



**CITY OF NEWPORT
REGULAR COUNCIL MEETING
NEWPORT CITY HALL
JULY 19, 2012 – 5:30 P.M.**

MAYOR: Tim Geraghty
COUNCIL: Tom Ingemann
Bill Sumner
Tracy Rahm
Steven Gallagher

City Administrator: Brian Anderson
Supt. of Public Works: Bruce Hanson
Chief of Police: Curt Montgomery
Fire Chief: Mark Mailand
Executive Analyst: Renee Helm

AGENDA

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL
4. ADOPT AGENDA
5. ADOPT CONSENT AGENDA – All items listed under this section are considered routine and non-controversial by the Council and will be approved by a single motion. An item may be removed from the consent agenda and discussed if a Council member, staff member, or citizen so requests.
 - A. Minutes of the June 21, 2012 Regular City Council Meeting
 - B. List of Bills in the Amount of \$190,526.78
 - C. North Ravine Partial Payment #3
 - D. Lion's Annual Park Permit
 - E. Gambling Permit for Foster My Pet
 - F. **Resolution No. 2012-18** – Appointment of 2012 Election Judges
 - G. **Resolution No. 2012-19** – Identifying the Need for Livable Communities Demonstration Account Funding and Authorizing an Application for Grant Funds
6. VISITORS PRESENTATIONS/PETITIONS/CORRESPONDENCE
7. MAYOR'S REPORT
8. COUNCIL REPORTS
9. ADMINISTRATOR'S REPORT
 - A. Request from Martin Vietoris
 1. **Resolution No. 2012-20** – Approving a Rezoning Request from Martin Vietoris
 2. **Resolution No. 2012-21** – Approving a Planned Unit Development and Minor Subdivision from Martin Vietoris
 - B. Appeal from Veolia Environmental Services of Denied Building Permit to Install a 15,000 Gallon Above-Ground Storage Tank at 1545 7th Avenue
 - C. **Ordinance No. 2012-9** – Amending Chapter 7, Section 760, Archery Deer Hunting

Agenda for 07-19-2012

- D. Discussion of Fishing Pier – Under Separate Cover
- E. Approval of 2012-2013 Liquor License – Under Separate Cover

10. ATTORNEY’S REPORT

11. POLICE CHIEF’S REPORT

- A. Code Red Presentation
- B. June 2012 Activity Report

12. FIRE CHIEF’S REPORT

13. ENGINEER’S REPORT

14. SUPERINTENDENT OF PUBLIC WORKS REPORT

15. NEW / OLD BUSINESS

16. ADJOURNMENT

Upcoming Meetings and Events:

- | | | |
|--------------------------------|-----------------|------------------------|
| 1. Parks Board Meeting | July 26, 2012 | 7:00 p.m. |
| 2. City Council Meeting | August 2, 2012 | 5:30 p.m. |
| 3. Planning Commission Meeting | August 9, 2012 | 7:00 p.m. |
| 4. Pioneer Day Festival | August 12, 2012 | 11:00 a.m. – 5:00 p.m. |



**City of Newport
City Council Minutes
June 21, 2012**

1. CALL TO ORDER

Mayor Tim Geraghty called the meeting to order at 5:30 P.M.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL -

Council Present – Tim Geraghty, Bill Sumner, Tracy Rahm, Steven Gallagher

Council Absent – Tom Ingemann

Staff Present – Brian Anderson, City Administrator; Bruce Hanson, Supt. of Public Works; Renee Helm, Executive Analyst; Fritz Knaak, City Attorney; John Stewart, City Engineer

Staff Absent – Curt Montgomery, Police Chief; Mark Mailand, Fire Chief;

4. ADOPT AGENDA

Motion by Gallagher, seconded by Sumner, to adopt the Agenda as presented. With 4 Ayes, 0 Nays, 1 Absent, the motion carried.

5. ADOPT CONSENT AGENDA

Motion by Sumner, seconded by Rahm, to approve the Consent Agenda as presented, which includes the following items:

- A. Minutes of the June 7, 2012 Regular City Council Meeting
- B. Minutes of the June 7, 2012 Public Hearing Meeting
- C. List of Bills in the Amount of \$572,490.23
- D. Resolution No. 2012-14 – Appointing Chief Montgomery as Responsible Authority for Data Practices
- E. Temporary Liquor License for Newport Fire Department for Booya
- F. Solicitor's Permits – Under Separate Cover

With 4 Ayes, 0 Nays, 1 Absent, the motion carried.

6. VISITORS PRESENTATIONS/PETITIONS/CORRESPONDENCE

7. MAYOR'S REPORT –

Mayor Geraghty – Tom Ingemann, Brian and myself were up in Duluth today for the League of Minnesota Cities conference. The League gave the City an award for the GreenStep Cities program and I would like to thank Renee for it, she took the lead on this and did a good job. I was also honored and received the C.C. Ludwig Award for my public service and I take this as an award for the City for all of the work that we've done.

8. COUNCIL REPORTS

Councilman Rahm – Nothing to Report

Councilman Sumner – I attended a meeting for the community advisory panel at the Refinery. We saw the operation of the loading dock and they have quite an extensive system to trap any vapors. I think it's very important to know and recognize another step that they have in regards to safety. The work that they've done on the North Ravine project has been a great job in protecting the neighborhood during these rains we've had. I'd like to thank the City and Engineer and everyone else who has been involved.

Councilman Gallagher – I attended a Met Council TAB meeting at which they discussed the reduction in Federal Highway Funds coming to the State of Minnesota. That discussion will be ongoing for the next year or so until Congress makes a transportation bill that is concrete.

Mayor Geraghty – Was there anything that impacts us directly?

Councilman Gallagher – No.

9. ADMINISTRATOR'S REPORT

A. Public Hearing – To consider a resolution finding the existence of a public nuisance at 1057 7th Avenue in the City of Newport, Minnesota, ordering the immediate abatement thereof and authorizing the assessment of the cost of the abatement.

The Public Hearing was opened at 5:37 p.m.

Attorney Knaak presented on this item as outlined in the June 21, 2012 City Council packet.

John Schmidt, 480 2nd Avenue – Mr. Schmidt was present to state that he is interested in purchasing the house and was wondering if the City had any contact information on the property owner.

Attorney Knaak – I spoke with Mr. Walbillig Jr. The property was transferred to his son, Mr. Walbillig the Third. We do have that information. I can certainly tell him that there is an interested party who would like to purchase the property.

Mayor Geraghty – I think we should still move forward with the issue at hand.

Councilman Gallagher – Was the notice sent out stating that demolition is a possibility?

Attorney Knaak – Once we serve the notice, Mr. Walbillig has 20 days to respond. If he doesn't respond we can go in on the 21st day to clean it up and if necessary, demolish the property.

Councilman Gallagher – We'll have one more council meeting before anything happens?

Attorney Knaak – Yes. I think it's been a long time since the City has demolished a property.

Councilman Sumner – Have we been inside to examine the interior?

