by the City Council of the City of White Bear Lake that the City Council accepts and adopts the following findings in relation to the extension of the Variances:

1. The requested variances will not:
 - a. Impair an adequate supply of light and air to adjacent property.
 - b. Unreasonably increase the congestion in the public street.
 - c. Increase the danger of fire or endanger the public safety.
 - d. Unreasonably diminish or impair established property values within the neighborhood or in any way be contrary to the intent of this Code.
2. Because the bear sign is a long-standing community icon, the sign variances are a reasonable use of the land or building and the variances are the minimum required to accomplish this purpose.
3. Because the perimeter landscaping (tree and shrub) requirements will be satisfied by alternative methods, the variances are in harmony with the general purpose and intent of the City Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
4. Because the setbacks and impervious area are an improvement over existing conditions, the variances are in harmony with the general purpose and intent of the City Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
5. The special conditions or circumstances are not the result of actions of the applicant.

6. The non-conforming uses of neighboring lands, structures, or buildings in the same district are not the sole grounds for issuance of the variances.

FURTHER, BE IT RESOLVED, that the City Council of the City of White Bear Lake hereby approves the requested time extension subject to all of the same following conditions:

1. All application materials, maps, drawings, and descriptive information submitted with this application shall become part of the permit.
2. Per Section 1301.050, Subd.4, if within ~~one~~ **two (2)** years after approving the Conditional Use Permit, the use as allowed by the permit shall not have been completed or utilized, the CUP shall become null and void unless a petition for an extension of time in which to complete or utilize the use has been granted by the City Council. Such petition shall be requested in writing and shall be submitted at least 30 days prior to expiration.
3. This Conditional Use Permit shall become effective upon the applicant tendering proof (ie: a receipt) to the City of having filed a certified copy of the sign resolution of approval with the County Recorder pursuant to Minnesota State Statute 462.3595 to ensure the compliance of the herein-stated conditions.
4. A snow storage plan shall be approved by City staff and adhered to by the property owner. Failure to comply with the snow storage plan may result in citation without written warning.
5. No loud speakers.
6. The applicant shall obtain a building permit prior to beginning any work.
7. The applicant shall obtain sign permits prior to the removal and reinstallation of any signage. The amount of wall signage is limited to 109 square feet on the west elevation as shown. The bear sign shall be no closer than 101.8 feet from the OHWL and 74.3 feet from the west property line. The up-cast lighting for the bear sign shall be positioned on the northwest side of the bear (meaning it shines up towards the site, and away from the lake and the road).
8. The waste/recycling receptacles shall be internal to the building and any rooftop mechanical equipment will be positioned far enough away from the edge of the building so that it is not visible from the public right-of-ways or adjacent residential.

Prior to the issuance of a building permit, the applicant shall:

9. Provide a final site plan, including:
 - a. Revise the turning radius diagram to show truck turning movement onto County Road F with a 32 foot wide curb cut or shift the eastern curb cut further eastward to accommodate truck tuning movements, either solution subject to staff approval. Customer and employee parking shall meet code.
 - b. Provide at least a 10 foot setback along the east property line and any existing setbacks greater than 10 feet shall be maintained.
 - c. The area of the future building expansion shall be maintained as green space until constructed.

- d. Narrow the building by 5 feet near the front entrance in order to provide foundation plantings.
Revised plan to be approved by staff.
10. Provide a final landscape plan, including:
 - a. Locate large boulders between basin #2 and the lot to reduce the likelihood of snow being plowed into this basin.
 - b. "Do not plow past the fence" signs shall be posted on the fence.
 - c. Provide a graphic and table that summarizes the square footage of each of the landscape islands. May not include any part of the island that is less than 8 feet wide, any stormwater islands, or islands without trees). Amount of island area to meet code.
 - d. Replace the missing boulevard tree along Highway 61.
 - e. No more than one third of the proposed trees may be of the same type.
 - f. Landscape islands must be irrigated.
 - g. Trees shall either be upsized to off-set the missing inches or the remaining equivalent amount shall be paid into the Arbor Day fund at the rate of \$100 per caliper inch for trees and \$50 per shrub.
Revised plan to be approved by staff.
11. Provide final grading and drainage plan, including:
 - a. Relocate cross section A (or provide a second cross section) at the narrowest part of the shoreline area.
 - b. Show the OHWL, 25 foot setback, and 37.5 foot setback on the cross section.
 - c. Comply with both Engineering Memos - dated Jan. 29, 2019 and Feb. 6, 2019
Revised plan to be approved by staff.
12. Precast concrete panels must be color-integrated (versus painted) and are only allowed with an "architectural treatment". The applicant shall provide building materials samples to be approved by staff. All overhead doors to remain transparent.
13. Provide a photometric plan and lighting details for the parking lot pole lights and the wall packs on the building. The photometric plan should be calculated at grade, using initial lumens, with an Ilf rating of at least 1.0. Pole height shall not exceed 22 feet on top of a maximum 2 foot tall base. Any poles within 50 feet of the east property line, and along the north side within view of the adjacent townhomes, shall be a maximum of 10 feet on a 2 foot tall base. The light sources shall be shielded from view from County Road F, Goose Lake and adjacent residential. Plan and details subject to staff approval.
14. Provide a bike rack location and detail, subject to staff approval.
15. Extend a letter of credit consisting of 125% of the exterior improvements, which renews automatically every six months. The amount of the letter shall be based on a cost estimate of the outside improvements, to be approved by the City prior to the issuance of the letter of credit.
16. Provide a SAC (Sewer Availability Charge) determination letter from the Metropolitan Council.
17. Obtain any necessary permits from MnDOT, Ramsey County and the DNR and provide a

copy of each to the City.

- 18. Enter into a Stormwater Operation and Maintenance Agreement for the new on-site stormwater features and shoreline restoration plantings.

Prior to issuance of a certificate of occupancy:

- 19. The design drawings, work plans and maintenance plan generated by the restoration contractor shall be approved by the City.

Prior to the release of the letter of credit, the applicant shall:

- 20. Provide an as-built plan that complies with the City’s Record Drawing Requirements.
- 21. All exterior improvements must be installed.
- 22. All landscaping must have survived at least one full growing season.
- 23. The applicant shall provide proof of having recorded the Resolution of Approval and the Stormwater Operation and Maintenance Agreement with the County Recorder’s Office.

The foregoing resolution, offered by Councilmember _____ and supported by Councilmember _____, was declared carried on the following vote:

Ayes:
 Nays:
 Passed:

 Jo Emerson, Mayor

ATTEST:

 Kara Coustry, City Clerk

Approval is contingent upon execution and return of this document to the City Planning Office.

I have read and agree to the conditions of this resolution as outlined above.

 Signed _____ Date _____

 Print Name & Title



1100 Mendota Heights Road • Mendota Heights, MN 55120 • (651) 681-0200 • Fax (651) 681-0235

December 30, 2019

City of White Bear Lake, MN
Planning & Zoning/City Council
4701 Highway 61
White Bear Lake, MN 55110

RE: Permit & CUP Time Extension for the Walser Polar Chevrolet Dealership

To Whom it May Concern:

To follow up on the request made by the city planning and zoning department, we are requesting a time extension on the building permit, and conditional use permit for the construction of the Walser Polar Chevrolet Dealership, located on County Road F and Highway 61. We are requesting this extension due to additional time/steps that need to be taken to finalize the Goose Lake Shoreline restoration, as well as the owner's final financing. We anticipate that construction of the new facility and permits can be closed out by the end of the year 2020. If you have any additional questions or comments, please do not hesitate to contact me at 651-443-2000 or at john.grotkin@rjryan.com.

Thanks,

A handwritten signature in blue ink, appearing to read 'John A. Grotkin', with a small blue dot at the end.

John A. Grotkin
Project Manager
R.J. Ryan Construction Company



City of White Bear Lake
Community Development Department

MEMORANDUM

To: Ellen Hiniker, City Manager

From: The Planning Commission

Through: Ashton Miller, Planning Technician

Date: February 5, 2020 for the February 11, 2020 City Council Meeting

Subject: **Herod, 4264 Cottage Park Road - CUP and Variance**
Case No. 20-1-CUP & 20-1-V

REQUEST

A Conditional Use Permit to allow for two curb cuts accessing Cottage Park Road and a two foot height variance from the four foot height limit for a fence abutting a right-of way.

SUMMARY

In addition to the applicant, three residents spoke in support of the CUP and variance. On a 4-1 vote, the Planning Commission recommended approval of a Conditional Use Permit for one additional curb cut, denial of the Conditional Use Permit for a curb cut on the portion of the property with the primary structure on it, and denial of the fence height variance, striking the condition that the fence be moved out of the public right-of-way. The dissenting vote found the condition to relocate the fence onto private property to be reasonable.

RECOMMENDED COUNCIL ACTION

Approval of the attached resolutions.

ATTACHMENTS

Resolution of Approval/Denial - CUP
Resolution of Denial - Variance

RESOLUTION NO.

**RESOLUTION GRANTING ONE CONDITIONAL USE PERMIT
AND DENYING ONE CONDITIONAL USE PERMIT
BOTH AT 4264 COTTAGE PARK ROAD
WITHIN THE CITY OF WHITE BEAR LAKE, MINNESOTA**

WHEREAS, a proposal (20-1-CUP) has been submitted by Richard Herod III to the City Council requesting approval of a conditional use permit from the Zoning Code of the City of White Bear Lake for the following location:

LOCATION: 4264 Cottage Park Road

LEGAL DESCRIPTION: Attached as Exhibit A

WHEREAS, THE APPLICANT SEEKS THE FOLLOWING: A conditional use permit for two additional curb cuts accessing Cottage Park Road, per Code Section 1302.050, Subd.4.h.9

WHEREAS, the Planning Commission has held a public hearing as required by the city Zoning Code on January 27, 2020; and

WHEREAS, the City Council has considered the advice and recommendations of the Planning Commission regarding the effect of the proposed CUP upon the health, safety, and welfare of the community and its Comprehensive Plan, as well as any concerns related to compatibility of uses, traffic, property values, light, air, danger of fire, and risk to public safety in the surrounding areas;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of White Bear Lake that the City Council denies the request for the curb cut onto Parcel 1, based upon then following findings:

1. The granting of the request is not consistent with the character of the neighborhood.
2. The proposed use of the curb cut into the rear yard is unwarranted since access can be gained in other ways.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of White Bear Lake that the City Council accepts and adopts the following findings of the Planning Commission:

1. The proposal is consistent with the city's Comprehensive Plan.
2. The proposal is consistent with existing and future land uses in the area.
3. The proposal conforms to the Zoning Code requirements.
4. The proposal will not depreciate values in the area.
5. The proposal will not overburden the existing public services nor the capacity of the City to service the area.

6. Traffic generation will be within the capabilities of the streets serving the site.

FUTHER, BE IT RESOLVED, that the City Council of the City of White Bear Lake hereby approves the request for a curb cut on Parcel 2, subject to the following conditions.

1. All application materials, maps, drawings, and descriptive information submitted with this application shall become part of the permit.
2. Per Section 1301.050, Subd.4, if within one (1) year after granting the Conditional Use Permit, the use as allowed by the permit shall not have been completed or utilized, the permit shall become null and void unless a petition for an extension of time in which to complete or utilize the use has been granted by the City Council. Such petition shall be requested in writing and shall be submitted at least 30 days prior to expiration.
3. This conditional use permit shall become effective upon the applicant tendering proof (i.e. a receipt) to the City of having filed a certified copy of this permit with the County Recorder pursuant to Minnesota State Statute 462.3595 to ensure the compliance of the herein-stated conditions. Proof of such shall be provided prior to the issuance of a rental license.
4. A driveway permit and right-of-way permit shall be obtained before construction of the curb cut on Parcel 2 in conjunction with the City street reconstruction project.

Prior to the issuance of a permit to allow the curb cut on Parcel 2, the applicant shall:

5. Enter into an Encroachment Agreement with the City for the existing structure and fence. Language of the agreement to be approved by staff before it is executed and recorded by the applicant.

The foregoing resolution, offered by Councilmember _____ and supported by Councilmember _____, was declared carried on the following vote:

Ayes:
 Nays:
 Passed:

 Jo Emerson, Mayor

ATTEST:

 Kara Coustry, City Clerk

Approval is contingent upon execution and return of this document to the City Planning Office.

I have read and agree to the conditions of this resolution as outlined above.

Richard Herod III

Date

EXHIBIT A**LEGAL DESCRIPTION****Parcel 1**

Lots 27 and 28, Block 2 of Cottage Park, except the following described portion of said Lot 28, viz: Beginning at a point of the S'ly line of said Lot 28, distant 20 feet W'ly from the SE'ly corner of said Lot 28; thence diagonally to a point of the E'ly line of said Lot 28, 86 feet NE'ly from the SE'ly corner of said Lot 28, thence SW'ly on the E'ly line of said Lot 28, to the SE'ly corner of Lot 28; thence 20 feet W'ly to the point of beginning, according to the recorded plat thereof on file and of record in the office the Register of Deeds in and for Ramsey County, State of Minnesota, AND that portion of Lot Four (4) in Block Three (3) of South Shore Addition described as follows; to-wit: Beginning at the Northwest (NW) corner of Lot Four (4), Block Three (3), South Shore Addition thence Southeasterly (SE'ly) a distance of Ten (10) feet along the old shore line of White Bear Lake; thence diagonally in a Southwesterly (SW'ly) direction a distance of Fifty (50) feet to a point on the Westerly (W'ly) line of said Lot 4, said point being fifty-three (53) feet Southerly (S'ly) from the Northwesterly (NW'ly) corner of said Lot 4; thence Northeasterly (NE'ly) fifty-three feet to the point of beginning.

AND

Parcel 2

All that part of Block 4, South Shore Rearrangement of parts of Blocks 1, 2, 3, and 4 Cottage Park lying within the following described lines: Commencing at the Southeast corner of the plat of Tousley Lakeview (assumed bearing of said South line is East); thence South 1 degree 37 minutes 40 seconds West 99.63 feet; thence South 1 degree 41 minutes 46 seconds West 100.01 feet to the point of beginning of the line to be herein described; thence continuing South 1 degree 41 minutes 46 seconds West 50.0 feet; thence on a curve to the right 108.90 feet, delta angle of 20 degrees 15 minutes 29 seconds, radius of 308.00 feet bearing North 88 degrees 18 minutes 14 second West to a point on the South line of said Block 4; thence North 68 degrees 51 minutes 17 seconds West 83.45 feet along said South line; thence Northerly on a curve to the right 75.38 feet, delta angle of 13 degrees 03 minutes 12 seconds, radius of 330.87 feet bearing North 83 degrees 10 minutes 42 seconds East to a point of reverse curve on the East line of White Bear Avenue; thence continuing Northerly on a curve to the left 50.0 feet, delta angle of 4 degrees 43 minutes 19 seconds, radius of 606.7 feet bearing North 74 degrees 19 minutes 04 seconds West along said Easterly line; thence North 88 degrees 42 minutes 03 seconds East 90.41 feet to the point of beginning, Ramsey County, Minnesota.

RESOLUTION NO.

**RESOLUTION DENYING A FENCE VARIANCE
FOR 4264 COTTAGE PARK ROAD
WITHIN THE CITY OF WHITE BEAR LAKE, MINNESOTA**

WHEREAS, a proposal (20-1-V) has been submitted by Richard Herod III to the City Council requesting approval of a setback variance from the Zoning Code of the City of White Bear Lake for the following location:

LOCATION: 4264 Cottage Park Road

LEGAL DESCRIPTION: Attached as Exhibit A

WHEREAS, THE APPLICANT SEEKS THE FOLLOWING RELIEF: A two foot variance from the four foot height limit for a fence abutting a right-of-way, per Zoning Code Section 1302.030. Subd.6.h.4; and

WHEREAS, the Planning Commission held a public hearing, as required by the city Zoning Code, on January 27, 2020; and

WHEREAS, the City Council has considered the advice and recommendations of the Planning Commission regarding the effect of the proposed variance upon the health, safety, and welfare of the community and its Comprehensive Plan, as well as any concerns related to compatibility of uses, traffic, property values, light, air, danger of fire, and risk to public safety in the surrounding areas;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of White Bear Lake that the City Council accepts and adopts the following findings:

- 1) The variance is not necessary for the reasonable use of the land or building.
- 2) There are no unique physical characteristics to the building or lot which create a practical difficulty for the applicant.
- 3) Deviation from the code without reasonable justification will slowly alter the City's essential character.

The foregoing resolution, offered by Councilmember _____ and supported by Councilmember _____, was declared carried on the following vote:

Ayes:
Nays:
Passed:

Jo Emerson, Mayor

ATTEST:

Kara Coustry, City Clerk

EXHIBIT A**LEGAL DESCRIPTION****Parcel 1**

Lots 27 and 28, Block 2 of Cottage Park, except the following described portion of said Lot 28, viz: Beginning at a point of the S'ly line of said Lot 28, distant 20 feet W'ly from the SE'ly corner of said Lot 28; thence diagonally to a point of the E'ly line of said Lot 28, 86 feet NE'ly from the SE'ly corner of said Lot 28, thence SW'ly on the E'ly line of said Lot 28, to the SE'ly corner of Lot 28; thence 20 feet W'ly to the point of beginning, according to the recorded plat thereof on file and of record in the office the Register of Deeds in and for Ramsey County, State of Minnesota, AND that portion of Lot Four (4) in Block Three (3) of South Shore Addition described as follows; to-wit: Beginning at the Northwest (NW) corner of Lot Four (4), Block Three (3), South Shore Addition thence Southeasterly (SE'ly) a distance of Ten (10) feet along the old shore line of White Bear Lake; thence diagonally in a Southwesterly (SW'ly) direction a distance of Fifty (50) feet to a point on the Westerly (W'ly) line of said Lot 4, said point being fifty-three (53) feet Southerly (S'ly) from the Northwesterly (NW'ly) corner of said Lot 4; thence Northeasterly (NE'ly) fifty-three feet to the point of beginning.

AND

Parcel 2

All that part of Block 4, South Shore Rearrangement of parts of Blocks 1, 2, 3, and 4 Cottage Park lying within the following described lines: Commencing at the Southeast corner of the plat of Tousley Lakeview (assumed bearing of said South line is East); thence South 1 degree 37 minutes 40 seconds West 99.63 feet; thence South 1 degree 41 minutes 46 seconds West 100.01 feet to the point of beginning of the line to be herein described; thence continuing South 1 degree 41 minutes 46 seconds West 50.0 feet; thence on a curve to the right 108.90 feet, delta angle of 20 degrees 15 minutes 29 seconds, radius of 308.00 feet bearing North 88 degrees 18 minutes 14 second West to a point on the South line of said Block 4; thence North 68 degrees 51 minutes 17 seconds West 83.45 feet along said South line; thence Northerly on a curve to the right 75.38 feet, delta angle of 13 degrees 03 minutes 12 seconds, radius of 330.87 feet bearing North 83 degrees 10 minutes 42 seconds East to a point of reverse curve on the East line of White Bear Avenue; thence continuing Northerly on a curve to the left 50.0 feet, delta angle of 4 degrees 43 minutes 19 seconds, radius of 606.7 feet bearing North 74 degrees 19 minutes 04 seconds West along said Easterly line; thence North 88 degrees 42 minutes 03 seconds East 90.41 feet to the point of beginning, Ramsey County, Minnesota.



City of White Bear Lake
Community Development Department

MEMORANDUM

To: Ellen Hiniker, City Manager

From: The Planning Commission

Through: Samantha Crosby, Planning & Zoning Coordinator

Date: February 6, 2020 for the February 11, 2020 City Council Meeting

Subject: **Twin Cities Petroleum, 2490 County Road F, East – Sign Setback Variances Case No. 20-2-V**

REQUEST

Two setback variances in order to locate a freestanding monument sign near the northeast corner of the property.

SUMMARY

One resident expressed concern regarding light and noise generated by the property which has recently increased. On a 5-0 vote, the Planning Commission recommended approval of the variances with the condition that the property owner work with staff to reduce the light and noise to the extent reasonable. Staff has consulted with the property owner. In relation to the noise, the volume of the video displays has been reduced to approximately 50 decibels 2 feet from the pump. This is a very acceptable level that cannot be heard when standing at the property line. In relation to the lighting, staff has revised the conditions of approval accordingly.

RECOMMENDED COUNCIL ACTION

Approval of the attached resolution.

ATTACHMENTS

Revised Resolution of Approval

RESOLUTION NO.

**RESOLUTION GRANTING TWO SETBACK VARIANCES FOR
2490 COUNTY ROAD F, EAST
WITHIN THE CITY OF WHITE BEAR LAKE, MINNESOTA**

WHEREAS, a proposal (20-2-V) has been submitted by Twin City Petroleum and Property LLC, to the City Council requesting approval of two setback variances from the Sign Code of the City of White Bear Lake for the following location:

LOCATION: 2490 County Road F, East

LEGAL DESCRIPTION: The North 110 feet of the East 110 feet of Lot 1, Block 1, Normandy Park, Ramsey County, Minnesota (PID # 253022210001)

WHEREAS, THE APPLICANT SEEKS THE FOLLOWING: A 3 foot 8 inch variance from the 10 foot setback requirement along the north property line and a 4 foot 5 inch variance from the 10 foot setback requirement along the east property line, both per Code Section 1202.040, Subd.2.B.1, in order to locate a freestanding monument sign in the existing greenspace on the northeast corner of the property; and

WHEREAS, the Planning Commission has held a public hearing as required by the city Zoning Code on January 27, 2020; and

WHEREAS, the City Council has considered the advice and recommendations of the Planning Commission regarding the effect of the proposed variances upon the health, safety, and welfare of the community and its Comprehensive Plan, as well as any concerns related to compatibility of uses, traffic, property values, light, air, danger of fire, and risk to public safety in the surrounding areas;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of White Bear Lake that the City Council accepts and adopts the following findings of the Planning Commission:

1. The requested variances will not:
 - a. Impair an adequate supply of light and air to the adjacent property.
 - b. Unreasonably increase the congestion in the public street.
 - c. Increase the danger of fire or endanger the public safety.
 - d. Unreasonably diminish or impair established property values within the neighborhood or in any way be contrary to the intent of this Code.
2. The variances are a reasonable use of the land or building and the variances are the minimum required to accomplish this purpose.
3. The variances will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

- 4. The non-conforming uses of neighboring lands, structures, or buildings in the same district are not the sole grounds for issuance of the variances.

FUTHER, BE IT RESOLVED, that the City Council of the City of White Bear Lake hereby approved the request, subject to the following conditions:

- 1. All application materials, maps, drawings, and descriptive information submitted in this application shall become part of the permit.
- 2. Per Section 1301.060, Subd.3, the variance shall become null and void if the project has not been completed or utilized within one (1) calendar year after the approval date, subject to petition for renewal. A request for renewal shall be submitted in writing at least one month prior to expiration of the approval.
- 3. A sign permit shall be obtained prior to installing the freestanding sign.
- 4. The sign shall comply with the duration, transition, brightness, display, and malfunction requirements of Section 1202.040, Subd.2.B.3 of the Sign Code.
- 5. The applicant shall verify the property lines and have the property pins exposed at the time of inspection.
- 6. Only the price portion of the sign will be illuminated – the rest of the sign will be unilluminated.
- 7. Fifty percent of the under canopy lights will be shut off at 9:00 pm.
- 8. The property owner will provide a photometric plan for City review to verify whether or not the lighting complies with the City’s code requirements. The photometric plan will including all lighting on site, including the video displays and the freestanding sign. The owner shall submit this plan within two months of the date of approval of this variance or the price sign shall be turned off until the photometric plan is provided. If the photometric plan shows that the lighting does not comply with City code, the lights shall be dimmed, shielded, replaced or otherwise corrected to comply with code. The correction shall enacted within 6 months of the date of approval of this variance or the price sign shall be turned off until compliance has been achieved.

The foregoing resolution, offered by Councilmember _____ and supported by Councilmember _____, was declared carried on the following vote:

Ayes:
Nays:
Passed:

Jo Emerson, Mayor

ATTEST:

Kara Coustry, City Clerk

Approval is contingent upon execution and return of this document to the City Planning Office.
I have read and agree to the conditions of this resolution as outlined above.

Property Owner's Printed Name and Signature

Date



City of White Bear Lake
Community Development Department

MEMORANDUM

To: Ellen Hiniker, City Manager

From: Tracy Shimek, Housing & Economic Development Coordinator

Date: February 6, 2020 for the February 11, 2020 City Council Meeting

Subject: **Community Development Block Grant Funding Approval for Pioneer Manor Window Replacement Project**

BACKGROUND

In a routine rental inspection of Pioneer Manor it was noted by inspection staff that many of the windows in the living units are difficult to open, especially for older residents. It has also been observed by property management staff that some units experience drafts from windows that are insufficiently insulated from the exterior. Staff determined window replacement would be a high priority capital investment for Pioneer Manor, but due to the high expense of a window replacement project determined it would be best to complete the project in phases once the building's debt had been retired.

In fall of 2019, Ramsey County staff solicited proposals from local municipalities for projects that would be eligible for Community Development Block Grant ("CDBG") funding. City staff approached Ramsey County with the Pioneer Window Replacement Project proposal and it was determined the project would be a good fit for CDBG funding.

SUMMARY

At the January 21, 2020 Ramsey County Housing and Redevelopment Authority Meeting, an amendment to the County's CDBG funding planned was approved which included a \$450,000 allocation for the Pioneer Manor Window Replacement Project. It is anticipated the cost of the window replacement including project management and Davis Bacon wage consultant fees will be approximately \$325,000. In the bid request, staff has requested two bid alternates to include panel replacement of the adjacent exterior paneling and trim replacement. While it is not necessary to include the two bid alternates to complete the window replacement process, it is felt it would be opportune to include the additional work should the approved CDBG funding be sufficient to cover the cost. If it is not completed in conjunction with the window replacement project, the work will likely need to be addressed in the future to ensure the underlying structure is sufficiently protected from exterior elements to prevent the deterioration of the building.

RECOMMENDED COUNCIL ACTION

Please forward the attached resolution to the City Council for consideration at its February 11, 2020 meeting, which, if approved supports the use of CDBG funds to replace the windows and at Pioneer Manor and authorizes the Mayor and City Manager to execute a Community Development

Block Grant Program Agreement with Ramsey County Housing and Redevelopment Authority for the project.

ATTACHMENTS

Resolution

RESOLUTION NO.

RESOLUTION AUTHORIZING THE USE OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FOR A WINDOW REPLACEMENT AND ADJACENT EXTERIOR PANELING AND TRIM PROJECT AT PIONEER MANOR

WHEREAS, the City of White Bear Lake owns and operates Pioneer Manor, a 42-unit, affordable senior apartment building; and,

WHEREAS, the City constructed Pioneer Manor in 1993 for the purpose of improving housing opportunities for residents over 62 years of age with 60% Area Median Income or lower; and

WHEREAS, the City's objective is to minimize monthly rent requirements through cost-containments and operating the facility on a break-even basis; and,

WHEREAS, the original windows and adjacent paneling and trim require replacement and to improve the energy efficiency and extend the life of the affordable senior housing facility; and,

WHEREAS, the policies of the City's Comprehensive Plan:

- Work to provide and maintain affordable housing for both rental and ownership sectors at a wide range of income levels;
- Continue to own and maintain Pioneer Manor as an affordable senior housing project; and,
- Promote federal, state and county programs which provide assistance to low and moderate income individuals and families for the rental and ownership of housing units.

WHEREAS, Ramsey County manages the Community Development Block Grant (CDBG) program to ensure housing opportunities are provided to people of low and moderate income; and

WHEREAS, the City ensures each resident that resides at Pioneer Manor complies with the income qualifications; and

WHEREAS, the City is seeking funding from Ramsey County through its Community Development Block Grant (CDBG) Program to assist with capital improvement projects, including the replacement of the original windows and adjacent exterior paneling and trim to improve the facility's overall energy efficiency.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of White Bear Lake, that the Council fully supports the use of CDBG funds to cover the cost of the window and adjacent exterior paneling and trim replacement at Pioneer Manor

RESOLUTION NO.

FURTHERMORE, having been awarded the grant funds, the Mayor and City Manager are hereby authorized to execute the Community Development Block Grant Program Agreement with Ramsey County Housing and Redevelopment Authority for the grant funds to be used for the window replacement and adjacent exterior paneling and trim project.

The foregoing resolution, offered by Councilmember _____ and supported by Councilmember _____, was declared carried on the following vote:

- Ayes:
- Nays:
- Passed:

Jo Emerson, Mayor

ATTEST:

Kara Coustry, City Clerk



City of White Bear Lake
Community Development Department

MEMORANDUM

To: Ellen Hiniker, City Manager

From: Tracy Shimek, Housing & Economic Development Coordinator

Date: February 6, 2020 for the February 11, 2020 City Council Meeting

Subject: **Awarding Contract for the Pioneer Manor Window Replacement Project**

BACKGROUND

At its January 14, 2020 meeting, City Council authorized Community Development Staff to advertise and accept bids for the replacement of all windows at Pioneer Manor. As noted in the previous agenda item, Ramsey County Housing and Redevelopment Authority has approved Community Development Block Grant funding to cover the cost of the project.

SUMMARY

On Wednesday, February 5, 2020 the City received bids for the Pioneer Manor Window Replacement Project. A total of one bid was received.

Staff is currently evaluating the bid and will present a recommendation to council at its February 11, 2020 meeting.

Additionally staff is requesting authorization to enter into contracts for ancillary services to facilitate the successful completion of the window replacement project including project management and Davis-Bacon wage compliance consulting. Funding from the Community Development Block Grant will be sufficient to encompass the cost of these services.

RECOMMENDED COUNCIL ACTION

Staff recommends Council receive the bids, award the contract, and authorize the City Manager to enter into additional contracts for services related to the project as recommended by staff at its February 11, 2020 meeting.



City of White Bear Lake
City Manager's Office

MEMORANDUM

To: Mayor and Council

From: Ellen Hiniker, City Manager

Date: February 6, 2020

Subject: **Resolution affirming RWSCC's preliminary assessment of the Comcast proposal that the franchise not be renewed**

BACKGROUND / SUMMARY

Ramsey/Washington Counties Suburban Cable Communications Commission (RWSCC), made up of 11 northeast suburban municipalities, was created in 1981 with a mission to perform the cable television franchising process on behalf of those municipalities. When cable television first arrived in 1983, the cable company agreed as part of its franchise commitment to provide access channels, production equipment, and staffing necessary for local programming. Eventually, the Commission decided to call that community television operation "Suburban Community Channels (SCC)." The cable company ownership changed hands several times in the 1980s and 1990s. Comcast has served as cable operator since 2002.

In 1999, the Commission and cable company implemented a renewed franchise agreement that is set to expire. Council has approved extensions over the past two years as the Commission and Comcast attempted to negotiate the franchise through the informal renewal process outlined in the federal Cable Communications Policy Act. Unable to come to a mutually acceptable agreement, the Commission initiated the formal renewal process last fall and issued a formal Request for Renewal Proposals with an original submission deadline of November 11th, which was later extended to December 13, 2019.

The Commission, as governed by the federal Cable Act, has specific criteria for evaluating the proposal. Upon review and as set forth in the attached documentation, the Commission's preliminary assessment led to a denial of the request to renew. This action, if supported by participating cities, does not deny Comcast any right or opportunity to provide service; rather, it would move the franchise discussions onto the next hearing phase in accordance with the federal Cable Act.

Grounds for the Commission's recommendation, as outlined in the attachment, are not just related to public, education and governmental programs funded through PEG fees. The Commission has also found that Comcast did not reasonably satisfy matters relating to customer service and billing, the I-NET, extension of service to unserved areas, upgrade of the system and system maintenance.