Mayor Geraghty – I believe Brian has.

The Public Hearing closed at 5:44 p.m.

Admin. Anderson – I believe there is still time for someone to purchase it because it has to be served and go through the courts. I would recommend they move forward.

Councilman Rahm – How long have we been working with them?

Admin. Anderson – A year and a half.

Motion by Gallagher, seconded by Geraghty, to adopt Resolution No. 2012-15 finding an existence of a public nuisance at 1057 7th Avenue, ordering the immediate abatement, and authorizing the assessment of the cost of abatement. With 4 Ayes, 0 Nays, 1 Absent, the motion carried.

B. Red Rock Gateway Area

Barb Dacy, Executive Director of the Washington County HRA, presented on this item as outlined in the June 21, 2012 City Council packet. A copy of the presentation will be attached and included in the official minutes.

Councilman Rahm – Did you review the JPA?

Attorney Knaak – Yes

Councilman Sumner – What would be the next two to three steps if we approved this tonight?

Ms. Dacy – Very important is to keep in front of the private development community. We've met with a couple and have a couple more to meet with. I think a second step is to work with the County on development of Area 1 and the design of Maxwell Avenue.

Councilman Sumner – Does the County have money to help with that?

Ms. Dacy – I understand that Maxwell Avenue is not on the CIP but that is an annual process.

Councilman Rahm – I would like to know what the next funding will be and how much. Do you have a ballpark figure?

Ms. Dacy – Any number would be a pure guess.

Mayor Geraghty – How soon do you think Maxwell will be upgraded? Is that an important aspect?

Ms. Dacy – I think it would be important to transform and establish a new feel of the area. How soon is also a discussion with the County that we'll have.

Mayor Geraghty – Is that easement wide enough for the four lanes?

Ms. Dacy – It's wide enough for the roadway widths but we also need to look at the sidewalk and bike paths, as well as if there's a median or not.

Motion by Geraghty, seconded by Rahm, to adopt Resolution No. 2012-16 approving planning guidance and a joint powers agreement for the Red Rock Gateway Redevelopment. With 4 Ayes, 0 Nays, 1 Absent, the motion carried.

C. Ordinance No. 2012-8 – Approving a Zoning Amendment to Section 1300, Section 1330, and Section 1350, Adding Section 1370.09, and Amending the Zoning Map

Sherri Buss, TKDA Planner, presented on this item as outlined in the June 21, 2012 City Council packet.

Councilman Sumner – Is there any reason that Met Council would not approve it?

Ms. Buss – We looked very specifically at their requirements for densities and FAR and made sure that the ordinance is consistent with their standards.

Mayor Geraghty – Are the charts totally replacing the old ones?

Ms. Buss – It was too difficult to add the allowable uses for the MX-3 District in the current chart so we made a reference to it in Section 1350.

Mayor Geraghty – Is there any particular reason that Pioneer Park and Lions Park aren't shaded green on the Zoning Map?

Ms. Buss – No, they should be. You should really give the Planning Commission a pat on the back as they did a lot of work on this and spent months going over it.

Mayor Geraghty – We thank the Planning Commission for all of their hard work.

Councilman Sumner – Is the four story height going to be adequate? Do they have an option to go higher?

Ms. Buss – There is an option to go higher, they would need to get a Conditional Use Permit.

Motion by Gallagher, seconded by Rahm, to adopt Ordinance No. 2012-8 approving a zoning amendment to Section 1300, Section 1330, and Section 1350, adding Section 1370.09, and amending the Zoning Map. With 4 Ayes, 0 Nays, 1 Absent, the motion carried.

- D. Resolution No. 2012-17** – Authorizing the Mayor and City Administrator to Execute a Purchase Agreement for 1605 Cedar Lane and to Submit a Grant Application to the Department of Natural Resources for the Flood Damage Reduction Grant Assistance Program

Admin. Anderson presented on this item as outlined in the June 21, 2012 City Council packet.

Councilman Gallagher – Will the grant go through?

Admin. Anderson – Yes, the DNR seems pretty excited about it.

Motion by Rahm, seconded by Sumner, to adopt Resolution No. 2012-17 authorizing the Mayor and City Administrator to execute a purchase agreement for 1605 Cedar Lane and to submit a grant application to the Department of Natural Resources. With 4 Ayes, 0 Nays, 1 Absent, the motion carried.

- E. Discuss the Veteran's Memorial in Pioneer Park**

Admin. Anderson presented on this item as outlined in the June 21, 2012 City Council packet.

Councilman Sumner – I've seen a lot of streetscapes where after one or two winters, the pavers disintegrate. I would like to purchase something of high quality. However, usually high quality pavers are usually slick in the winter. I think we need something that is long lasting, durable, and hazard free.

Admin. Anderson – We'll discuss the maintenance of this too. I don't think we'll be placing salt or any chemicals on it. Individuals may also purchase pavers in the future.

Councilman Sumner – How big are the pavers and what can go on them?

Admin. Anderson – They're 4 by 8 inches. I believe their name, branch of service and years served will be on there.

Councilman Sumner – Will the City pay \$100 each for the pavers for the Civil War Veterans?

Admin. Anderson – No, the pavers cost \$20 each. The remainder of the money will go towards the rest of the memorial.

Councilman Sumner – Are there other park funds that could be used for this?

Admin. Anderson – Yes, there's a special revenue fund for Pioneer Park. We'll bring it back to the Council if we need to use other park funds.

Councilman Sumner – What type of response have we seen in other communities in regards to the cost?

Admin. Anderson – Typically, other communities sell them for \$100. Usually, those memorials are larger.

Councilman Sumner – Does the person have to have a connection to Newport?

Admin. Anderson – I think that's more of a policy decision. I think this is guided more towards Newport.

Mayor Geraghty – We'll have to think about that. I know we dedicated it last summer and have sold some at \$50. I don't think there's been an overwhelming response for \$50.

Councilman Rahm – Will there be different colors for each war?

Admin. Anderson – I think the HPC would like to use the same color throughout.

Mayor Geraghty – It seems it would be a good project for donations.

Admin. Anderson – We've started seeking private donations. Bailey Nurseries is helping with the plants.

Superintendent Hanson – I think it'll cost the same amount in the future because we need them engraved at the factory and there are discounts in buying in bulk.

Admin. Anderson – Maybe there is someone in Minnesota who can do some engraving even if we buy the bricks in the south.

Motion by Geraghty, seconded by Gallagher to approve the concept plan for the Veteran's Memorial and set the price of the brick pavers at \$75. With 4 Ayes, 0 Nays, 1 Absent, the motion carried.

F. Discuss Penalties for Liquor and Cigarette Licenses

Executive Analyst Helm and Admin. Anderson presented on this item as outlined in the June 21, 2012 City Council packet. There are four questions before the Council.

1. How many years should the violations be within? On average, it's 3-4 years.
2. How many violations within those years?
3. How many days per violation?
4. Do you want to put a penalty on there as well?

Councilman Gallagher – I'm okay with four years, four violations. I like Hastings example. I would make the fourth violation 12 days and \$4,000 or revocation. Fritz, what do you think?

Attorney Knaak – As a practical matter, if you get to that level of penalty, which is when people start showing up with lawyers. You might as well make it worth your while.

Councilman Rahm – I did bring this up because one of the stores that we were asked to renew had a violation. My question would be, why don't we do something that mirrors our sister cities so that we're in the

same area?

Councilman Gallagher – I don't think we'd lose any business. Is this fine suspension to the business and the employee?

Attorney Knaak – The employee is the one who gets charged criminally.

Councilman Gallagher – Which means they should be more diligent in how they check ids.

Attorney Knaak – Yes and they're supposed to do training as well.

Councilman Sumner – What is the history of violations in the City?

Attorney Knaak – It tends to be sporadic, cigarettes especially. You're seeing businesses card more and more now. I haven't seen the chronic problems that would merit a license revocation that I have seen in other cities.

Admin. Anderson – So far, I have four years, four violations. The days would start at three and go up by three each year. The penalty would start at \$1,000 and go up by \$500, with the last violation being \$4,000 or revocation.

Mayor Geraghty – Does the suspension apply to the employee or business?

Attorney Knaak – The business. The employee is charged criminally.

Councilman Sumner – What was the problem you were concerned about addressing?

Councilman Rahm – I wanted to know what our policy was when this happened.

Councilman Sumner – I don't think we need to go to the extreme with the little violations we have.

Councilman Rahm – I was thinking Cottage Grove would be fair.

Mayor Geraghty – Are you leaning towards the suspension and no dollar penalty?

Councilman Rahm – Yes.

Councilman Sumner – Let's start out with the Cottage Grove model and see how it goes.

Admin. Anderson – We can also do something where we would get rid of the penalty if they prove that they have done training.

Attorney Knaak – That gives you some leeway when you're dealing with negotiations. They should be training anyway and to the extent that they're not doing it effectively, you can insist that they conduct additional training. A week without liquor is a severe penalty.

Councilman Rahm – I would lean more to the suspension and the fine with the cigarette.

Councilman Gallagher – Why are the cigarettes less? They should be equal.

Councilman Rahm – Probably because you can't do as much damage with cigarettes.

Councilman Gallagher – But you're still selling a substance to someone who is underage.

Admin. Anderson – You're leaning towards Cottage Grove?

Councilman Sumner – Yes, and the same for cigarettes.

Admin. Anderson – Okay, we'll bring this back in ordinance form.

G. Complete Streets Policy

Executive Analyst Helm presented on this item as outlined in the June 21, 2012 City Council packet.

Mayor Geraghty – Did you look this over John? Is it consistent with what we've been doing?

Engineer Stewart – Yes I did. It's an excellent policy and the principles behind it are good.

Councilman Sumner – Does this mandate sidewalks?

Engineer Stewart – It doesn't but it encourages them.

Councilman Gallagher – Does this conflict with our decision to not plow and maintain trails in the winter?

Admin. Anderson – We do still maintain adequate trails and walkways in the winter.

Councilman Rahm – So would this include creating bike lanes?

Admin. Anderson – Yes.

Motion by Gallagher, seconded by Geraghty to approve the Complete Streets Policy. With 3 Ayes, 0 Nays, 2 Absent, the motion carried.

Admin. Anderson – I would just like to mention that the City did receive a grant for the Knauff property located behind City Hall.

10. ATTORNEY'S REPORT – No Report

11. POLICE CHIEF'S REPORT – No Report

12. FIRE CHIEF'S REPORT – No Report

13. ENGINEER'S REPORT – Engineer Stewart gave an update on the North Ravine project. There has been some rainfall in the last couple weeks that caused some erosion, however it's all been contained within the project scope. Some of the rain did go all the way through the system so it is working.

Mayor Geraghty – When will they start the streetwork?

Engineer Stewart – They started cutting this morning and the contractor should be done by the second or third week of July.

14. SUPERINTENDENT OF PUBLIC WORKS REPORT – Superintendent Hanson gave an update on several items. The compost site will be open this week to collect storm debris at no charge. The City is no longer picking up debris along the streets. We have started sweeping streets. The crack sealing is also done for the year. Seal coating should be starting as early as next week.

Councilman Sumner – Was there enough to get a measurement in the relined pipes by the river?

Engineer Stewart – We haven't had a chance to do that yet.

Councilman Rahm – When will we start the construction of the pavilion?

Superintendent Hanson – We're looking at delivery for the first week of July.

15. NEW/OLD BUSINESS

Councilman Rahm – Some people have asked me if it's okay to park in the grass by the library because they've seen people do it. Do we want to let people do that?

Admin. Anderson – I would have to take a look at it. I've seen people park over because the streets are narrow. We can continue to monitor it to see how the grass holds up.

Superintendent Hanson – The grass hasn't been torn up or anything.

Admin. Anderson – I'd just like to clarify the list of bills. The City will not be paying the North Ravine Partial Payment #2, the Watershed District will be paying it. They wanted the City to approve it on the list of bills.

16. ADJOURNMENT

Motion by Geraghty, seconded by Gallagher, to adjourn the regular Council Meeting at 7:00 P.M. With 4 Ayes, 0 Nays, 1 Absent, the motion carried.

Signed: _____
Tim Geraghty, Mayor

Respectfully Submitted,

Renee Helm
Executive Analyst

NEWPORT, MN

07/12/12

*Check Summary Register©

June 2012

Name	Check Date	Check Amt
10100 Central Bank		
Paid Chk# 013731 BUREAU OF CRIMINAL AP.	6/21/2012	\$4.16 shipping costs
Paid Chk# 013732 CASSANDRA C URBANO	6/21/2012	\$151.80 supplies, milage
Paid Chk# 013733 COMMERCIAL ASPHALT CO.	6/21/2012	\$5,106.75 asphalt
Paid Chk# 013734 DIETRICH ELECTRIC, INC	6/21/2012	\$1,128.52 electrical inspection
Total Checks		<u>\$6,391.23</u>