Based on their review, RWSCC recommends that its member cities affirm their preliminary assessment that the franchise not be renewed as proposed by Comcast. This recommended action is not a final action. If approved, the resolution would initiate a hearing proceeding through which

conditions of the franchise would be determined. The matter will ultimately come back to the Council for final approval.

RECOMMENDED COUNCIL ACTION

Staff recommends adoption of the attached resolution affirming RWSCC's preliminary assessment of the Comcast proposal concluding that the franchise not be renewed.

ATTACHMENTS

Memo from RWSCC Executive Director, Finnerty
Resolution with RWSCC resolution attached

MEMORANDUM

February 4, 2020

TO: Ellen Hiniker, City Manager, City of White Bear Lake

FROM: Tim Finnerty, Executive Director, Cable Commission

SUBJECT: Recommendation for Preliminary Assessment that the Comcast of Minnesota, Inc., Cable Franchise Should Not Be Renewed

Please find attached the recommendation of the Cable Commission that the City adopt a **preliminary assessment** that the cable franchise with Comcast should not be renewed.

It's important that this recommended action represents a PRELIMINARY ASSESSMENT. It is not a FINAL decision. This will simply trigger the next step, which is an administrative hearing that gives Comcast a fair opportunity, right to introduce and produce evidence, and question witnesses. That's what the federal law calls for. It's designed to provide due process to the parties, including Comcast. And it will determine what is reasonable and what is not reasonable under the law.

The attached documents include:

Analysis of Comcast's proposal, including the grounds for the preliminary assessment. The statement is not intended to lay out all the problems with the Comcast proposal, but is instead meant to provide enough information for the Member Municipalities to understand why the Cable Commission has found that the proposal is not adequate to support renewal at this point.

A recommended Resolution to Member Municipalities for adoption that issues a **preliminary assessment that the franchise should not be renewed**.

Recommended rules for conducting an administrative hearing for Comcast of Minnesota, Inc., franchise renewal. The rules are to be applied to ensure that Comcast is afforded a fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence and to question witnesses.

The recommended hearing rules include a timeline for the schedule of proceedings, which assumes that all the member communities act on the Cable Commission's recommendation by March 10. The Cable Commission may be able to move faster if the communities act more quickly.

It is important to note that other documents are referenced, but not contained, within the attachments, include the following:

The Commission's Request for Renewal Proposal (RFRP) issued to Comcast in October, 2019; and Comcast's response in December, 2019, to that RFRP.

MEMORANDUM

PAGE TWO

These documents are available for public inspection at the Commission office, and can also be found at the following link: <https://drive.google.com/drive/folders/1gaFIAPBPFiTrjRW5WXGX8LwBrOmG4jj9>

Also available at this link are the following:

A December 30, 2019, letter from Mr. Joe Van Eaton (representing the Cable Commission) to Mr. Anthony Mendoza (representing Comcast) regarding Comcast's response to the RFRP, as well as Mr. Mendoza's January 10, 2020 reply to that letter.

A January 30, 2020, letter from Mr. Anthony Mendoza (representing Comcast) to the Cable Commission.

An alternative draft resolution in the event your community wishes to accept Comcast's proposal. The Cable Commission DOES NOT recommend, but makes it available for your convenience if applicable.

Finally, the discussion of the grounds for the preliminary assessment refers to a financial analysis by consultant to the Cable Commission, Garth Ashpaugh. That report is confidential, but can be made available to authorized municipal officials – but the confidentiality of the specific information in that report should be respected. To make arrangements to view this material, please contact me.

Please contact me with any questions. Thank you.

Executive Summary of Grounds for Preliminary Assessment that Comcast Cable Franchise Should Not Be Renewed

Each community would be deciding whether to issue a preliminary assessment that the franchise should not be renewed. The communities would then conduct a formal hearing through the Cable Commission before making a final renewal decision.

1. Under the Cable Act, an operator's request for renewal can be denied unless an operator "has substantially complied with the material terms of the existing franchise and with applicable law;" and "the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs." The needs review showed that Comcast:

Failed to satisfy customer billing requirements.

Failed to properly maintain the system, and failed to devise an effective system for identifying and correcting maintenance problems.

(Separately, the company failed to provide information required by the renewal application form, and failed to respond to questions about its proposal or to pay application fee in connection with renewal application process).

2. Under the Cable Act, an operator's request for renewal can be denied unless an operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal. In addition, to be legally qualified, the company must accept legal conditions locality has a right to impose.

Cases suggest the refusal to correct maintenance problems (sloppy placement on poles, open boxes, wires on ground) indicates a company may not satisfy the technical standard.

Comcast refused to accept conditions that may be imposed as a condition of issuance of a franchise, and requires communities to accept conditions which they are not required to accept.

Comcast will not provide a local customer service office – its closest offices are a significant distance from subscribers. It did not agree to customer service conditions the communities may impose.

Comcast does not agree to pay full 5% franchise fee permitted by law; and it also does not preserve right to assess fees on non-cable revenues, even if permitted by state and federal law.

Executive Summary

Page 2 of 3

Company insists on one-way, level playing field clause that is likely to require you to either give up franchise benefits, or deny franchises to others.

Company insists on incorporating an FCC Order, still under appeal, that would allow reduction of franchise fees.

3. Lastly, a renewal may be denied unless “the operator’s proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.” Among other things:

Comcast argues build out requirements are subject to a “needs and interest test.” It does not agree to build-out conditions that will ensure its system is available to residents and businesses throughout the communities.

While elsewhere, Comcast agrees to share the cost of extending its service to remote areas, if subscribers (or developers) are willing to pay share in extension costs, Comcast refuses to agree to cost-sharing in the RWSCC communities.

Comcast does not propose to upgrade its cable system.

The Cable Act allows localities to require operators to build “institutional networks” – part of the cable system designed to provide advanced communications services to small businesses, community organizations and other non-residential customers. An institutional network already exists. However, Comcast will not agree to provide or continue to provide an institutional network throughout the communities to serve local businesses.

The Cable act allows localities to require an operator to provide capacity on an institutional network for educational and government use. Instead, the company offers to maintain existing connections at a cost of over \$554,000 for a ten year period. Comcast elsewhere has agreed to maintain much larger “dark fiber networks” for under \$15,000 annually, and normal market prices for dark fiber maintenance could be one-tenth of the price Comcast proposed.

With respect to PEG, Comcast does not propose to maintain PEG channels with an appropriate option for adding a Century College channel, for example; it does not agree to terms that will ensure the quality of PEG that keeps pace with television technology, (company proposes only two High Definition channels, while other local channels to remain in old, standard definition format); it does not agree to

Executive Summary
Page 3 of 3

provide a facility for PEG throughout the franchise term; and it does not propose adequate, other capital support going forward.

The Cable Commission's RFRP suggested a support level of about \$244,000, a **reduction** of PEG support as currently structured. However, Comcast proposed just half that amount and less (as a percentage of gross) than it provides in many communities. It would make it more difficult, and perhaps impossible to produce many live events, such as local high school sporting events.

RESOLUTION NO.

PRELIMINARY ASSESSMENT THAT THE COMCAST OF MINNESOTA, INC. CABLE FRANCHISE SHOULD NOT BE RENEWED

WHEREAS, _____ is a member of the Ramsey/Washington Counties Suburban Cable Communications Commission II (hereinafter “RWSCC”) a Joint Powers Commission organized pursuant to Minn. Stat. § 471.59, as amended, and includes the municipalities of Birchwood, Dellwood, Grant, Lake Elmo, Mahtomedi, North St. Paul, Oakdale, White Bear Lake, White Bear Township and Willernie, Minnesota (“Member Municipalities”);

WHEREAS, the Member Municipalities enacted separate ordinances and entered into individual agreements authorizing MediaOne North Central Communications Corp. to provide cable service (collectively, the “Franchises”);

WHEREAS, as a result of several transfers of the Franchises, Comcast of Minnesota, Inc., (“Comcast”) currently holds the Franchises in the Member Municipalities;

WHEREAS, Section 626(a)(1) of the Cable Communications Policy Act of 1984, as amended (the “Cable Act”), 47 U.S.C. § 546(a)(1), provides that if a written renewal request is submitted by a cable operator during the 6-month period which begins with the 36th month before franchise expiration and ends with the 30th month prior to franchise expiration, a franchising authority shall, within six months of the request, commence formal proceedings to identify the future cable-related community needs and interests and to review the performance of the cable operator under its franchise during the then current franchise term;

WHEREAS, Comcast invoked the formal renewal procedures set forth in Section 626 of the Cable Act, 47 U.S.C. § 546;

WHEREAS, the Joint Powers Agreement empowers the Commission and/or its designee(s) to conduct the Section 626 formal franchise renewal process on the Member Cities’ behalf and to take such other steps and actions as are needed or required to carry out the formal franchise renewal process;

WHEREAS, the Commission commenced formal franchise renewal proceedings under Section 626(a) of the Cable Act, 47 U.S.C. § 546(a), and authorizing the Commission or its designee(s) to take certain actions to conduct those Section 626(a) proceedings;

WHEREAS, RWSCC performed a needs assessment of the Member Municipalities’ and their communities’ present and future cable-related needs and interests and has evaluated and continues to evaluate Comcast’s past performance under the Franchises and applicable laws and regulations, all as required by Section 626(a) of the Cable Act, 47 U.S.C. § 546(a);

WHEREAS, the Commission’s needs ascertainment and past performance review included the Report on Cable-Related Needs and Interests and System Technical Review Within the Ramsey Washington Suburban Cable Commission Franchise Area, dated August 30, 2017, by CBG Communications, Inc.; Constance Ledoux Book, Ph. D., Telecommunications Research

RESOLUTION NO.

PRELIMINARY ASSESSMENT THAT THE COMCAST OF MINNESOTA, INC. CABLE FRANCHISE SHOULD NOT BE RENEWED

Corporation; Carson Hamlin, Media Integration Specialist; and Issues and Answers Telephone Research Firm (“CBG Report”); and in addition, the Commission reviewed its own files and conducted certain investigations as to needs and interests and past performance, and drew upon publicly available information regarding industry and area trends;

WHEREAS, based on its needs ascertainment and past performance review, RWSCC staff prepared a “Request for Renewal Proposal for Cable Franchise” (“RFRP”) that summarizes the Member Municipalities' and their communities' present and future cable-related needs and interests, establishes requirements for facilities, equipment and channel capacity on Comcast's cable system and includes model provisions for satisfying those requirements and cable-related needs and interests; that identified past non-compliance issues, and provided Comcast a further opportunity to correct them; and included a model franchise with terms and conditions;

WHEREAS, RWSCC and Comcast engaged in informal renewal negotiations pursuant to 47 U.S.C. § 546(h) but are currently unable to arrive at mutually acceptable terms;

WHEREAS, RWSCC established November 11, 2019 as a deadline for Comcast's response to the RFRP;

WHEREAS, RWSCC and Comcast agreed to extend certain deadlines including the deadline for Comcast to respond to the RFRP; and on or about December 13, 2019, Comcast submitted to RWSCC its Response to Ramsey Washington Counties Suburban Cable Communications Commission II's Request for Renewal Proposal for Cable Franchise (“Comcast Proposal”);

WHEREAS, RWSCC reviewed the Comcast Proposal and based on that review made a preliminary assessment that the Franchises should not be renewed, as set forth in Resolution 2020-01, (“RWSCC Resolution”) and recommended that each Member Municipality confirm and issue a preliminary assessment that the franchise not be renewed;

WHEREAS, RWSCC has proposed Rules for the Conduct of an Administrative Hearing, attached to the RWSCC Resolution as Exhibit B and asked each Member Municipality to confirm those rules.

NOW THEREFORE BE IT RESOLVED BY the City Council of the City of White Bear Lake, Minnesota, that:

Section 1. _____ hereby issues a preliminary assessment that the franchise should not be renewed, and the actions of the RWSCC affirmed.

Section 2. Exhibit A to the RWSCC Resolution is adopted and incorporated herein, and sets out grounds for the preliminary denial, and the which of the categories of issues set out in 47 U.S.C. § 546(c)(1) may be raised in any formal administrative proceeding.

RESOLUTION NO.

**PRELIMINARY ASSESSMENT THAT THE COMCAST OF MINNESOTA, INC.
CABLE FRANCHISE SHOULD NOT BE RENEWED**

Section 3. Exhibit B, the Rules for Conduct of an Administrative Hearing are confirmed and may be used for conduct of the proceeding. To remove any doubt, the RWSCC is authorized to make such changes to the Rules as may be necessary or appropriate for the conduct of the proceeding without seeking further authorization from _____.

Section 4. RWSCC shall provide such notices as may be required and promptly commence the administrative proceeding required by law.

Section 5. The proceeding maybe delayed by agreement, subject to ratification by the Member Municipalities. The proceeding may be terminated if an agreement is reached as to renewal, or if Comcast determines it does not wish an administrative hearing on its application.

The foregoing resolution, offered by Councilmember _____, and supported by Councilmember _____, was declared carried on the following vote:

Ayes:
Nays:
Passed:

Mayor

ATTEST:

City Clerk

RESOLUTION NO. 2020-01

**PRELIMINARY ASSESSMENT THAT THE COMCAST OF MINNESOTA, INC.
CABLE FRANCHISE SHOULD NOT BE RENEWED**

WHEREAS, The Ramsey/Washington Counties Suburban Cable Communications Commission II (hereinafter “RWSCC”) is a Joint Powers Commission organized pursuant to Minn. Stat. § 471.59, as amended, and includes the municipalities of Birchwood, Dellwood, Grant, Lake Elmo, Mahtomedi, North St. Paul, Oakdale, White Bear Lake, White Bear Township and Willernie, Minnesota (“Member Municipalities”);

WHEREAS, the Member Municipalities enacted separate ordinances and entered into individual agreements authorizing MediaOne North Central Communications Corp. to provide cable service (collectively, the “Franchises”);

WHEREAS, as a result of several transfers of the Franchises, Comcast of Minnesota, Inc. (“Comcast”) currently holds the Franchises in the Member Municipalities;

WHEREAS, a Joint Powers Commission organized pursuant to Minn. Stat. § 471.59 has the statutory authority to “jointly or cooperatively exercise any power common to the contracting parties [i.e., the Member Municipalities]”;

WHEREAS, the RWSCC was established by the Ramsey/Washington Counties Suburban Cable Communications Commission II Joint and Cooperative Agreement for the Administration of a Cable Communications Franchises (the “Joint Powers Agreement”), to monitor Comcast’s performance, activities, and operations under the Franchises and to coordinate, administer, and enforce the Member Municipalities’ Franchises, among other things;

WHEREAS, Section 626(a)(1) of the Cable Communications Policy Act of 1984, as amended (the “Cable Act”), 47 U.S.C. § 546(a)(1), provides that if a written renewal request is submitted by a cable operator during the 6-month period which begins with the 36th month before franchise expiration and ends with the 30th month prior to franchise expiration, a franchising authority shall, within six months of the request, commence formal proceedings to identify the future cable-related community needs and interests and to review the performance of the cable operator under its franchise during the then current franchise term;

WHEREAS, Comcast invoked the formal renewal procedures set forth in Section 626 of the Cable Act, 47 U.S.C. § 546;

WHEREAS, the Joint Powers Agreement empowers the Commission and/or its designee(s) to conduct the Section 626 formal franchise renewal process on the Member Municipalities’ behalf and to take such other steps and actions as are needed or required to carry out the formal franchise renewal process;

WHEREAS, the Commission commenced formal franchise renewal proceedings under Section 626(a) of the Cable Act, 47 U.S.C. § 546(a), and authorizing the Commission or its designee(s) to take certain actions to conduct those Section 626(a) proceedings;

WHEREAS, RWSCC performed a needs assessment of the Member Municipalities' and their communities' present and future cable-related needs and interests and has evaluated and continues to evaluate Comcast's past performance under the Franchises and applicable laws and regulations, all as required by Section 626(a) of the Cable Act, 47 U.S.C. § 546(a);