FILTER: None

Text25	Text26	Text27	Text28	Comments
Paid Chk# 000059E	DELTA DENTAL OF MN	41093	1,133.95	dental insurance
Paid Chk# 000060E	PSN	41093	63.78	june online fees
Paid Chk# 000062E	MN REVENUE	41102	783.00	water tax - 2nd qtr
Paid Chk# 000063E	FEDERAL TAXES	41102	8,660.48	withholding, fica, medicare
Paid Chk# 000064E	MN REVENUE	41102	1,939.58	state withholding
Paid Chk# 000065E	ING LIFE INSURANCE & ANNUITY	41102	416.98	hcsp
Paid Chk# 013735	EMERGENCY APPARATUS MAINT. I	41081	(231.06)	police
Paid Chk# 013766	ADVANCED SPORTSWEAR	41093	207.00	baseball uniforms
Paid Chk# 013767	ARAMARK REFRESHMENT SERV.	41093	114.01	
Paid Chk# 013768	ATOMIC-COLO, LLC	41093	2,528.34	computer service
Paid Chk# 013769	CABELAS	41093	86.71	uniforms
Paid Chk# 013770	COMCAST	41093	123.28	
Paid Chk# 013771	EMERGENCY AUTOMOTIVE TECH.	41093	231.06	police
Paid Chk# 013772	FAIR OFFICE WORLD	41093	44.09	office supplies
Paid Chk# 013773	GALLS, LLC	41093	203.55	uniforms
Paid Chk# 013774	GERLACH OUTDOOR POWER EQUI	41093	19.62	park supplies
Paid Chk# 013775	HIGHLAND SANITATION	41093	241.41	sanitation
Paid Chk# 013776	INTERNATIONAL UNION OF OP. EN	41093	160.00	
Paid Chk# 013777	Knaak & Assoc. PA	41093	5,200.00	legal service
Paid Chk# 013778	MACQUEEN	41093	430.07	#27 sweeper repair
Paid Chk# 013779	MINNESOTA NATIVE LANDSCAPES	41093	270.00	weed control
Paid Chk# 013780	MN DEPT OF LABOR AND INDUSTR	41093	694.20	state surcharge
Paid Chk# 013781	MN NCPERS LIFE INSURANCE	41093	96.00	life insurance
Paid Chk# 013782	NORTHLAND TRUST SERVICES, INC	41093	29,138.75	bond pmt 2011A
Paid Chk# 013783	ON SITE SANITATION	41093	543.35	sanitation
Paid Chk# 013784	SOUTH SUBURBAN RENTAL, INC.	41093	50.77	LP GAS FILL
Paid Chk# 013785	ST. PAUL PARK REFINING CO. LLC	41093	2,510.29	
Paid Chk# 013786	STREICHERS	41093	195.41	uniforms
Paid Chk# 013787	SW/WC SERVICES COOPERATIVES	41093	14,526.00	
Paid Chk# 013788	THUMB THINGS/BUTTON WORKS	41093	234.00	pioneer days buttons

Paid Chk# 013789	TWIN CITY PROCESS SERVICE, LLC	41093	47.00	legal service scofield
Paid Chk# 013790	TYLER MARTIN	41093	22.20	milage - court
Paid Chk# 013791	US Bank	41093	4,026.25	2002A bond pmt
Paid Chk# 013792	XCEL ENERGY	41093	7.61	electricity
Paid Chk# 013801	ATOMIC-COLO, LLC	41102	786.04	overages - june
Paid Chk# 013802	BAUER BUILT, INC	41102	581.25	0212 truck tires
Paid Chk# 013803	BDM Consulting Engineers	41102	1,815.46	engineering
Paid Chk# 013804	CENTURY LINK	41102	375.72	phone
Paid Chk# 013805	CINTAS -754	41102	116.02	city hall rugs - pw rugs
Paid Chk# 013806	COMCAST	41102	362.35	
Paid Chk# 013807	COMMERCIAL ASPHALT CO.	41102	1,332.48	patching
Paid Chk# 013808	DEPT OF EMPLOYMENT & ECON DE	41102	2,299.00	unemployment charges
Paid Chk# 013809	DONALD SALVERDA & ASSOC.	41102	71.60	books - brian
Paid Chk# 013810	EDS TROPHIES INC	41102	32.14	her. Preservation award
Paid Chk# 013811	G & K SERVICES	41102	350.13	uniforms
Paid Chk# 013812	GERTENS	41102	192.11	library landscaping
Paid Chk# 013813	GOPHER STATE ONE-CALL	41102	88.55	
Paid Chk# 013814	GRAINGER PARTS	41102	900.31	pd air unit
Paid Chk# 013815	HAWKINS	41102	5.00	chorine
Paid Chk# 013816	ING LIFE INSURANCE & ANNUITY	41102	1,024.62	
Paid Chk# 013817	JOBSHQ	41102	50.00	summer rec pos. ad
Paid Chk# 013818	LIBERTY NAPA OF NEWPORT	41102	373.39	vehicle parts
Paid Chk# 013819	MACQUEEN	41102	368.61	sweeper repair
Paid Chk# 013820	MENARDS - COTTAGE GROVE	41102	582.53	lumber picnic tables
Paid Chk# 013821	MERIT CHEVROLET	41102	94.26	0212 truck parts
Paid Chk# 013822	MES	41102	426.79	boots and gloves
Paid Chk# 013823	Metropolitan Council	41102	15,613.70	
Paid Chk# 013824	MINNESOTA/WISCONSIN PLAYGRO	41102	33,336.45	gazebo
Paid Chk# 013825	MN CHILD SUPPORT PAYMENT CN	41102	528.60	child support
Paid Chk# 013826	OXYGEN SERVICE CO.	41102	38.53	welding gas
Paid Chk# 013827	PERA	41102	7,616.96	
Paid Chk# 013828	RIVERTOWN NEWSPAPER GROUP	41102	1,020.39	publishing
Paid Chk# 013829	SELECTACCOUNT	41102	581.00	
Paid Chk# 013830	SOUTH SUBURBAN RENTAL, INC.	41102	50.77	propane
Paid Chk# 013831	ST. PAUL PARK REFINING CO. LLC	41102	1,986.45	
Paid Chk# 013832	SYCOM	41102	1,122.78	lift station panel repair - 10
Paid Chk# 013833	T.A. SCHLIFSKY & SONS, INC.	41102	234.41	sand mix

Paid Chk# 013834	VERIZON	41102	78.08 cards
Paid Chk# 013835	WASHINGTON CTY PROPERTY REC	41102	126.65 mortgage filing 1206 hastings
Paid Chk# 013836	XCEL ENERGY	41102	1,677.28 electricity
	wages		33,177.46
			184,135.55



CONSULTING ENGINEERS AND SURVEYORS, PLC

July 11, 2012

Mr. Brian Anderson
City Administrator
City of Newport
596 7th Avenue
Newport, MN 55055

Re: Newport North Ravine Area Drainage Improvements - Payment Request No. 3

Dear Mr. Anderson:

The construction of the north ravine area drainage improvement project is continuing successfully. The grading operations are all but complete. The ponding areas on the Swanlund site have been constructed and the connecting stormsewer has been extended to Valley Road. The stabilization of the ravine is continuing and almost complete as well.

The total contract price for this project is \$1,533,317.58 and the contractor, Park Construction Company, is requesting payment of \$555,524.93 for the completion of the contract items including approximately 95% of the common excavation and 90% of the stormsewer piping and structures. The Contractor is also requesting \$38,581.88 for materials onsite, but we are deducting \$38,808.25 for materials onsite from Partial Payment No. 1. We have retained 5 percent of the requested amount until final completion of the entire project and therefore the amount due the contractor for the contract items is \$527,748.68 plus the difference in the materials onsite of -226.37. The amount due to the Contractor at this time is then \$527,522.31. Attached are four (4) copies of the Partial Payment Estimate No. 3 for your review and consideration.

We recommend the Council to approve this payment request in the next council meeting. If you have any questions, please feel free to contact us at (612) 548-3141. Thank you very much.

Sincerely,

Jim Stremel, P.E.
Project Engineer
BDM Consulting Engineers, PLC

Attachment: Partial Payment No. 3 Request (4 pgs)

CC: File

PARTIAL PAY ESTIMATE NO. 3

FROM: May 26, 2012
TO: June 22, 2012

COMPLETION DATE
ORIGINAL: 09/14/12
REVISED:
WORKING DAYS USED: N/A
WORKING DAYS REMAINING: N/A

AMOUNT OF CONTRACT
ORIGINAL: \$1,533,317.58
REVISED:

PROJECT: NORTH RAVINE AREA DRAINAGE IMPROVEMENTS
CITY PROJECT NO. 2011-01

CONTRACTOR: PARK CONSTRUCTION COMPANY
ADDRESS: 1481 81ST AVE NE, MINNEAPOLIS, MN 55432
OFFICE: 763-717-6208
FAX: 763-786-2952

OWNER: CITY OF NEWPORT

ITEM NO	SPEC NO.	ITEM DESCRIPTION	UNIT	QTY		THIS PERIOD		TOTAL TO DATE	
				TOTAL	UNIT PRICE	QTY	TOTAL	QTY	TOTAL
SCHEDULE 1.0 - STREET & GRADING									
1	2021.501	MOBILIZATION	LS	1.00	\$ 64,411.92	0.25	\$ 16,102.98	1.00	\$ 64,411.92
2	2051.501	MAINT & RESTORATION OF HAUL ROADS	LS	1.00	\$ 4,830.00	0.50	\$ 2,415.00	0.50	\$ 2,415.00
3	2101.501	CLEARING	AC	11.35	\$ 2,300.00		\$ -	11.35	\$ 26,105.00
4	2101.502	CLEARING	TREE	15	\$ 100.00	-17	\$ (1,700.00)	17	\$ 1,700.00
5	2101.506	GRUBBING	AC	11.35	\$ 1,000.00		\$ -	11.35	\$ 11,350.00
6	2101.507	GRUBBING	TREE	15	\$ 15.00	-17	\$ (255.00)	17	\$ 255.00
7	2103.501	BUILDING REMOVAL	LS	1.00	\$ 7,340.00		\$ -	1.00	\$ 7,340.00
8	2104.501	REMOVE CURB AND GUTTER	LF	228	\$ 2.70		\$ -	110	\$ 297.00
9	2104.505	REMOVE CONCRETE PAVEMENT	SY	312	\$ 5.90		\$ -	190	\$ 1,121.00
10	2104.505	REMOVE BITUMINOUS PAVEMENT	SY	4,096	\$ 2.25	2,743	\$ 6,171.75	3,480	\$ 7,830.00
11	2104.509	REMOVE MAILBOX SUPPORT	EACH	6	\$ 25.00		\$ -	0	\$ -
12	2104.525	ABANDON AND SEAL WELL SHAFT	EACH	2	\$ 1,500.00		\$ -	0	\$ -
13	2104.521	SALVAGE CHAIN LINK FENCE	LF	524	\$ 2.00		\$ -	645	\$ 1,290.00
14	2104.523	SALVAGE SIGN	EACH	3	\$ 20.00		\$ -	0	\$ -
15	2105.501	COMMON EXCAVATION (STREET) (EV) (P)	CY	1,306	\$ 10.70	653	\$ 6,987.10	653	\$ 6,987.10
16	2105.501	COMMON EXCAVATION (POND & RAVINE) (EV)	CY	69,438	\$ 3.75	22,261	\$ 83,478.75	64,648	\$ 242,430.00
17	2105.522	SELECT GRANULAR BORROW (CV)	CY	161	\$ 19.70		\$ -	0	\$ -
18	2105.525	TOPSOIL BORROW (LV)	CY	3,507	\$ 14.10		\$ -	0	\$ -
19	2105.607	TOPSOIL BORROW MOD (LV)	CY	616	\$ 15.90		\$ -	0	\$ -
20	2105.607	HAUL & STOCKPILE EXCESS MATERIAL (EV)	CY	4,000	\$ 3.25		\$ -	4,000	\$ 13,000.00
21	2105.604	COMPOSITE LINER (P)	SY	2,112	\$ 5.10		\$ -	2,112	\$ 10,771.20
22	2211.501	AGGREGATE BASE CLASS 5	TON	1,587	\$ 14.80	115.60	\$ 1,710.88	290.60	\$ 4,300.88
23	2118.501	AGGREGATE SURFACING CLASS 5	TON	246	\$ 14.80		\$ -	67	\$ 991.60
24	2232.501	MILL BITUMINOUS SURFACE (1.5")	SY	167	\$ 7.20		\$ -	0	\$ -
25	2301.501	CONCRETE PAVEMENT (6" THICK)	SY	125	\$ 52.20		\$ -	0	\$ -
26	2350.501	TYPE SP 12.5 WEAR COURSE MIXTURE 2B (HASTINGS)	TON	45	\$ 81.56	20.32	\$ 1,657.30	20.32	\$ 1,657.30
27	2350.501	TYPE SP 9.5 WEAR COURSE MIXTURE 2B (STREET)	TON	331	\$ 77.69		\$ -	0	\$ -
28	2350.501	TYPE SP 9.5 WEAR COURSE MIXTURE 2B (TRAIL)	TON	11	\$ 83.51		\$ -	0	\$ -
29	2350.501	TYPE SP 9.5 WEAR COURSE MIXTURE 2B (D/W)	TON	15	\$ 131.86		\$ -	0	\$ -
30	2350.502	TYPE SP 12.5 NON-WEARING COURSE MIXTURE 2B (STRE	TON	463	\$ 70.11	119.72	\$ 8,393.57	119.72	\$ 8,393.57
31	2357.502	BITUMINOUS MATERIAL FOR TACK COAT	GAL	113	\$ 10.31		\$ -	0	\$ -
32	2506.522	ADJUST FAME & RING CASTING	EACH	3	\$ 223.00		\$ -	0	\$ -
33	2531.501	CONCRETE CURB & GUTTER DESIGN B618	LF	1,699	\$ 10.20		\$ -	0	\$ -
34	2531.501	CONCRETE CURB & GUTTER DESIGN B624	LF	139	\$ 22.00	80	\$ 1,760.00	80	\$ 1,760.00
35	2531.501	BITUMINOUS CURB	LF	27	\$ 30.90		\$ -	0	\$ -
36	2540.602	INSTALL MAIL BOX SUPPORT	EACH	6	\$ 135.00		\$ -	0	\$ -
37	2557.603	INSTALL CHAIN LINK FENCE (SALVAGED)	LF	463	\$ 7.30		\$ -	0	\$ -
38	2557.603	INSTALL CHAIN LINK FENCE	LF	1,580	\$ 13.40		\$ -	0	\$ -
39	2563.601	TRAFFIC CONTROL	LS	1.00	\$ 3,150.00	0.20	\$ 630.00	0.95	\$ 2,992.50
40	2564.603	4" DOUBLE SOLID LINE YELLOW-EPOXY	LF	50	\$ 39.80		\$ -	0	\$ -
41	2564.602	INSTALL SIGN (SALVAGED)	EACH	3	\$ 95.00		\$ -	0	\$ -
42	2564.602	F&I SIGN PANEL TYPE C	EACH	10	\$ 110.00		\$ -	0	\$ -
43	2573.502	SILT FENCE, TYPE MACHINE SLICED	LF	3,034	\$ 1.90		\$ -	4,310	\$ 8,189.00
44	2573.540	FILTER LOG, TYPE WOOD FIBER BIOROLL (6")	LF	4,115	\$ 2.20		\$ -	0	\$ -
45	2573.540	FILTER LOG, TYPE WOOD FIBER BIOROLL (12")	LF	2,069	\$ 3.75	1,367	\$ 5,126.25	1,942	\$ 7,282.50
46	2573.602	INLET PROTECTION	EACH	15	\$ 223.00		\$ -	12	\$ 2,676.00
47	2573.602	TEMPORARY ROCK CONSTRUCTION ENTRANCE	EACH	4	\$ 1,390.00	2	\$ 2,780.00	3	\$ 4,170.00
48	2573.513	TEMPORARY DITCH CHECK TYPE 7	CY	81	\$ 62.10	3	\$ 186.30	6	\$ 372.60
49	2573.602	ROCK DITCH CHECK	EACH	9	\$ 1,050.00	5	\$ 5,250.00	5	\$ 5,250.00