WHEREAS, the Commission's needs ascertainment and past performance review included the Report on Cable-Related Needs and Interests and System Technical Review Within the Ramsey Washington Suburban Cable Commission Franchise Area, dated August 30, 2017, by CBG Communications, Inc.; Constance Ledoux Book, Ph. D., Telecommunications Research Corporation; Carson Hamlin, Media Integration Specialist; and Issues and Answers Telephone Research Firm ("CBG Report"); and in addition, the Commission reviewed its own files and conducted certain investigations as to needs and interests and past performance, and drew upon publicly available information regarding industry and area trends;

WHEREAS, based on its needs ascertainment and past performance review, RWSCC staff prepared a "Request for Renewal Proposal for Cable Franchise" ("RFRP") that summarizes the Member Municipalities' and their communities' present and future cable-related needs and interests, establishes requirements for facilities, equipment and channel capacity on Comcast's cable system and includes model provisions for satisfying those requirements and cable-related needs and interests; that identified past non-compliance issues, and provided Comcast a further opportunity to correct them; and included a model franchise with terms and conditions;

WHEREAS, RWSCC and Comcast engaged in informal renewal negotiations pursuant to 47 U.S.C. § 546(h) but are currently unable to arrive at mutually acceptable terms;

WHEREAS, RWSCC established November 11, 2019 as a deadline for Comcast's response to the RFRP;

WHEREAS, RWSCC and Comcast agreed to extend certain deadlines including the deadline for Comcast to respond to the RFRP; and on or about December 13, 2019, Comcast submitted to RWSCC its Response to Ramsey Washington Counties Suburban Cable Communications Commission II's Request for Renewal Proposal for Cable Franchise ("Comcast Proposal");

WHEREAS, RWSCC has carefully reviewed the Comcast Proposal and has preliminarily considered whether:

(A) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;

(B) the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;

(C) the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and

(D) the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests; and

WHEREAS, the RWSCC has preliminarily assessed the proposal and determined that the proposal does not show that Comcast's past performance justifies renewal; or show that Comcast has the financial, legal and technical ability to provide the services, facilities and equipment set forth in the proposal; and does not show that it is reasonable to meet future cable-related needs and interests, in light of the costs of meeting those needs and interests; and

WHEREAS, RWSCC has proposed Rules for the Conduct of an Administrative Hearing, attached hereto as Exhibit B, which rules are intended to comply with all procedural obligations set forth in 47 U.S.C. § 546(c);

WHEREAS, the preliminary assessment and the rules will be referred to each of the Member Municipalities for their adoption, and each of the Member Municipalities should take action on the preliminary assessment and rules by April 13, 2020;

NOW, THEREFORE, BE IT RESOLVED BY THE RAMSEY WASHINGTON CABLE COMMUNICATIONS COMMISSION II, THAT:

1. Each of the above recitals is hereby incorporated as a finding of fact by RWSCC.
2. RWSCC hereby issues a preliminary assessment that the franchise should not be renewed. The basis for RWSCC's preliminary assessment is set forth in Exhibit A. The proposed rules for conduct of the proceeding are set forth in Exhibit B.
3. RWSCC recommends to the Member Municipalities that the Member Municipalities issue a preliminary assessment that the Comcast Franchises should not be renewed, and confirm that the hearing will be conducted for the community pursuant to the Rules set forth in Exhibit B; and make it clear that the rules may be changed as necessary or appropriate in the conduct of the proceeding.
4. RWSCC recommends that each of the Member Municipalities adopt a resolution in the form of Exhibit C, Preliminary Assessment, but also provides an alternative resolution that would approve the renewal proposal.
5. At any administrative hearing, the Rules for the Conduct of an Administrative Hearing attached hereto as Exhibit B shall be applied to ensure that Comcast is afforded a fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence and to question witnesses.
6. The administrative proceeding will commence immediately after any Member Municipality adopts a resolution affirming this preliminary assessment and the procedural

rules, and after proper notice is given. Commencement may be delayed to allow for each of the Member Municipalities to act upon these recommendations.

7. The proceeding may be delayed by agreement, subject to ratification by the Member Municipalities. The proceeding may be terminated if an agreement is reached as to renewal, or if Comcast determines it does not wish an administrative hearing on its application.
8. RWSCC finds that its actions are appropriate and reasonable in light of the mandates contained in federal law including 47 U.S.C. § 546.

PASSED AND ADOPTED this 30th day of January, 2020:

RAMSEY/WASHINGTON COUNTIES
SUBURBAN CABLE COMMUNICATIONS
COMMISSION II

By: 
Chair

EXHIBIT A

**ANALYSIS OF COMCAST'S CABLE PROPOSAL TO THE RAMSEY/WASHINGTON
COUNTIES SUBURBAN CABLE COMMUNICATIONS COMMISSION II**

PRELIMINARY ASSESSMENT OF THE COMCAST FORMAL PROPOSAL FOR RENEWED FRANCHISES WITH THE RWSCC II MEMBER MUNICIPALITIES

A. Recommendation

The RWSCC should adopt, and recommend that its Member Municipalities issue a preliminary assessment that the cable franchises (“Franchises”) issued to Comcast of Minnesota, Inc. (“Comcast”) should not be renewed.

B. Federal Law Background

The Cable Communications Policy Act of 1984 (“Cable Act”) contemplates a three-stage renewal process.¹ In the first stage, a local franchising authority (“LFA”) identifies future, cable-related community needs and interests and evaluates the cable franchisee’s performance during the term of the franchise.² Next, the LFA issues a Request for Renewal Proposal (“RFRP”) to the incumbent cable operator. The operator has the opportunity to respond to this request by submitting a proposal for renewal which must contain such material as the franchising authority may require.³ Assuming it does so, and if the LFA issues “a preliminary assessment that the franchise should not be renewed,” the operator is entitled to an administrative hearing on its renewal proposal.⁴ The operator is afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding.⁵

Following the administrative proceeding, the LFA must “issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and ... [s]uch decision shall state the reasons therefor.”⁶

The renewal proceeding considers four statutory criteria. Specifically, the LFA considers whether:

1. the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;
2. the quality of the operator’s service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;
3. the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator’s proposal; and
4. the operator’s proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.⁷

¹ 47 U.S.C. § 546.

² See 47 U.S.C. § 546(a)(1).

³ 47 U.S.C. § 546(b)(1).

⁴ 47 U.S.C. § 546(c)(1), (2).

⁵ 47 U.S.C. § 546(c)(2).

⁶ 47 U.S.C. § 546(c)(3).

The LFA must then issue a written decision either granting or denying the operator's renewal proposal. A final written decision by the LFA to deny renewal may be based on an adverse finding on one or more of these four issues. The operator may appeal a final decision to deny to state or federal court.

The focus of the renewal proceeding is the operator's proposal. If inadequate, the operator's request may be denied, even if the operator expresses a willingness to offer something different during the proceeding. It is bound by its proposal and its limits, and this memorandum describes some of the issues with the Comcast Proposal, based on the preliminary assessment of that proposal.

C. RWSCC/Local Actions/Comcast Submission

On October 4, 2019, the RWSCC issued its RFRP to Comcast. The RFRP, among other things, identified specific needs and interests based in part upon the analysis prepared by CBG Communications, Inc., and included specific instructions for Comcast to submit its renewal proposal. The RFRP also contained a model for meeting certain of those needs and interests.

The RFRP was divided into several sections. Parts II A-C identified the communities' future cable-related needs and interests. Part II.D identified past performance issues. The RFRP states Comcast should satisfy the needs and interests identified, and address past performance issues. We discuss Comcast's response in detail below.

Part III provided Comcast a model for meeting needs and interests. Comcast was not required to hew to the model, but the model provided the company a clear guide for meeting needs and interests. The RFRP went on to state that if the company departed from the model, it needed to justify the model and explain why its proposal satisfied local, cable-related needs and interests. The company largely ignored this requirement, as well as requirements e.g., that it provide detailed financial information if it claimed that its proposal was reasonable in light of costs.

Part IV included a model franchise ("RWSCC Model"). The Cable Act requires the company to enter into a franchise, and Part IV specified franchise terms, including customer service and franchise fee provisions. The RFRP allowed a company to propose changes, but noted that if it was unwilling to accept franchise terms, it would be legally unqualified to provide the services, facilities, and equipment it proposed – even assuming those were adequate. The RFRP made it clear that if the company was silent, it would be deemed a statement that the company was not willing to accept the franchise. Comcast did not say it would accept the model franchise, and submitted its own alternative ("Comcast Franchise").

⁷ 47 U.S.C. § 546 (c)(1)(A)-(D). A major legal issue in the renewal proceedings is likely to involve the proper application of this statutory standard. Comcast argues that its proposal need only be "adequate" to meet future cable-related needs and interests. RWSCC legal counsel believes that the proper standard for renewal is the express statutory standard. While it is unclear whether Comcast believes its proposal satisfies a "reasonableness" test, the analysis below would reach the same conclusion without regard to whether the relevant test is whether the proper test is "adequacy" or "reasonableness." The term "reasonable" or "reasonableness" is used throughout for convenience, and because that is the term that appears in Section 626.

The RFRP required Comcast to submit its response by November 11, 2019. This deadline was subsequently extended, by agreement of RWSCC and Comcast, in order to allow more time for negotiations aimed at reaching an informal settlement to continue. On December 13, 2019, Comcast submitted its response to the RFRP.

D. Analysis

While required to provide such material as the franchising authority may require, Comcast chose not to do so. Its failure to provide the information is in some cases based on legal claims with which RWSCC disagrees, but in many cases the departure from the requirements are unexplained, and creates burdens for the RWSCC and delays the renewal process. By letter dated December 30, 2020, the RWSCC notified Comcast that its failure to submit the information was both a violation of the franchise and a violation of the Cable Act, and Comcast was given an opportunity to cure. Comcast did not cure, and in its submission on January 10, 2020 refused to provide most of the requested information.

While the information provided is incomplete, and that incompleteness could justify termination of the renewal process or limitations on the information that may be presented by Comcast in any renewal proceeding, the RWSCC has attempted to analyze the Comcast Proposal, including the proposed Comcast Franchise.

As part of that review, the RWSCC retained the firm of Ashpaugh & Sculco (A&S) to review the proposal by Comcast from a financial perspective, in light of the renewal standards identified above. The report is confidential and cannot be made public. However, the main findings may be summarized as:

- the failure to provide the financial information requests limited the ability of A&S to analyze the proposal, BUT
- there is enough information to conclude that Comcast (at least as long as it maintains its current assets and structure) is financially qualified within the meaning of the Cable Act, and
- the company's operations generate significant revenues, enough so that the company should be able to continue to provide at least the levels of support it is providing for PEG now, as well as continuing to provide capacity on the institutional network, and investing new capital into the RWSCC communities.

CBG reviewed the report, and likewise concluded that it does not reasonably satisfy the needs and interests that it identified in its needs assessment report, and falls substantially short of doing so. This is particularly true with respect to proposals for upgrade; for PEG capital support, facilities and equipment; for PEG channels; for the institutional network, and for extension of the system to portions of the RWSCC communities not now served by Comcast.

Based on these, and on its own review, staff concludes that the RWSCC should issue a preliminary assessment that the franchise not be renewed, and recommend that each of the Member Municipalities do the same. A proceeding should be commenced to consider whether

the proposal satisfies each of the four requirements a proposal must satisfy in order to warrant renewal, with one exception. Based on the A&S report, the financial qualifications of Comcast to provide the services, facilities, and equipment as set forth in the operator's proposal would not be at issue, assuming the structure and assets of the company remain as set forth in the proposal.

Under the Cable Act, RWSCC is not required to detail the grounds for its preliminary assessment. As a result, this report does not list in detail all of the apparent shortcomings of the Comcast Proposal, nor all of the problems associated with Comcast's past performance. Rather, it identifies broadly the issues that will be in play during the renewal proceeding, provides examples of why those are at issue, and identifies issues that are of particular moment. Issuing a preliminary assessment that the Franchises should not be renewed will not prevent the parties from reaching a renewal agreement by negotiation later.

Under the Cable Act, within four months of the submission of a renewal proposal an LFA must either issue a preliminary assessment of non-renewal, or renew the franchise (unless the parties agree to extend that time). In this case, the four months expires on roughly April 13, 2020. The RWSCC should take action by that date, and as a matter of caution, by that same date, each Member Municipality should separately affirm the preliminary assessment and the grounds therefore, and affirm the proposed procedures for the conduct of the proceeding. Alternatively, the RWSCC could recommend, or a locality could choose to accept the Comcast proposal as submitted.

Grounds for Preliminary Assessment that Franchises Should not be Renewed

A. Has Comcast Substantially Complied with the Material Terms of Its Franchise?

RWSCC preliminarily concludes that it has not. The violations include:

1. The needs assessment showed several problems with the cable system. RFRP at 10, Sec. II(A); CBG Report, Ex. E1 and E2. Given the number of issues, and as part of the cure of these problems, Comcast was required to conduct an orderly inspection and to improve its existing system for identifying and correcting system problems; the RFRP indicated it was not an acceptable cure to maintain the status quo. RFRP at 3, 10, Secs. I(B), II(A). Comcast has not proposed an alternative method for compliance.
2. Comcast was being sued for fraudulent billing practices by the Minnesota Attorney General. The company was notified that the billing practices alleged would violate the franchise, as well as FCC rules, and put on notice that the practices should cease. The Minnesota Attorney General has settled with Comcast, without resolving the issue of whether Comcast in fact violated state law. The settlement will not result in correction all of the billing practices to which the RWSCC objected. The settlement resolves certain billing issues identified in the Attorney General's lawsuit by requiring Comcast to obtain affirmative informed consent from customers before customers are billed for any new products. This requirement does not assure that bills will be clear, concise, and understandable, as required under Section 5.2(b) of the Franchises. Comcast has not corrected its practices, and failed to timely respond to a notice of violation. It did submit

a letter in September, 2019, arguing that the litigation with the state provides no grounds for finding a violation, but its letter did not contest the findings that its billing practices violated federal law and the franchise – it made no effort to show that its practices comply with those requirements.

3. The RWSCC noticed a violation of Comcast's duty to provide information to the RWSCC in response to the RFRP. Comcast responded, but its response does not justify its failure to provide the required information.
 4. Comcast has had notice of each of these violations, and neither the RWSCC or its Member Municipalities has acquiesced in the violations, or agreed that Comcast's actions cure the defaults.
- B. Has the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs?*

RWSCC preliminarily concludes that it has not. The areas of default include the same issues discussed in Section A above. Those are also relevant to this Section B, particularly as to billing practices, and as to each, Comcast has been provided notice and opportunity to cure, and has not done so.

Other problems identified in the needs assessment – such as the failure to maintain a local office (RFRP at 20, Sec. II(C)) – might be properly considered under this section but RWSCC intends to address them under item D.

- C. Does Comcast have the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal?*

RWSCC preliminarily concludes Comcast does not have the legal or technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal. The issues include:

1. The failure to maintain the system properly (see discussion of system issues in Section A.1.) is an indication that Comcast is either unwilling or unable to comply with requirements for the placement of its system in the rights of way upon which the RWSCC may insist. Similar past technical shortcomings have supported denial in formal renewal proceedings. *Rolla Cable System, Inc. v. City of Rolla*, 761 F. Supp. 1398 (E.D. Mo. 1991).
2. As discussed above, and in the RFRP, Comcast is legally required to obtain a franchise as a condition of placing its system in the rights of way and providing services, and the Member Municipalities may insist on inclusion of certain conditions in the franchise as a matter of right. RFRP at 6, Sec. I(C). These conditions need not be based on any showing of need, although as the RFRP

notes, there is a need for each provision. These include, for example, the right to require the franchisee to pay a franchise fee equal to 5% of gross revenues derived by a cable operator from the operation of the cable system to provide cable service. 47 U.S.C. § 542. Rather than accepting the provision proposed in the RFRP, the company proposes to pay less than the federal maximum 5%. Comcast Franchise, Sec. 1. Not only are certain revenues excluded from the definition of gross revenues, the Comcast Franchise inappropriately allocates revenues among services. The failure to agree to pay a franchise fee equal to 5% of all gross revenues, as permitted by the Cable Act alone would justify a preliminary assessment that the Franchises should not be renewed.

3. There are many ways in which the Comcast Franchise departs from the model in the RFRP that also justify the preliminary assessment. For example, the Cable Act states that localities have the right to establish “customer service requirements” of the cable operator and “requirements for customer service and for constructions schedules and other construction-related requirements, 47 U.S.C. § 552. The RFRP required a customer service office in the RWSCC service territories, RFRP at 20, Sec. II(C), and Comcast refuses to provide one. Comcast Ex. 3, Item 2(B)(2)(b). Likewise, Comcast did not agree to customer service conditions designed to protect consumers from billing fraud and misleading billing practices (RWSCC Model, Sec. 9.3) – even though Comcast’s own conduct suggests that there are good reasons to protect consumers.

As the RFRP describes, requirements for construction also are arguably requirements that may be imposed unilaterally, and RWSCC preliminarily concludes that Comcast’s proposal does not satisfy requirements in the RFRP for build-out.⁸

Comcast also insisted on conditions that it does not have the right to require the localities to accept as a condition of a franchise, and which are not in the interest of the RWSCC to accept.

The Comcast Franchise, Sec. 18.16, includes a “competitive equity” provision of the sort that the RFRP states was not acceptable. Minnesota state law contains a clause that prevents a city from entering into “sweetheart deals” that favor one franchise cable operator over another with respect to certain requirements. The Member Municipalities will obviously comply with applicable state law. But Comcast goes further, and states that if the City issues an “authorization” to be in the rights of way to any company that provides “similar video programming service,” Comcast can obtain relief from its obligations. Under federal law, however, the City is expected to issue franchises to provide video programming to open video systems (“OVS”), and by federal law, certain obligations cannot be imposed on OVS that can be applied to cable systems. The FCC has

⁸ The RFRP did include these requirements within the needs and interest section of the RFRP as a matter of caution. RFRP at 10-11, Sec. II(A). The RFRP also notes that each of the franchise requirements is justified by needs and interests described in the RFRP, although a needs and interest analysis is not required. RFRP at 6, Sec. I(C).

distinguished between obligations that can be imposed on new entrants and on incumbents, and noted that treating the former like the latter can preclude competition.⁹ Providers of wireless services may require an authorization to be in the rights of way, and may provide video programming services wirelessly, but FCC rules would prevent localities from charging a wireless provider a 5% franchise fee, for example.¹⁰ Systems that provide video programming on a common carrier basis are not subject to Cable Act requirements at all, even if a local authorization is required to use the rights of way. See, e.g., 47 U.S.C. §§ 571, 573. Comcast argues that the Commission has upheld the validity of competitive equity clauses, but that does not mean that (a) such clauses are in the interest of the community; or (b) a cable operator may require a locality to agree to a competitive equity clause as a condition of issuing a franchise. Among other things, because the clause goes far beyond what the State has considered appropriate; and because of the potential anticompetitive effects, the insistence on this clause may itself justify renewal preliminary assessment that the Franchises should not be renewed.

The FCC recently issued an order declaring generally that all franchise requirements are “in-kind” benefits and count against the franchise fee unless they are (a) requirements that fall within exceptions to the franchise fee definition in 47 U.S.C. § 542, such as exceptions for capital requirements related to PEG facilities, equipment and channels¹¹ (PEG includes I-Net by definition); or incidental requirements such as bonds; (b) customer service requirements; or (c) build-out requirements (obligations to extend the system to provide service) or customer service obligations. Comcast’s proposal appears to go beyond the FCC order. It defines gross revenues to permit it to deduct the fair market value of all “in kind” benefits (without defining that term, or including the exceptions in the FCC order) (Comcast Franchise, Sec. 1). In addition, in several places the Comcast Franchise “locks in” the FCC order, and does not promise to satisfy needs and interests in the event the FCC order is overturned. By contrast, the model in the RFRP recognized the existence of the order, but addressed how the order would apply while in force, and what Comcast’s obligations would be if the order is overturned, or appealed. See, e.g., RWSCC Model, Secs. 3.3, 7.13, 7.14. Similar problems appear in the scope of the Comcast franchise.

D. Is Comcast’s Proposal Reasonable to Meet the Future Cable-Related Community Needs and Interests, Taking Into Account the Cost of Meeting Such Needs and Interests?

RWSCC preliminarily concludes Comcast’s proposal is not reasonable to meet future, cable-related needs and interests, taking into account the cost of meeting such needs and

⁹ *Implementation of Section 621(a)(1) of the Cable Commc'ns Policy Act of 1984 As Amended by the Cable Television Consumer Prot. & Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd. 5101, 5163, para. 138 (2007).

¹⁰ *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Inv.*, Declaratory Ruling and Third Report and Order, 33 F.C.C. Rcd. 9088, 9112-13, para. 50 (2018).

¹¹ Requirements for channel capacity do not count against the franchise fee.

interests. A table submitted by the company, Comcast Proposal, Exh. 3 shows that Comcast is not purporting to reasonably satisfy many needs and interest because it contends it cannot legally be required to satisfy them. Outside counsel disagree with those claims, and some of those disagreements are discussed below. Based on the preliminary assessment, it appears, among other shortcomings that:

1. Comcast has failed to submit a proposal reasonable to meet the need and interest in a cable system that includes equipment and facilities typical of a well-designed, state-of-the-art cable system, and which will maximize consumer choices, and the need and interest in a system upgrade. RFRP at 9-10, Sec. II(A). Comcast objects to the term “state-of-the-art” as vague and without a specific and generally accepted meaning with regard to cable systems. Ex. 3, Item 1. Comcast also claims that this requirement is impermissible, based upon 47 U.S.C. § 544(e), in that it prohibits, conditions, or restricts Comcast’s use of subscriber equipment or transmission technology in violation of federal law. *Id.* Comcast’s complaint that “state-of-the-art” is vague appears unfounded given that the RFRP provides objective measures, in addition to Model Franchise provisions, that demonstrate how the “state-of-the-art” requirement may be satisfied. In addition, Comcast’s application of 47 U.S.C. § 544(e) is erroneous, *see* Comcast Ex.. 3. Comcast suggests that localities may not require upgrades or establish construction schedules. The FCC has specifically stated that localities may require upgrade proposals in an RFRP, and the statute specifically permits establishment of construction-related schedules. What localities may not do is prescribe how the upgrade is to be performed. The RFRP does not prescribe *how or what equipment* may be used in connection with the upgrade. Rather, it gives Comcast the flexibility to use whatever technology it desires – including technologies it is actually using in the Twin Cities area.
2. Comcast has failed to submit a proposal reasonable to meet the need and interest in Comcast having an effective procedure in place and reporting process for identifying and correcting system problems. RFRP at 10, Sec. II(A). The Comcast Model does not contain a maintenance monitoring program, despite the specific finding by CBG Communications, Inc. that RWSCC should require such a program. CBG Report at 139.
3. Comcast has failed to submit a proposal reasonable to meet the need and interest in a cable system that passes all residences and businesses, except in cases where Comcast can show that requiring build-out would not provide it a reasonable opportunity to earn an adequate rate of return on the system as a whole. RFRP at 9, Sec. II(A). Comcast mischaracterizes this need and interest as a universal service obligation, Ex. 3, Item 2, but in any case, the law does not appear to prohibit universal service requirements. Comcast conflates the rules that apply to new entrants (and are designed to prevent imposition of unreasonable service area requirements as someone is entering the market) with requirements that may be imposed on existing long-term incumbents. The FCC has stated that limitation on build-out requirements for new entrants do not apply to incumbent cable operators. While Comcast has proposed a build-out requirement that is in some respects superior to that in the existing franchise, the proposal differs in at least four significant respects from the RFRP model franchise. Each of these differences alone would justify the preliminary conclusion that Comcast has not reasonably met the

identified needs and interests, and that preliminary conclusion is only bolstered by the absence of, for example, time limits for providing service to areas.

- a.* With respect to potential residential subscribers, the model required the system to pass all dwelling units where density was 15 units per street mile. RWSCC Model, Sec. 3.2.2. That is far below the density level proposed by Comcast. Comcast Franchise, Sec. 6.7(a).
 - b.* With respect to potential residential subscribers, the model proposed a build-out with no line extension charge unless Comcast showed build-out was not feasible. RWSCC Model, Sec. 3.2.2.
 - c.* Perhaps as importantly, where build-out is too expensive for Comcast, the model proposed to require Comcast to build-out and share the costs of the build-out with potential subscribers. RWSCC Model, Sec. 3.2.2. For example, if there were 14, instead of 15 residential dwelling units per mile, Comcast would pay 14/15 of the extension costs, if subscribers were willing to bear the remainder. Under the Comcast proposal, even if a customer was willing to share in build-out costs, Comcast could refuse to serve subscribers in lower density areas, or charge a potential subscriber the entire cost of the build-out. Comcast Franchise, Sec. 6.7(b).
 - d.* The model included similar provisions with respect to service to non-residential customers. RWSCC Model, Sec. 3.3. The proposed franchise does not require Comcast to pass any non-residential units, and no commitments are made with respect to build-out for service. Comcast Franchise, Sec. 6.7.
4. Comcast has failed to submit a proposal reasonable to satisfy the needs and interest in an institutional network. RFRP at 11, Sec. II(A). The authority to require an institutional network – a network designed to serve primarily non-residential customers is clear, and Comcast has not even responded to that need and interest. The existence of an I-Net, could, for example, ensure that small and large businesses have access to secure connections that are capable of supporting a wide range of advanced services, including high-speed Internet. RFRP at 19, Sec. II(B). No proposal is submitted in this regard.
5. Comcast has failed to submit a proposal reasonable to meet the needs and interests in public, educational, and government (“PEG”) use of the cable system both as to needs and interests related to capacity on an institutional network, or to related to capacity used to distribute video programming to cable service subscribers (Channel 16 being an example of PEG channel capacity). For convenience, the former are summarized in subsection (a) while the latter are summarized in subsection (b).
 - a.* The RFRP required Comcast to provide capacity and certain capital support for educational and government use of an institutional network, at no charge to the community, as permitted by 47 U.S.C. § 531. Comcast currently provides capacity for an institutional network and it is actively used by the Member Municipalities for critical applications. In this case, Comcast demands that localities pay for access to existing capacity, at rates that are more like rates charged for the provision of services (even though in this case, the only service

that would be arguably provided is “maintenance).” Ex. 3, Item 14. Charging for that capacity is not justified by cost to Comcast, and Comcast does not claim any benefit to the community from charging for the capacity. Moreover, the proposal, among other things, fails to reasonably address requirements for capacity as the institutional network expands.

- b.* the Comcast Proposal fails to satisfy needs and interests identified for PEG. That includes the needs and interests in channel capacity now or for the future; for PEG channel quality (only two channels would be available in high definition, and nothing ensures PEG channel quality would keep pace with the quality of other channels); the need and interest in ongoing capital support for PEG and ongoing PEG facilities; the need and interest in connections necessary to permit PEG channels to be monitored to ensure that the signal is being properly transmitted; the need and interest in having adequate capital connections for program origination (for high school sports for example). RFRP at 12-16, Sec. II(B). RWSCC preliminarily concludes that Comcast does not provide the number of channels required to satisfy current and future needs; proposes no improvements in quality despite changes in video technology, and proposes lower levels of support than are provided now, and no guarantee that adequate facilities will continue to be available. Comcast Proposal at 7; Comcast Franchise, Sec. 7.1. The ability to produce remote programming would be limited, as existing capital infrastructure deteriorates. Comcast appears to primarily justify its proposals on three grounds. The first is that there is limited interest in PEG (Ex. 3, Item 5) – but the CBG ascertainment shows otherwise, and CBG does not believe that the contentions by Comcast to the contrary accurately reflect the need and interest in PEG. Second, the proposal is based on the amount of original programming carried on the channel, but this has little relation to the value of the programming, or the quality of the signal required, as the CBG reports suggest. Lastly, Comcast points to the RWSCC reserves and financial practices. Comcast Proposal at 19-20. Those claims are disputed. For example, as the RFRP shows, the RFRP identified significant additional capital as well as operational costs for the future that are *not* addressed by the level of support in the RFRP model franchise. RFRP at 14-16, Sec. II(B). The Member Municipalities will need to reserve those funds for such purposes, and Comcast’s future obligations cannot be reduced based on those reserves, or other concerns about RWSCC operations.

Each of the failures identified above, considered individually, or collectively: the failure to reasonably meet needs and interest in a system upgrade; the need and interest in expanded service to residences and businesses, the institution of a program to ensure that the system is maintained in good order; the proposals with respect to institutional networks; and the proposals with respect to public, educational, and government uses of the system would justify a preliminary assessment not to renew the Comcast franchise.

Likewise, if measured under a “needs and interests” test, whether considered individually, or collectively, Comcast’s refusal to pay the a 5% franchise fee on all revenues; as permitted under the Cable Act; and its refusal to agree to the customer service standards in the

RFRP model franchise would justify a preliminary assessment that the Franchises should not be renewed, as would other proposed changes to the RFRP model franchise agreement.

CONCLUSION

The RWCC should determine, and recommend that its Member Municipalities make a preliminary assessment not to renew the Comcast franchises and authorize the RWSCC to commence an administrative proceeding to determine whether the Franchises should be renewed, consistent with the Section 626 of the Cable Act, 47 U.S.C. § 546.

The RWSCC should also approve an alternative resolution for consideration by the Member Municipalities, should any of them choose not to accept the recommendation. That Resolution should provide for approval of renewal.

EXHIBIT B

**RULES FOR CONDUCTING ADMINISTRATIVE HEARING FOR COMCAST OF
MINNESOTA, INC., FRANCHISE RENEWAL**

Explanatory Note:

The attached rules hew closely to procedures that were adopted for formal proceedings that have been noticed for other Minnesota communities, including the Northern Dakota County Cable Communications Commission. The rules contain some additional detail as to the procedures that will be followed, but substantively provide Comcast and the RWSCC communities the same procedural rights. Because these procedures have largely been litigated, the RWSCC has good reason to believe that these processes would be upheld if challenged by Comcast.

There is one significant departure from practices in other communities. Other communities have asked the Minnesota Office of Administrative Hearings to appoint a hearing officer. Under the attached model, RWSCC would appoint the hearing officer. Use of the OAH is not required by law, and the concern is that the OAH would not be able to conduct or complete the proceeding in accordance with the timetable set out in the proposed rules. In at least one recent case, it has been more than a year since the preliminary denial, and a hearing will not occur until next Fall. This would be of less concern if Comcast were willing to agree to a true “standstill” agreement with the RWSCC communities with a date certain for extension, but so far it has been willing to extend certain part of the agreements with the RWSCC communities, but not others.

The RWSCC therefore believes it is important to set out a process that allows for a rapid hearing and a conclusion of the renewal proceeding. This can be done by appointing an independent hearing officer. Case law suggests that the “hearing officer” could be, among others, the RWSCC itself, a subcommittee of the RWSCC, or its counsel, Michael Bradley. However, it appears important to have someone familiar with cable law conduct the case, and Mr. Bradley, while qualified believes it better if he not serve as the sole hearing officer.

James N. Horwood, a partner with Spiegel & McDiarmid, has agreed to act as hearing officer, His resume appears here: <http://www.spiegelmc.com/professionals/james-horwood/>

Mr. Horwood has significant experience with cable renewals, having litigated one of the few cases to have gone through the hearing process. He represents municipal governments and access centers on cable issues, but none in Minnesota. Because this proceeding must comply first and foremost with federal rules for renewal, he will be in a position to ensure that the proceedings are conducted rapidly, and in an appropriate manner.