50	2575.505	SODDING	SY	1,845	\$	2.40		\$	-	0	\$	-
51	2575.523	EROSION CONTROL BLANKETS CATEGORY 2	SY	55,942	\$	1.10	10,042	\$	11,046.20	13,932	\$	15,325.20
52	2575.523	EROSION CONTROL BLANKETS CATEGORY 4	SY	7,447	\$	1.15	3,478	\$	3,999.70	3,478	\$	3,999.70
53	2575.525	EROSION STABILIZATION MAT CLASS 2	SY	1,912	\$	5.75	1,912	\$	10,994.00	1,912	\$	10,994.00
54	2575.525	EROSION STABILIZATION MAT CLASS 4	SY	7,437	\$	8.00	2,534	\$	20,272.00	2,534	\$	20,272.00
55	2575.532	FERTILIZER TYPE 4	LB	2,494	\$	0.65	1,750	\$	1,137.50	2,150	\$	1,397.50
56	2575.550	COMPOST GRADE 2	CY	206	\$	53.20		\$	-	0	\$	-
57	2575.555	TURF ESTABLISHMENT	LS	1.00	\$	6,550.00	0.20	\$	1,310.00	0.30	\$	1,965.00
58	2575.608	SEED MIXTURE 330	LB	1,115	\$	4.60	642	\$	2,953.20	892	\$	4,103.20
59	2575.608	SEED MIXTURE 328	LB	57	\$	4.50		\$	-	10	\$	45.00
60	2575.608	SEED MIXTURE SPECIAL 1	LB	79	\$	1.70	145	\$	246.50	145	\$	246.50
61	2575.608	HYDRAULIC SOIL STABILIZER TYPE 6	LB	109,534	\$	0.65	3,795	\$	2,466.75	5,319	\$	3,457.35
T SCHEDULE 1.0 - STREET & GRADING - TOTAL								\$	195,120.73		\$	507,144.62
SCHEDULE 2.0 - SANITARY												
62	2104.501	REMOVE PIPE (SEWER SERVICE)	LF	297	\$	2.70		\$	-	0	\$	-
63	2503.602	CONNECT TO EXISTING SEWER (SERVICE)	EACH	9	\$	275.00		\$	-	0	\$	-
64	2503.603	INSTALL PIPE SEWER (SERVICES)	LF	297	\$	23.60		\$	-	0	\$	-
65	2506.602	ADJUST FAME & RING CASTING (SPECIAL)	EACH	1	\$	223.00		\$	-	0	\$	-
T SCHEDULE 2.0 - SANITARY- TOTAL								\$	-		\$	-
SCHEDULE 3.0 - WATERMAIN												
66	2104.501	REMOVE PIPE (WATERMAIN)	LF	72	\$	5.40	23	\$	124.20	23	\$	124.20
67	2504.602	ADJUST VALVE BOX	EACH	4	\$	318.00		\$	-	0	\$	-
68	2504.602	CONNECT TO EXISTING WATERMAIN	EACH	6	\$	691.00	4	\$	2,764.00	4	\$	2,764.00
69	2504.603	18" CP PIPE CASING	LF	35	\$	101.00	20	\$	2,020.00	20	\$	2,020.00
70	2504.603	6" WATERMAIN DUCTILE IRON CL 52	LF	80	\$	78.60	13	\$	1,021.80	13	\$	1,021.80
71	2504.604	4" POLYSTYRENE INSULATION	SY	194	\$	62.60	56	\$	3,505.60	56	\$	3,505.60
T SCHEDULE 3.0 - WATERMAIN - TOTAL								\$	9,435.60		\$	9,435.60
SCHEDULE 4.0 - STORM												
72	2104.501	REMOVE SEWER PIPE (STORM)	LF	1,865	\$	3.50	490	\$	1,715.00	1,805	\$	6,317.50
73	2104.509	REMOVE MANHOLE OR CATCH BASIN	EACH	7	\$	307.00	2	\$	614.00	6	\$	1,842.00
74	2104.607	SALVAGE RANDOM RIP RAP	CY	209	\$	9.25		\$	-	209	\$	1,933.25
75	2451.507	GRANULAR BEDDING (CV)	CY	2,703	\$	2.85		\$	-	0	\$	-
76	2501.515	24" GS PIPE APRON	EACH	5	\$	517.00	1	\$	517.00	5	\$	2,585.00
77	2501.515	30" GS PIPE APRON	EACH	1	\$	1,170.00		\$	-	1	\$	1,170.00
78	2501.515	36" GS PIPE APRON	EACH	3	\$	2,060.00	2	\$	4,120.00	3	\$	6,180.00
79	2501.515	48" GS PIPE APRON	EACH	1	\$	2,530.00		\$	-	1	\$	2,530.00
80	2501.515	60" GS PIPE APRON	EACH	1	\$	5,100.00	1	\$	5,100.00	1	\$	5,100.00
81	2501.573	INSTALL FLAP GATE (36" ELASTOMERIC CHECK VALVE)	EACH	1	\$	8,270.00	1	\$	8,270.00	1	\$	8,270.00
82	2502.521	8" TP PIPE DRAIN	LF	73	\$	21.50	65	\$	1,397.50	73	\$	1,569.50
83	2502.602	8" TP PIPE DRAIN CLEAN OUT	EACH	2	\$	302.00	2	\$	604.00	2	\$	604.00
84	2503.511	15" RC PIPE SEWER DES 3006 CL III	LF	59	\$	27.20	42	\$	1,142.40	59	\$	1,604.80
85	2503.511	18" RC PIPE SEWER DES 3006 CL III	LF	60	\$	29.40	60	\$	1,764.00	60	\$	1,764.00
86	2503.511	24" RC PIPE SEWER DES 3006 CL III	LF	376	\$	34.10	282	\$	9,616.20	367	\$	12,514.70
87	2503.511	30" RC PIPE SEWER DES 3006 CL III	LF	240	\$	45.90	240	\$	11,016.00	240	\$	11,016.00
88	2503.511	36" RC PIPE SEWER DES 3006 CL III	LF	233	\$	60.40	233	\$	14,073.20	233	\$	14,073.20
89	2503.511	48" RC PIPE SEWER DES 3006 CL III	LF	146	\$	105.00	146	\$	15,330.00	146	\$	15,330.00
90	2503.603	18" CP PIPE SEWER	LF	160	\$	26.20	160	\$	4,192.00	160	\$	4,192.00
91	2503.603	24" CP PIPE SEWER	LF	740	\$	28.70	268	\$	7,691.60	740	\$	21,238.00
92	2503.603	30" CP PIPE SEWER	LF	400	\$	37.80	41	\$	1,549.80	400	\$	15,120.00
93	2503.603	36" CP PIPE SEWER	LF	1,906	\$	43.40	659	\$	28,600.60	1,845	\$	80,073.00
94	2503.603	48" CP PIPE SEWER	LF	613	\$	65.70	516	\$	33,901.20	613	\$	40,274.10
95	2503.603	60" CP PIPE SEWER	LF	240	\$	110.00	240	\$	26,400.00	240	\$	26,400.00
96	2503.603	PLUG FILL & ABANDON PIPE SEWER	LF	147	\$	26.80		\$	-	122	\$	3,269.60
97	2506.502	CONST DRAINAGE STRUCTURE DESIGN 27-4020	EACH	3	\$	1,050.00	3	\$	3,150.00	3	\$	3,150.00
98	2506.502	CONST DRAINAGE STRUCTURE DESIGN 48-4020	EACH	6	\$	1,880.00	5	\$	9,400.00	6	\$	11,280.00
99	2506.502	CONST DRAINAGE STRUCTURE DESIGN 60-4020	EACH	10	\$	3,020.00	6	\$	18,120.00	10	\$	30,200.00
100	2506.502	CONST DRAINAGE STRUCTURE DESIGN 66-4020	EACH	1	\$	3,110.00		\$	-	1	\$	3,110.00
101	2506.502	CONST DRAINAGE STRUCTURE DESIGN 72-4020	EACH	4	\$	3,680.00	2	\$	7,360.00	4	\$	14,720.00