You should be aware that your outside counsel, Joseph Van Eaton, was a member of Mr. Horwood’s firm, but left that firm more than 25 years ago. While occasionally Mr. Bradley, Mr. Van Eaton and Mr. Horwood’s firm will file joint appeals of FCC orders or comments with the FCC, neither Mr. Horwood or his firm have participated in this renewal proceeding in any way.

While we are not asking that the RWSCC approve the appointment of Mr. Horwood now, and we may propose additional alternatives, it is important for the Commission to understand that, if the rules are approved, we do have a person who can conduct the proceeding. Under the attached process, a hearing would occur in early June. A final decision would be made by the local communities and the RWSCC in the fall. Of course, as part of the consideration of the rules, the proposed schedule could be adjusted by the RWSCC.

RULES FOR CONDUCTING ADMINISTRATIVE HEARING FOR COMCAST OF MINNESOTA, INC., FRANCHISE RENEWAL

The RWSCC hereby establishes procedural guidelines for purpose of the administrative hearing under the Cable Communications Policy Act of 1984 as follows:

I. Hearing Officer Appointment; Duties:

- a. The RWSCC shall appoint a Hearing Officer to conduct the administrative hearing and issue recommended findings of fact for consideration by the RWSCC. The Hearing Officer will conduct the hearing consistent with the requirements of the Cable Communications Policy Act of 1984, and with the rules adopted below, ~~and to the extent practicable, and consistent with the above, in a manner consistent with the provisions for administrative hearings before the Minnesota Public Utilities Commission for rate cases.~~ The rules and procedures for contested case hearings under the Minnesota Administrative Procedures Act shall not apply.
- b. Minn. R. 1400.7300, subp. 1-4 (2013) sets out the rules of evidence applicable to this proceeding.
- c. The Hearing Officer will conduct the hearing in accordance with the scheduled prescribed but may shorten or extend any date for good cause shown, or where the Hearing Officer's schedule requires a variance in the schedule. The schedule is based on the assumption that the RWSCC communities will act on the petition for preliminary denial no later than March 10, 2020.
- d. The Hearing Officer will have authority to issue any rulings, and establish any other procedures necessary to the conduct of the hearing, including page limits and formats for briefs. That authority includes, but is not limited to, the authority to require production of witnesses and evidence, to recommend or impose sanctions, to rule on the admissibility of evidence and to limit evidence that may be presented, and to adopt appropriate orders governing treatment of trade secrets and confidential information.
- e. Sanctions for failure to comply with discovery, to submit pre-filed testimony or to provide the information required to be produced with the pre-filed testimony may include, but are not limited to, the following: :
 - i. directing that the matters embraced by the failure to provide information be taken as established for purposes of the action, as the prevailing party claims;
 - ii. prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
 - iii. striking pleadings or testimony in whole or in part;

- f. The RWSCC may remove a Hearing Officer if it appears the officer is unable or unwilling to perform his or her duties in a timely manner in a manner consistent with these rules.
- g. The rules may be altered by agreement of Comcast and RWSCC, and with the consent of the Hearing Officer, provided the rules comport with the requirements of the Cable Communications Policy Act of 1984.

II. Overview of Process:

- a. The proceeding will involve a review of Comcast's renewal proposal, and the submissions made in response to questions regarding that proposal in January, 2020. It will also involve a review of Comcast's past performance, and its qualifications. Amendments to the proposal are not permitted.
- b. Except for the record of the ascertainment, the RFRP and the Comcast response to the RFRP, which shall be introduced into the record, evidence, including exhibits will be submitted by pre-filed testimony. Any Witness submitting pre-filed testimony must appear at hearing, and shall be subject to cross-examination except where Hearing Officer determines, or parties agree, that the absence of a witness is not required (to authenticate documents, for example). The Hearing Officer may permit redirect and re-cross, but re-direct may not be used as a means of presenting evidence that should have been presented in pre-filed testimony.
- c. At the hearing, the Hearing Officer will consider whether :
 - (A) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;
 - (B) the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;
 - (C) the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and
 - (D) the operator's proposal for renewal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.
- d. At the end of the hearing, the parties will submit briefs and recommended findings to the Hearing Officer, and the Hearing Officer will prepare a written recommendation as to whether Comcast's request for renewal should be granted, or denied, and the reasons therefore. Each party may submit objections to those recommendations.
- e. The RWSCC may accept the recommendations, reject them and adopt its own, or amend the recommendations. The adopted, alternative, or amended

recommendations will be sent to each community for final decision as to whether to grant or deny the renewal, based on the record of the proceedings.

III. Tentative Schedule of Proceedings:

Milestone¹²	Timing
Delivery of Record of Ascertainment	February 14, 2020
All Parties' Pre-Filed Direct Testimony	Monday, March 30, 2020
All Parties' Rebuttal Testimony	Thursday, April 30, 2020
All Parties' Surrebuttal Testimony	Thursday, May 21, 2020
Deadline for Minor Revisions to Pre-filed Testimony and Errata Sheets	Wednesday, May 27, 2020
Objection to the Admissibility of Testimony	See below
Prehearing Conference	Monday, June 1, 2020 at 1:30 p.m.
Evidentiary Hearing	June 8-12 2020
All Parties' Initial Briefs, Proposed Findings of Fact and Conclusions of Law	Friday, July 10, 2020
All Parties' Reply Briefs	Friday, July 31, 2020
Tentative Recommendation of Hearing Officer	Monday, August 31, 2020
Objections of Parties to Recommendations	Monday, September 14, 2020
RWSCC ISSUES RECOMMENDED DECISION	

¹² Dates assume that the RWSCC communities will either accept or preliminarily deny the proposal submitted by Comcast by March 10, 2020. If communities have not acted on the proposal, the RWSCC may establish different hearing dates, but as federal law requires action on a proposal within four months of submission, the date will not be extended more than one month.

IV. Discovery of Additional Information

- a. Information requests and responses shall not be served on the Hearing Officer.
- b. A party may serve requests for information on any other party in the form of interrogatories, or requests for production of documents. All requests for information shall be made in writing by email, and the requesting party shall follow the email with a copy of the request sent by regular U.S. mail or other delivery service to all parties. To the extent that a request includes material designated as Trade Secret or Not Public under the Minnesota Government Data Practices Act, Minn. Stat. Chap. 13, an e-mail request is required only between the requesting and responding party. Requests shall be sent to the person(s) designated to receive data requests by the party from whom the information is sought. Any request received by e-mail after 4:30 p.m. on a business day, on a weekend day, or on a Minnesota state holiday is considered received on the next business day.
- c. The party responding to the request shall respond to information request within eight business days of receipt of the information request, which will be deemed to be the date and time of the email, or if not sent on a business day, the following business day. A business day does not include a weekend day or a Minnesota state holiday. In accordance with Minn. R. 1400.6100. subp. 1, the day that the information request is received is not counted in the eight-day period. If the request is received after 4:30 p.m. on a business day, the following business day is also not counted in the calculation of the eight-day response period.
- d. Responses to information requests shall be submitted by email, and the responding party shall follow the email with a copy of the response sent by regular U.S. mail or other delivery service, if requested. To the extent that a response includes material designated as Trade Secret or Not Public, an e-mail response is required only between the requesting party and the responding party. Any response received before 4:30 p.m. on a business day is considered to be received on the same day. Any response that is received after 4:30 p.m. on a business day is considered to be received the following business day.
- e. In the event that the responding party is unable to send the response by email due to the volume or nature of information included in a response, the responding party shall send the response by facsimile, regular U.S. mail, or other delivery service so that the requesting party receives the entire response by the date due, including any material designated as Trade Secret or Not Public. Responding parties may utilize other electronic media to convey large volumes of data. If the response is sent by facsimile, the responding party shall follow the facsimile with a copy of the response sent by regular U.S. mail or other delivery service. There shall be a continuing obligation to update and supplement information responses with any responsive material that may subsequently be discovered or acquired by

the responding party. The responsive information need not be supplied to other parties unless specifically requested by a party.

- f. A party that wishes to receive e-mail copies of requests or responses shall notify the requesting/responding party, who shall provide the information in that format. If the request or response contains material designated as Trade Secret or Not Public information, the providing party may require that the requesting party comply with the terms of any Protective Order in this matter before providing the information.
- g. A party's response must include any objections to the request, but shall include any information requested to the extent the request is not objectionable. All objections shall be stated with specificity and any ground for objection which is not stated in a timely manner is waived unless the party's failure is excused. In the event the information cannot be supplied within eight business days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and shall attempt to work out a schedule of compliance with the requesting party.
- h. The following persons shall be served with an e-mail copy of any information requests or responses. In addition, subject to any Protective Order in this matter, a discovery request may specify that copies be served on any person who has been retained to submit expert testimony in this matter.
 - i. For Comcast: [to be provided by Comcast]
 - ii. For RWSCC: [to be provided by RWSCC]
- i. Except for good cause shown to the Hearing Officer, each side is permitted twenty (25) requests for production of documents and twenty (20) interrogatories.
- j. Interrogatories or document requests do not count against the limit if the interrogatory or document request seeks information that was required to be produced as part of these procedures (for example, a request for workpapers that should have been included with pre-filed testimony).
- k. No depositions shall be permitted.
- l. All disputes concerning the reasonableness of information requests and the timing and sufficiency of responses; and all requests for waiver of any rules for good cause shall be heard by the Hearing Officer upon motion of a party. Hearings on such motions may be conducted by telephone conference call.
- m. Subject to the foregoing, discovery is limited to nonprivileged matter relevant to any party's claim or defense and proportional to the needs of the case, considering

the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. Discovery may be limited or conditioned if the information sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.

V. Prefiled Testimony:

- a. In prefiled direct testimony, Comcast shall, at a minimum, detail the grounds on which it claims it satisfies the renewal standards under the federal Cable Act, including by supporting any claim it intends to make that its proposal is reasonable to meet the future cable-related needs and interests “in light of the cost thereof.”
- b. In prefiled direct testimony, RWSCC shall, at a minimum, detail the grounds supporting the preliminary conclusion that the proposal did not satisfy renewal standards under the federal Cable Act based on the information submitted by Comcast.
- c. A person submitting pre-filed testimony shall attach all exhibits that witness intends to use in support of testimony, workpapers and calculations made in the preparation of testimony; and provide copies or a working link to all documents relied upon in the preparation of the testimony, except that if a document is part of the record of the ascertainment, a reference to the document in the ascertainment is sufficient.
- d. Prefiled testimony shall be marked as an exhibit and offered for admission into the record at the hearing. A hard copy shall be provided for that purpose and the offering party. The Hearing Officer will assign a hearing exhibit number to the document at the time that it is offered for admission at the hearing.
- e. Prefiled testimony that is amended or not offered into the record shall be considered withdrawn and no witness shall be cross-examined concerning the withdrawn testimony. Except for good cause shown, all revisions or corrections to any prefiled testimony shall be in writing and served upon the Hearing Officer and the parties no later than three days prior to the commencement of the evidentiary hearing.
- f. Information shall not be included in testimony that reasonably should have been included in an earlier round of testimony, absent affirmative approval of the Hearing Officer for good cause shown by the offering party and based on the offering party's motion to the Hearing Officer, which shall be appended to the new testimony.

VI. Objections to Prefiled Testimony:

- a. Objections by any party to prefiled testimony (including exhibits attached thereto), must be filed along with rebuttal testimony with respect to pre-filed direct testimony; one week before the scheduled date for submission of surrebuttal testimony with respect to rebuttal testimony, and on June 1, 2020, or by such time as the Hearing Officer may prescribe for surrebuttal testimony. Objections regarding introduction of wholly new matter, that is not properly responsive to earlier testimony, in prefiled rebuttal or surrebuttal testimony shall be considered waived unless the objecting party states its objection in writing by those dates. In such an objection the objecting party shall identify the information by witness and location in testimony and serve a copy of the objection on the Hearing Officer.

VII. Filing of Prefiled Testimony:

- a. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.
- b. All prefiled testimony shall be submitted by email to the Hearing Officer with a courtesy copy delivered simultaneously to the other party. Original copies of said documents shall be filed with the Hearing Officer at the commencement of the hearing.
- c. If Trade Secret or Not Public Data is filed with the Hearing Officer, it shall be prepared and marked in accordance with the Minnesota Data Practices Act.

VIII. Pre-Hearing Disclosures:

- a. Each side shall disclose to the other any visual aids or demonstrative exhibits it intends to use at the administrative hearing at least seven (7) days before the hearing. Objections shall be raised to such materials in writing at least one business day before the hearing is to commence.

IX. Witness Testimony at Hearing:

- a. Comcast will present its witnesses for cross-examination first; RWSCC will present its witnesses second.
- b. Parties shall examine and cross-examine witnesses through their attorneys. If a party determines that the party has no questions for a particular witness, that party shall inform the Hearing Officer and other parties as soon as practicable.

- c. Witnesses will be allowed ten minutes in which to summarize their prefiled testimony. For good cause shown, witnesses will be permitted to respond to any new matters not addressed in prefiled testimony through direct examination by counsel.

X. Administrative Hearing, Generally:

- a. Each side may be represented by an attorney and through the procedures described above, shall be afforded the opportunity to present relevant evidence and to call and examine witnesses and cross-examine witnesses of the other party;
- b. Commission members and City Council Members may not be called as witnesses nor may the Commission's or Comcast's legal counsel be called as witnesses.
- c. Witnesses will be sworn;
- d. A court reporter will be present at the hearings. The parties must make arrangements with the Court Reporter to obtain a copy of the transcript.
- e. Request for Accommodation. The Hearing Officer shall be notified promptly if either an accommodation or interpreter is needed.
- f. Except as the Hearing Officer otherwise directs, post-hearing briefs will be submitted in lieu of closing argument.
- g. The Hearing Office will close the record of the proceedings;
- h. The Hearing Officer will issue recommended findings of fact in writing based upon the record of the proceeding and stating the reasons therefore, pursuant to the Cable Communications Policy Act of 1984, as amended.

XI. Post Hearing:

- a. The Commission will review the recommended findings of fact from the Hearing Officer and will, upon request of the parties, permit oral argument before the Commission not to exceed thirty (30) minutes per party. Thereafter the Commission will issue a written decision recommending to the Member Cities to grant or deny the proposal for renewal pursuant to the Cable Communications Policy Act of 1984, as amended. Each Member City shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and transmit a copy of such decision to the cable operator. If the recommendation of the Commission is accepted, the Commission's decision may be adopted by reference.

Dated: _____



City of White Bear Lake
City Manager's Office

MEMORANDUM

To: Mayor and City Council

From: Ellen Hiniker, City Manager

Date: February 5, 2020

Subject: **Cable Commission extension of Franchise Agreement with Comcast**

BACKGROUND/SUMMARY

The City's Cable Commission has been engaged in informal franchise renewal negotiations with Comcast since September 2017. In October 2019, the Cable Commission initiated the "formal" franchise renewal process, including issuing a Request for Renewal Proposal (RFRP) to Comcast. At Comcast's request, the Cable Commission agreed to provide Comcast extra time to respond to the RFRP, and the parties further agreed to recommend to extend the expiration date of the current Franchise Agreement in order to help facilitate the RFRP process.

To date, the following extensions have been approved by the City Council:

City Council Approval Date	Deadline Extension
January 23, 2018	November 1, 2018
June 12, 2018	March 31, 2019
November 27, 2018	August 31, 2019
April 23, 2019	February 28, 2020

This agreement to change the expiration date of the current franchise from February 28, 2020 to March 31, 2020 provided Comcast additional time to respond to the RFRP. However, it is likely that the need for a formal hearing process resulting from the preliminary assessment of Comcast's proposal will necessitate additional time. The date for an additional extension will be negotiated once all participating cities have considered RWSCC's recommendation related to Comcast's proposal.

RECOMMENDED COUNCIL ACTION

Staff recommends the City Council approve the Extension Agreement to change the expiration of the Franchise from February 28, 2020 to March 31, 2020.

ATTACHMENTS

Resolution

RESOLUTION NO.

AUTHORIZING AN AGREEMENT TO EXTEND THE CABLE FRANCHISE AGREEMENT WITH COMCAST

WHEREAS, The City of White Bear Lake, through its Cable Commission, periodically negotiates the terms of its cable franchise with Comcast; and

WHEREAS, in October 2019, the Cable Commission initiated the “formal” franchise renewal process, including issuing a Request for Renewal Proposal (RFRP) to Comcast; and

WHEREAS, at Comcast’s request, the Cable Commission agreed to provide Comcast extra time to respond to the RFRP, and the parties further agreed to recommend extending the current Franchise Agreement to March 31, 2020; and

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of White Bear Lake that the Mayor is authorized and hereby directed to execute an extension to the Ramsey Washington Suburban Cable Commission Franchise Agreement with Comcast, which pushes the expiration date from February 28, 2020 to March 31, 2020

The foregoing resolution offered by Councilmember _____, and supported by Councilmember _____ was declared carried on the following vote.

Ayes:

Nays:

Passed:

Jo Emerson, Mayor

ATTEST:

Kara Coustry, City Clerk



City of White Bear Lake
Engineering Department

MEMORANDUM

To: Ellen Hiniker, City Manager

From: Paul Kauppi, Public Works Director/City Engineer

Date: February 6, 2020

Subject: **Award of contract for the Centerville Road Water Tower Reconditioning, City Project Nos.: 19-20**

SUMMARY / SUMMARY

Five (5) bids were received for the Centerville Road Water Tower Reconditioning which were opened on February 4, 2020. Classic Protective Coatings, Inc. of Menomonie, Wisconsin submitted the lowest base bid of \$837,650.00, which is \$362,350 less than anticipated in the 2020 budget. Early release of the bids contributed to favorable results.

The bid also included two bid alternates. Bid alternate A was for an additional 3 years of warranty, 5 years total and bid alternate B was for an alternate logo and paint scheme. Classic Protective Coatings has a strong reputation; it was determined by staff and the consultants that the extended warranty is unnecessary. If the company that submitted the second lowest bid had prevailed, staff would have recommended inclusion of the extended warranty.

Further discussion regarding the water tower logo will be added to the February 18 work session agenda. If Council chooses not to go with an alternate logo, Alternate B in the amount of \$16,700.00 will be deducted prior to executing the contract.

It is recommended that the City Council accept the bid from Classic Protective Coatings, Inc. for the Centerville Water Tower Reconditioning Project including Bid Alternate B, alternate logo and paint scheme, with the ability to remove bid alternate B prior to executing a contract.

RECOMMENDED COUNCIL ACTION

Staff recommends the City Council receive the bids and award a contract to Classic Protective Coatings, Inc. for the total base bid amount of \$837,650.00 plus bid Alternate B in the amount of \$16,700.00 for a total contract of \$854,350.00.

ATTACHMENTS

Resolution

RESOLUTION NO.:

**RESOLUTION ACCEPTING BIDS AND AWARDING CONTRACT
FOR THE CENTERVILLE ROAD WATER TOWER RECONDITIONING
CITY PROJECT NO. 19-20**

WHEREAS, pursuant to resolutions of the City Council, specifications were drawn and advertisement for bids were made; and

WHEREAS, the following bids complying with the advertisement and specifications were received, opened, and tabulated according to law:

Contractor	Total Base Bid	Alternate Bid A	Alternate Bid B
Classic Protective Coatings, Inc.	837,650	17,275	16,700
M.K. Painting, Inc.	851,000	8,000	6,000
Osseo Construction Co. LLC	1,230,000	25,000	65,000
TMI Coatings, Inc.	959,000	24,000	15,000
Viking Industrial Painting	1,042,400	10,000	20,000

WHEREAS, it appears that Classic Protective Coatings, Inc. is the lowest responsible bidder.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of White Bear Lake, Minnesota that:

1. The Mayor and City Clerk are hereby authorized and directed to enter into contract with Classic Protective Coatings, Inc., in the amount of \$854,350.00 which includes the \$837,650.00 total base bid plus Bid Alternate B in the amount of \$16,700 as approved by the City Council and on file in the office of the City Engineer.
2. The City Clerk is hereby authorized and directed to return forthwith to all bidders the deposits made with their bids, except that the deposits of the successful bidder and the next lowest bidder shall be retained until a contract has been signed.

The foregoing resolution offered by Councilmember _____ and supported by Councilmember _____ was declared carried on the following vote:

Ayes:
Nays:
Passed:

Jo Emerson, Mayor

ATTEST:

Kara Coustry, City Clerk

City of White Bear Lake Environmental Advisory Commission

MINUTES

Date: November 21, 2019	Time: 6:30pm	Location: WBL City Hall
COMMISSION MEMBERS PRESENT	Sheryl Bolstad, Chris Greene, Bonnie Greenleaf , Rick Johnston, Gary Schroeher (Chair)	
COMMISSION MEMBERS ABSENT	Robert Winkler	
STAFF PRESENT	Connie Taillon, Environmental Specialist	
VISITORS		
NOTETAKER	Connie Taillon	

1. CALL TO ORDER

The meeting was called to order at 7:59 pm.

2. APPROVAL OF AGENDA

The commission members reviewed the agenda and had no changes. Commissioner Johnston moved, seconded by Commissioner Greenleaf, to approve the agenda as presented. Motion carried, vote 5/0.

3. APPROVAL OF MINUTES

a) October 16, 2019 regular meeting

The commission members reviewed the October 16, 2019 draft minutes and had no changes.

Commissioner Greenleaf moved, seconded by Commissioner Greene, to approve the minutes of the October 16, 2019 meeting as presented. Motion carried, vote 5/0.

4. VISITORS & PRESENTATIONS

None

5. UNFINISHED BUSINESS

a) 2020 Work Plan

Commission members discussed the importance of prioritizing and implementing projects; however, determining how to changes people's behavior should also be a priority. Due to the full agenda, the commission members agreed to postpone the 2020 work plan discussion until the December meeting.

6. NEW BUSINESS

a) Officer election

The commission members discussed the 2020 Chair and Vice Chair officer positions. Commissioner Bolstad moved, seconded by Commissioner Greene, to nominate Chair Schroeher as Chair for 2020. Motion carried, vote 5/0.

Commissioner Greenleaf moved, seconded by Chair Schroeher, to nominate Commissioner Bolstad as Vice Chair for 2020. Motion carried, vote 5/0.

7. DISCUSSION

a) Goose Lake

Staff reported that the second reading of a temporary boating restriction ordinance for East Goose Lake is tentatively scheduled for the January 28, 2020 City Council meeting. The agenda item will be pulled if VLAWMO is unsuccessful at securing clean water grant funding to conduct an alum treatment. Commission members discussed whether to take a stand on this issue. Commissioner Johnston agreed to draft a letter that he will bring to the December EAC meeting for review and discussion.

b) Staff updates

- U of M Capstone Project
Commission members are invited to attend the U of M capstone project presentations at City Hall on December 5, starting at 5:30pm.
- Organics dumpster enclosure
City Council approved the construction of an organics dumpster enclosure at Public Works. The enclosure is planned to be operational by the end of December.
- 4th and Otter
VLAWMO staff and volunteers cleared buckthorn from the newly acquired City property at 4th and Otter this fall. VLAWMO recently applied for a grant to help fund native seed and plants for the site.
- MPCA update
Staff provided an update from the MPCA regarding soil-vapor sampling at the intersection of County Road E and Bellaire. The MPCA stated that there is nothing new to report of major significance since the last discussion. They will conduct the next round of testing likely after the holidays.
- LEAP Award
Staff accepted the Ramsey Washington Metro Watershed District LEAP award for the Edgewater ROW prairie project on November 14.
- Lawns to Legumes Grant
The Board of Soil and Water Resources received funding to develop the Lawns to Legumes program. As part of this new program, funding is available on a competitive basis to create a demonstration neighborhood of different types of pollinator plantings. Staff will include this program on the December agenda for further discussion.

c) Commission member updates

None

d) Do-outs

- Commissioner Johnston to draft a letter regarding the Goose Lake alum treatment and bring to the December meeting for discussion.
- Chair Schroeder to bring the St. Anthony pollinator map to a future meeting.
- Commission members to read the Lawns to Legumes information and discuss at the December meeting.
- Staff to email EAC the date and time of the U of M Capstone Project final presentation.
- Staff to email EAC a reminder to bring treats to the December meeting.
- Staff to email recycling container manufacturer web links to Public Works.

e) December agenda

Include the 2020 Work Plan, Goose Lake letter, and Lawns to Legumes program on the December agenda. Bring holiday treats to share.

8. ADJOURNMENT

The next meeting will be held at City Hall on Wednesday, December 18, 2019 at 6:30pm. Commissioner Johnston moved, seconded by Commissioner Greenleaf, to adjourn the meeting at 9:04 pm. Motion carried, vote 5/0.

City of White Bear Lake Environmental Advisory Commission

MINUTES

Date: December 18, 2019	Time: 6:30pm	Location: WBL City Hall
COMMISSION MEMBERS PRESENT	Sheryl Bolstad, Chris Greene, Bonnie Greenleaf , Rick Johnston, Gary Schroeder (Chair)	
COMMISSION MEMBERS ABSENT	Robert Winkler	
STAFF PRESENT	Connie Taillon, Environmental Specialist	
VISITORS		
NOTETAKER	Connie Taillon	

1. CALL TO ORDER

The meeting was called to order at 6:41 pm.

2. APPROVAL OF AGENDA

The commission members reviewed the agenda and had no changes. Commissioner Johnston moved, seconded by Commissioner Bolstad, to approve the agenda as presented. Motion carried, vote 5/0.

3. APPROVAL OF MINUTES

a) November 21, 2019 regular meeting

The commission members reviewed the November 21, 2019 draft minutes and directed staff to change 'Commissioner Schroeder' to 'commission members' in Item 5a) 2020 Work Plan, and add the location and chemical that is being tested in MPCA update under Item 7b) Staff updates. Commissioner Greenleaf moved, seconded by Commissioner Johnston, to approve the November 21, 2019 minutes as amended. Motion carried, vote 5/0.

4. VISITORS & PRESENTATIONS

None

5. UNFINISHED BUSINESS

a) 2020 Work Plan

Commission members reviewed the list of goals on the draft work plan and removed goals that are the now the focus of the Climate Smart Municipalities steering committee. The organics drop off site and the rebates for water sense toilets were also removed from the list because these projects are underway. The commission members discussed priority goals for 2020 including Adopt-a-Drain promotion, downtown recycling containers, pollinator plantings on City property, demo battery powered lawn equipment at the Expo, Expo banner and weights for tents, zero waste City events, converting gas powered equipment to battery for both City and private residents, and highlighting resident environmental achievements in the newsletter.

Commission member left at 8:00pm

6. NEW BUSINESS

a) Pollinator plantings

Staff presented the meeting notes from the joint Parks Commission and Environmental Advisory Commission meeting held on November 21, 2019. The commission members had no changes. The commission members brainstormed ideas for pollinator plantings on City property. The ideas discussed include creating a map showing the location of existing pollinator planting sites, designing and planting a demonstration garden, and adding information about pollinator gardens in the spring newsletter.

Commission members discussed existing resources and suggested visiting the Saint Anthony Village website for information on their St. Anthony Pollinator Pathway program and researching the Monarch Weigh Station program. The 2020 work plan will be adopted at the February meeting.

7. DISCUSSION

a) Lawns to Legumes program

Staff updated the commission members on a Lawns to Legumes Demonstration Neighborhood Grant Program request for proposals. Cities, Counties, watershed districts, and non-governmental organizations can apply. The goal of the program is to increase populations of rusty patched bumble bees and other at risk pollinators. A map showing locations where Rusty Patched Bumble Bees may be present includes a portion of the City from the south shore of White Bear Lake to Lakewood Hills Park. Staff will discuss if the City will pursue this grant for projects in neighborhoods near Lakewood Hills Park.

b) Earth Day – 50th Anniversary

Staff stated that April 22, 2019 is the 50th anniversary of Earth Day and asked the commission members to brainstorm possible projects or events for this day.

c) Staff updates

- Met Council Water Efficiency Grant

Staff reported that the City received a grant for \$26,300 from the Metropolitan Council through funding from the Clean Water Land and Legacy Amendment. The grant will enable the City to provide rebates to public water utility customers who replace existing toilets with WaterSense toilets. The rebate is up to \$200 for out of pocket costs for a replacement toilet but does not include installation costs. Staff will email the commission members when the grant funding is available.

- Goose Lake

Staff reported that the VLAWMO board voted on December 11, 2019 to rescind the recommendation to the City to temporarily restrict boating after an alum treatment on East Goose Lake. The VLAWMO Board supports the science behind the recommendation and wishes to foster collaboration rather than conflict among neighbors and agencies.

- VLAWMO remote camera and frog surveys

Staff shared the results of VLAWMO remote camera surveys and frog and toad monitoring in Rotary Nature Preserve. A camera located south of the boardwalk in the wetland area captured Mink, Raccoon, Great Blue Heron, Sandhill Crane, and Wood Ducks. The frog and toad survey results indicate that the site supports strong populations of frogs and toads. A total of 6 species were detected. These animal surveys help to determine the health of the habitat and restoration needs.

d) Commission member updates

None

e) Do-outs

- Staff to contact the WBLHS Environmental Club faculty leader to ask about recruiting a student EAC delegate.
- Staff to email the commission members a link to the following Council meeting videos: first reading of the Goose Lake boating ordinance and the Climate Smart Municipalities presentation.
- Staff to email commission members the starting date of the water efficiency rebate.
- Staff to email commission members a link to the U of M Capstone project reports when available.
- Commissioner Johnston to research compostable products.

f) January agenda

Include the Shoreview water conservation program on the January agenda.

8. ADJOURNMENT

The next meeting will be held at City Hall on Wednesday, January 15, 2020 at 6:30pm. Commissioner Johnston moved, seconded by Commissioner Bolstad, to adjourn the meeting at 8:47 pm. Motion carried, vote 4/0.

Park Advisory Commission Meeting Minutes

NOVEMBER 21, 2019

6:30 P.M.

CITY HALL

MEMBERS PRESENT	Bryan Belisle, Victoria Biehn, Mark Cermak, Anastacia Davis, Ginny Davis, Mike Shepard
MEMBERS ABSENT	Bill Ganzlin
STAFF PRESENT	Mark Meyer
VISITORS	
NOTE TAKER	Mark Meyer

AGENDA TOPICS

1. CALL TO ORDER

The meeting was called to order at 6:30 pm at City Hall.

2. APPROVAL OF MINUTES

Approval of the minutes from October 17, 2019 was moved by Mark Cermak and seconded by Ginny Davis.

3. APPROVAL OF AGENDA

Approval of the November 21, 2019 agenda was moved by Mike Shepard and seconded by Victoria Biehn. Motion carried.

4. UNFINISHED BUSINESS

a. Sizing for Park Advisory Shirts

The Park Commission was fitted for shirts for the park tours in the summer months.

5. NEW BUSINESS

a) Joint Meeting with the Environmental Advisory Commission

The Park Advisory Commission had a great joint meeting with the Environmental Advisory Commission. The first item for discussion was to bring in pollinator friendly plantings to the parks. Pollinator friendly plantings help reduce the amount of mowing in our larger parks and help bring pollinator wildlife into the parks system. Adding pollinator plantings and an asphalt trail system in one of the City's parks could change the way the park is used by people. Connie Taillon will check to see what grants are out there to help install and maintain the pollinator friendly plantings.

The Park and Environmental Commissions also discussed buckthorn control. Lakewood Hills Park's wooded areas need to be thinned out and the ground cover

needs to be reestablished. Connie Taillon will check if there are grant dollars to help manage our forest area from buckthorn.