102	2506.502	CONST DRAINAGE STRUCTURE DESIGN 78-4020	EACH	2	\$	4,710.00	2	\$	9,420.00	2	\$	9,420.00
103	2506.502	CONST DRAINAGE STRUCTURE DESIGN 84-4020	EACH	3	\$	5,350.00	2	\$	10,700.00	2	\$	10,700.00
104	2506.502	CONST DRAINAGE STRUCTURE DESIGN 96-4020	EACH	2	\$	8,350.00	2	\$	16,700.00	2	\$	16,700.00
105	2506.502	CONST DRAINAGE STRUCTURE DESIGN SPECIAL 24"X36"	EACH	4	\$	1,480.00	3	\$	4,440.00	4	\$	5,920.00
106	2506.502	CONST DRAINAGE STRUCTURE DESIGN SPECIAL 32"X48"	EACH	2	\$	2,130.00	1	\$	2,130.00	2	\$	4,260.00
107	2506.502	CONST DRAINAGE STRUCTURE DESIGN SPECIAL 60	EACH	4	\$	5,250.00	1	\$	5,250.00	4	\$	21,000.00
108	2506.502	CONST DRAINAGE STRUCTURE DESIGN SPECIAL 78	EACH	1	\$	7,530.00		\$	-	1	\$	7,530.00
109	2506.502	CONST DRAINAGE STRUCTURE DESIGN SPECIAL 5'X6'	EACH	3	\$	9,000.00	3	\$	27,000.00	3	\$	27,000.00
110	2506.502	CONST DRAINAGE STRUCTURE DESIGN SPECIAL 6'X18'	EACH	1	\$	25,000.00		\$	-	1	\$	25,000.00
111	2506.602	CONNECT TO EXISTING DRAINAGE STRUCTURE	EACH	3	\$	893.00		\$	-	3	\$	2,679.00
112	2511.501	RANDOM RIPRAP CLASS III	CY	990	\$	47.10	912.60	\$	42,983.46	912.60	\$	42,983.46
113	2511.501	RANDOM RIPRAP CLASS IV	CY	131	\$	52.20	48.40	\$	2,526.48	48.40	\$	2,526.48
114	2511.501	RANDOM RIPRAP CLASS V	CY	56	\$	52.10	207.6	\$	10,815.96	207.6	\$	10,815.96
115	2511.511	GRANULAR FILTER (CV)	CY	850	\$	2.60		\$	-	0	\$	-
116	2511.515	GEOTEXTILE FILTER TYPE IV	SY	2,316	\$	2.90	1,158	\$	3,358.20	1,158	\$	3,358.20
117	2511.515	GEOTEXTILE FILTER TYPE VI	SY	56	\$	2.45		\$	-	0	\$	-
118	2511.607	INSTALL RANDOM RIPRAP (SALVAGED)	CY	96	\$	9.25		\$	-	96	\$	888.00
119	2554.509	GUIDE POST TYPE B (STRUCTURE MARKERS)	EACH	3	\$	83.20		\$	-	0	\$	-
T SCHEDULE 4.0 - STORM - TOTAL								\$	350,968.60		\$	538,211.75

PROJECT SUMMARY

		THIS PERIOD	TOTAL TO DATE
T	SCHEDULE 1.0 - STREET & GRADING - TOTAL	\$ 195,120.73	\$ 507,144.62
T	SCHEDULE 2.0 - SANITARY- TOTAL	\$ -	\$ -
T	SCHEDULE 3.0 - WATERMAIN - TOTAL	\$ 9,435.60	\$ 9,435.60
T	SCHEDULE 4.0 - STORM - TOTAL	\$ 350,968.60	\$ 538,211.75

AMOUNT EARNED	\$ 555,524.93	\$ 1,054,791.97
AMOUNT RETAINED - 5%	\$ 27,776.25	\$ 52,739.60
MATERIAL ON SITE	\$ 38,581.88	\$ 77,390.13
MATERIAL DEDUCT	\$ 38,808.25	\$ 38,808.25
PREVIOUS PAYMENTS		\$ 513,111.94
AMOUNT DUE	\$ 527,522.31	

CONTRACTOR'S CERTIFICATION

The undersigned Contractor certifies that to the best of their knowledge, information and belief the work covered by this payment estimate has been completed in accordance with the contract documents, that all amounts have been paid by the contractor for work for which previous payment estimates was issued and payments received from the owner, and that current payment shown herein is now due.