Connie updated the Parks Advisory Commission that Ramsey County reached out to the City of White Bear Lake about putting in a food waste collection site. The spot that was chosen is at the Public Works site on the north entrance. Residents can bring food scraps in bio degradable bags and put it in the dumpster. The food waste collection site should be completed in the next few weeks.

The Environmental Commission supported the new Adopt-A-Drain program for the storm sewers around the City. Residents can sign-up to take care of the storm drains on their block and remove the debris from the drains. There will be more discussion on all of these topics in the future.

6. OTHER STAFF REPORTS

None.

7. COMMISSION REPORTS

None.

8. OTHER BUSINESS

None.

9. ADJOURNMENT

The next meeting will be held on January 16, 2019 at 6:30 p.m at City Hall.

There being no further business to come before the Park Commission, the meeting was adjourned. Moved by Bryan Belisle and seconded by Anastacia Davis.

**MINUTES
PLANNING COMMISSION MEETING
CITY OF WHITE BEAR LAKE
JANUARY 27, 2020**

The regular monthly meeting of the White Bear Lake Planning Commission was called to order on Monday, January 27, 2020, beginning at 7:00 p.m. in the White Bear Lake City Hall Council Chambers, 4701 Highway 61, White Bear Lake, Minnesota by Chair Mark Lynch.

1. CALL TO ORDER/ROLL CALL:

MEMBERS PRESENT: Jim Berry, Pamela Enz, Mark Lynch, Erich Reinhardt, and Peter Reis.

MEMBERS EXCUSED: Ken Baltzer.

MEMBERS UNEXCUSED: None.

STAFF PRESENT: Anne Kane, Community Development Director, Samantha Crosby, Planning & Zoning Coordinator, and Ashton Miller, Planning Technician.

OTHERS PRESENT: Jim Hamilton, Robert Johnson, Richard Herod III, Chuck Mears, Michele Klegin, Melanie Emery.

2. APPROVAL OF THE JANUARY 27, 2020 AGENDA:

Member Reis moved for approval of the agenda. Member Berry seconded the motion, and the agenda was approved (5-0).

3. APPROVAL OF THE NOVEMBER 25, 2019 PLANNING COMMISSION MEETING MINUTES:

Member Reinhardt moved for approval of the minutes. Member Reis seconded the motion, and the minutes were approved (5-0).

4. CASE ITEMS:

A. **Case No. 19-10-Z:** A **City-Initiated** text amendment to Zoning Code Section 1303.230, Subd.7 “Shoreland Alterations” to create parameters for the use of riprap and reiterate the limitation that retaining walls not exceed four (4) feet in height.

Staff recommended tabling the request. Member Reis moved such, Member Reinhardt seconded and the item was tabled by a vote of 5-0.

B. **Case No. 20-1-CUP & 20-1-V:** A request by **Richard Herod III** for a 2’ variance from the 4’ height limit for a fence abutting a right-of-way, per Code Section 1302.030, Subd.6.h.4, in order to maintain a six foot fence along Cottage Park Road, and a conditional use permit for two curb cuts accessing Cottage Park Road, per Code Section 1302.050, Subd.4.h.9 at the property located at 4264 Cottage Park Road.

Miller discussed the case. Staff recommended approval of one curb cut, denial of one curb cut and denial of the fence height variance.

Member Reinhardt recapped the scenario of events to which Kane clarified that Mr. Herod had contacted staff to confirm if his contractor had pulled a permit. He was told they had not, nor had they verified the property lines before work began. A survey done later revealed that both a small section of the fence and a very small corner of the residence is in the right-of-way.

Member Reis confirmed that it is not the full extent of the fence that encroaches into the right-of-way and asked about the materiality of the encroachment into the right-of-way, considering it was six inches. Kane responded that the right-of-way of Cottage Park is much tighter than most and therefore probably more material than others.

Member Reis reiterated that the options for compliance are to chop off top two feet or relocate 12 feet further back. He asked if the department keeps a log of contractors who commit such violations. He suggested that perhaps in the future, the City should more closely monitor certain contractors when they pull permits to ensure they are following the rules. Kane cautioned that the house's encroachment into the right-of-way is a unique circumstance and could be misleading in relation to the location of the property line.

Member Lynch opened the public hearing.

Richard Herod III, the applicant, acknowledged that he never intended to be in this situation. He explained the intent of the fence is to prevent people from leaning over the fence and stealing his two French bulldog puppies when he is not looking. His home is on a corner lot and the house is situated in a strange place, which limits the amount of back yard space. He does not want to lose any of that space by pushing the fence back, or incur the expense of relocation.

Member Lynch sought clarification on the portion of fence that encroaches into the neighbor's property, which is a civil matter between the two private landowners. The city is not requiring any changes to the fence to the east of the house.

Member Berry wondered about the possibility of cutting the fence down by two feet, and then adding something more see-through along the top such as latticework. Kane replied that it is still considered a six-foot fence.

Mr. Herod asked if landscaping such as arborvitaes could be utilized in place of the fence. Kane confirmed that they could be – and without a permit.

Melanie Emery, 2143 Lakeview and 2144 Lakeview Avenue. She commented that everyone knows the house and that the neighborhood is a very busy area with lots of pedestrians. She believes that wanting to connect one's fence to the corner of the house is natural and makes sense. She finds that if trees can be planted in that spot, the fence ought to be allowed there, so is in support of all of the applicant's requests.

Chuck Mears, 4274 Cottage Park Road. He questioned if the new street curb would be surmountable or traditional. Kane responded that she believed the curb will be a typical 6-inch barrier curb, similar to the curb along the west side of Lake Avenue. Mr. Mears appreciated that Mr. Herod approached him to obtain his opinion on the fence and supports keeping it in the

existing location. He pointed out that there are other properties in this neighborhood that are extremely close to the property line. He thinks that moving the segment of fence out of the right-of-way does not make a lot of sense given the nominal amount of encroachment. Finally, he suggested a lesser variance could be granted that would not require the applicant to move the fence the full twelve feet back.

Michele Klegin, 3404 Cottage Park Road. She commented that the fence is beautiful since it is not white or metal. She believes that moving the fence 12 feet back from the property line would look odd. She mentioned that she understands the applicant's desire to protect his dogs, as there has recently been a rash of stolen dogs according to a neighborhood watch app.

Member Lynch closed the public hearing.

Member Reinhardt mentioned that a wrought iron fence would provide the security while preserving the views.

Member Enz wondered if the road will be widened at all during the reconstruction. Ms. Klegin reported that it will not according to the packet of information she received from the City.

Member Lynch expressed disappointment that the work was done before the proper approvals were in place. He noted there has been an uptick in the number of variance requests after the work, and that eventually something may need to be taken down. He was not supportive of blocking the view of the lake since it is a community asset.

Member Reis moved to recommend approval of Case No. 20-1-CUP, but only one of the two curb cuts and removal of condition #6 and denial of 20-1-V. Member Reinhardt seconded the motion.

Member Reinhardt asked about the Encroachment Agreement. Kane responded that the fence could be included in the agreement and the risk is essentially transferred to the homeowner. She cited a similar situation in Ramaley Park on an alley.

The motion passed by a vote of 4-1. Member Lynch opposed.

- C. **Case No. 20-2-V:** A request by **Twin Cities Petroleum** for a 3'8" variance from the 10' setback requirement along the north property line, and a 4'5" variance from the 10' setback requirement along the east property line, both per Code Section 1202.040, Subd.2.B.1, in order to locate a freestanding monument sign in the existing greenspace on the northeast corner of the property located at 2490 County Road F East.

Crosby discussed the case. Staff recommended approval of the request.

Member Lynch opened the public hearing.

Robert Johnson, 4087 Bellaire Avenue, White Bear Township. He and his wife have lived there for many years. They are opposed to the construction of the sign. Since the new owner took over, there have been a number of changes at the store that have negatively affected him. There are now constant loops of ads on the pumps, creating noise that can be heard in Mr. Johnson's yard and the canopy lights have been changed out and are on constantly. He is afraid that the

illuminated sign will aim straight at their house. The light will be on all night even when the store is not open.

He stated that considering the location of the station and that it has been there for so long, the sign may not be great advertising. The roads are not through streets and the people that drive by have already decided if they will visit the gas station, so the sign will not draw in new crowds. He believes the light pollution that the monument sign will emit is not justified based on the location of the gas station.

Member Lynch replied that the Planning Commission may be able to address Mr. Johnson's concerns regarding the noise and canopy lights since the sign will be adding more illumination to the property.

Jim Hamilton, applicant. He explained that there has never been an electronic pricer there. The price sign is on the canopy and can be difficult to change, meaning sometimes it does not get done, which impacts business since price is a major factor in the gas industry. The previous lessee had a decrease in sales compared to his other stores that did have electronic pricers. He does not think there are many places that do not have electronic price signs, and one is needed here.

Member Lynch asked if the top part of the sign could be dimmed. Mr. Hamilton replied it was not an option. He added that gas can be pumped 24 hours a day, so some lighting is needed for safety.

Member Lynch closed the public hearing.

Member Reinhardt asked if there is anything in the code that pertains to lighting and neighbors, especially since the business is uniquely nestled inside a residential neighborhood. Crosby replied that this is the first time staff has heard of issues in the area.

Member Berry asked if a permit is needed for new lighting. Crosby stated that only an electrical permit is required. She added that the City could request a lighting plan to review.

Member Lynch asked if conditions could be added to the resolution of approval. Crosby answered that they could at least address the canopy lighting. Kane added they usually do not add conditions for a variance because it either meets the hardship requirement or not. She noted she could look into what the code would allow, since there is no conditional use permit for the site. Crosby further noted that a condition could be added that requires the sign background to be opaque like churches to reduce the illumination.

Member Enz asked if light pollution is addressed in the city code. Crosby replied that the allowed measure of light is one foot candle from the center of the street.

Mr. Hamilton explained that working with the sign face is doable and that block out could be added that would help reduce the amount of light. He believes Twin Cities Petroleum wants to be good neighbors, so he will also look into the sound issue from the video screens.

Member Lynch proposed that he would like to add some language regarding the blocking of the sign.

Member Enz moved to recommend approval of Case No. 20-2-V with a condition that both compliance with and reduction of the light and noise be reviewed by staff. Member Reis seconded the motion. The motion passed by a vote of 5-0.

5. DISCUSSION ITEMS:

A. City Council Meeting Minutes of January 14, 2020.

No discussion

B. Park Advisory Commission Meeting Minutes of October 17, 2019.

No discussion

6. ADJOURNMENT:

Member Reis moved to adjourn, seconded by Member Enz. The motion passed unanimously (5-0), and the January 27, 2020 Planning Commission meeting was adjourned at 8:32 p.m.

REGULAR MEETING OF THE WHITE BEAR LAKE CONSERVATION DISTRICT
7:00 P.M. WHITE BEAR CITY HALL
MINUTES OF November 2019

APPROVAL DATE: January 21, 2020

1. CALL TO ORDER The November 19, 2019 meeting of the White Bear Lake Conservation District was called to order by Chair Bryan DeSmet at 7:00 pm in the White Bear Lake City Hall Council Chambers.
2. ROLL CALL Present were: Chair Bryan DeSmet, Vice Chair Mark Ganz; Secretary/Treasurer Diane Longville; Present Directors: Mike Parenteau, Scott Costello, Cameron Sigecon, Marty Rathmanner, Rylan Juran, Geoff Ratte and Susie Mahoney. A quorum was present.
3. AGENDA -Chairperson DeSmet asked for any changes to tonight's agenda - None
4. APPROVAL OF MINUTES OF - October 15, 2019 Board Meeting
Motion (DeSmet/second) Moved to approve all aye passed.
5. PUBLIC COMMENT TIME - None
6. NEW BUSINESS - Steve McComas presented the annual lake treatment report. Doesn't see that next year there will be much difference in growth or treatment
7. UNFINISHED BUSINESS - Amendment to ordinance 5. Updates to ordinance 5 with items 2019 01, 02, and 03. Removal of ordinance 12. Motion (Costello/second) to review all three amendments 2019-01,02,03 all aye passed.
Second reading Public Hearing will be on January agenda.
8. REPORTS/ACTION ITEMS
Executive Committee- none.
9. Lake Quality Committee – Mike Parenteau
 - o Lake level 925.00
 - o Water temperature 36 degrees same as last year
 - o Phragmites treatment- Lake Management reports treatment very successful. There might be a very small amount of regrowth if at all. DNR suggests it will be a 3-4 yr program. Ramsey county paid for the treatment and will do so next year as well. Thank you card will be sent from WBLCD.
10. Lake Utilization Committee – Mark Ganz the following applications were reviewed by the LUC and recommended to the board
 - o Forest Heights -approved
 - o Scott Bohnen - tabled
 - o Derrek Skeie - tabled
 - o Manitou Island - tabled
 - o Birchwood Village- 2 approved Kay Beach tabled need drawing of placement of new buoys.
 - o White Bear Township- approved
 - o Wildwood Beach Condo - approved
 - o McCartney Estates- approved
 - o Hickory St. Dock Assoc - approved
 - o Roxanne Hodgeson - Mark Ganz will meet with them and their lawyer at Beach site for dock placement in the spring.
11. Lake Education – Scott Costello
None
- 12.. Treasurer's Report

Motion (Longville/Second) approval of 11/19/19 Treasurer's report and payment of check numbers 4608-4614. Approval of estimated 12/31/19 Treasurers Report. All aye passed.

13. Board Counsel

Have access to possible purchase of a drone for counting boats would the board be interested. He will get more information as cost to hire an operator etc.

14. ANNOUNCEMENTS - none

15. ADJOURNMENT

Motion (Desmet/second) MOVE TO ADJOURN All aye passed.

Meeting Adjourned at 8:05pm

ATTEST:

Kim Johnson _____

Administrative Secretary, WBLCD

Date: 1/21/20

APPROVED:

Bryan DeSmet _____

Board Chairperson, WBLCD

Date: 1/21/20



City of White Bear Lake
City Manager's Office

MEMORANDUM

To: Ellen Hiniker, City Manager
From: Kara Coustry, City Clerk
Date: January 31, 2020
Subject: For-profit yoga events in public spaces

BACKGROUND / SUMMARY

The City received a request from Yogadevotion to hold for-profit yoga classes at Memorial Beach. The group is requesting beach use for yoga on Fridays from 9:00 a.m. – 10:00 a.m. for a total of 13 classes running June 5 – August 28.

Staff is supportive of this activity in its parks and open spaces. It draws people to the parks and encourages health and human connection. Yoga on the Beach has been occurring for 15 years as part of community education programming before the group struck out on their own. Participants sign a waiver, but the group would also provide general liability insurance covering the City.

Following past practice, the City has implemented a charge for use of public spaces for commerce. Staff proposes charging 10% of the proceeds, consistent with what the group pays for use of church space for the same.

The group, being at a public beach, understands the use of this public space is not exclusive.

RECOMMENDED COUNCIL ACTION

Consider adopting the attached resolution authorizing use of Memorial Beach for for-profit yoga classes at a fee of 10% of class proceeds.

ATTACHEMENTS

Resolution

RESOLUTION NO.

**A RESOLUTION APPROVING ONGOING YOGA EVENTS
FOR COMMERCE AT RAILROAD PARK**

WHEREAS, an application has been submitted by Yogadevotion to hold for-profit yoga classes at Memorial Beach every Friday from June 5th – August 28th; and

WHEREAS, staff is supportive of this activity as it draws people to the parks and encourages health and human connection; and

WHEREAS, following past practice, approval for use of public space for commerce would require payment by the group for that use.

NOW THEREFORE, BE IT RESOLVED that the White Bear Lake City Council approves the use of Memorial Beach for yoga classes for commerce contingent upon receipt of general liability insurance and 10% of class proceeds.

The foregoing resolution offered by Councilmember _____ and supported by Councilmember _____, was declared carried on the following vote:

Ayes:
Nays:
Passed:

Jo Emerson, Mayor

ATTEST:

Kara Coustry, City Clerk