Contractor: **PARK CONSTRUCTION COMPANY**

By _____

Date _____

ENGINEER'S CERTIFICATION

The undersigned certifies that the work has been carefully observed and to the best of their knowledge and belief, the quantities shown in this estimate are correct and the work has been performed in accordance with the contract documents.

Engineer: **BDM CONSULTING ENGINEERS & SURVEYORS, PLC**

By _____

Date _____

APPROVED BY OWNER

Owner: **CITY OF NEWPORT**

By _____

Date _____

PARK PERMIT FOR THE CITY OF NEWPORT



596 7th Avenue, Newport, MN. 55055
(651) 459-5677 FAX (651) 459-9883

REQUESTER'S NAME: AL BOCHTE

ADDRESS: 8296 ORANGE BLVD S., COTTAGE GROVE MN, 55016

PHONE # (HOME) 651-459-5344 (WORK) _____

PARK REQUESTED:

- LOVELAND PARK (Glen Road)
- Pavilion #1 (Large Pavilion w/water)
 - Pavilion #2 (Between Ballfields)
 - Pavilion #3 (By Kids Play Area)
- PIONEER PARK (4th Ave. & 6th St.)
- Pavilion #1 (Small Pavilion)
 - Pavilion #2 (Large Pavilion)

LIONS PARK (2nd Ave. & 20th St.)

BUSY BEAVER PARK (10th Ave. & 17th St.)

NOTE: If you wish to use ball fields you must contact someone from the NAA to make sure they are available.

DATE RESERVED: 07/24/2012 FROM 3 P TO 9 P
(Time) (Time)

PARK BEING USED FOR: PICNIC

NUMBER OF PEOPLE ATTENDING: 100

(The City provides portable toilets in each Park System. If your group is larger than 25 people, it will be your responsibility to contract with a company to provide more portable toilets, at your expense.)

DO YOU INTEND TO SERVE BEER? : YES NO

NOTE: Beer in any quantity, may be possessed, transported to and from and consumed during the course of picnicking within those grounds specifically designated and equipped for such use, between the hours of 12:00 Noon and 11:00 P.M., by special permit which shall be issued by the City Council prior to the actual occasion. All applications for a special beer permit shall include proof of liquor liability insurance obtained by the applicant for the occasion naming the City as an additional insured, the location where the beer is to be consumed, the name and address of the applicant and other information required on the application. No permit shall be granted to any person under the legal drinking age in Minnesota or who within 5 years prior to the application has been convicted of a felony, or of violating any law of the State of Minnesota or local Ordinance relating to the manufacture, sale, distribution, or possession for sale or distribution of beer. Upon receiving a completed application along with proof of insurance, the City Park and Recreation Administrator shall present the application to the City Council for action to either grant or deny the special permit allowing the consumption of beer on a specified date in a City Park.

The Grantee of a Park Permit shall be bound by Chapter 3. Section 300, Park System, of the Newport Code of Ordinances. This Ordinance is attached to this Permit.

CERTIFICATE OF LIQUOR LIABILITY INSURANCE RECEIVED ON: _____

FEE OF: \$50.00 DATE PAID: _____ CHECK# _____ RECEIPT# _____

DAMAGE DEPOSIT: \$100.00 DATE PAID: _____ CHECK# _____

DEPOSIT REFUNDED:

YES DATE: _____

NO REASON: _____

Approved by the Newport City Council on this _____ day of _____, 20____.

MOTION BY: _____, SECONDED BY: _____

VOTE: GERAGHTY _____
 INGEMANN _____
 RAHM _____
 SUMNER _____
 GALLAGHER _____

SIGNED: _____

Mayor

ATTEST: _____

City Administrator

Revised 4/6/2011



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/27/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Hendrickson Agency Inc. 8009 34th Ave South Suite 1455 Bloomington MN 55425	CONTACT NAME: Lynn Schnell PHONE (A/C No. Ext.): (952)903-2300 FAX (A/C No.): (952)903-2395 E-MAIL ADDRESS: lynn@hendricksonagency.com														
INSURED Lions Clubs of Minnesota C/O CRM Risk Managers 13214 Kerry Lane Eden Prairie MN 55346	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A: USG Insurance Services, Inc.</td> <td></td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: USG Insurance Services, Inc.		INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:	
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A: USG Insurance Services, Inc.															
INSURER B:															
INSURER C:															
INSURER D:															
INSURER E:															
INSURER F:															

COVERAGES **CERTIFICATE NUMBER:** October 2011 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS								
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PBO <input type="checkbox"/> LOC					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$								
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$								
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTIONS					EACH OCCURRENCE \$ AGGREGATE \$ \$								
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A			<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">WC STATUTORY LIMITS</td> <td style="width: 50%;">OTH FR</td> </tr> <tr> <td>EL EACH ACCIDENT</td> <td>\$</td> </tr> <tr> <td>EL DISEASE - EA EMPLOYEE</td> <td>\$</td> </tr> <tr> <td>EL DISEASE - POLICY LIMIT</td> <td>\$</td> </tr> </table>	WC STATUTORY LIMITS	OTH FR	EL EACH ACCIDENT	\$	EL DISEASE - EA EMPLOYEE	\$	EL DISEASE - POLICY LIMIT	\$
WC STATUTORY LIMITS	OTH FR													
EL EACH ACCIDENT	\$													
EL DISEASE - EA EMPLOYEE	\$													
EL DISEASE - POLICY LIMIT	\$													
A	Liquor Liability		SE800000R7	10/31/2011	10/31/2012	Occurrence \$1,000,000 Aggregate \$2,000,000								

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 Member Club: St. Paul Park/Newport Lions
 Certificate Holder is included as Additional Insured

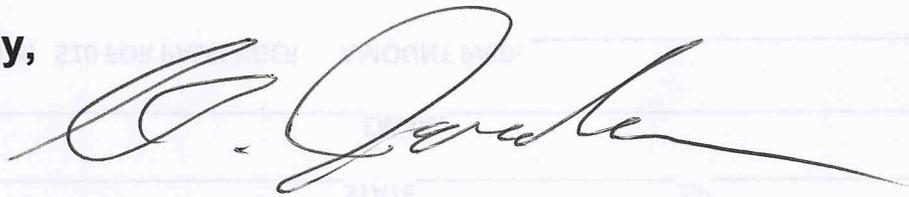
CERTIFICATE HOLDER City of Newport 596 7th Avenue Newport, MN 55055	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE T Hendrickson/LYNNS
---	---

July, 12 2012

To City of Newport

Extreme Custom Choppers, does hereby give Foster My Pet, a MN 501C-3 nonprofit organization permission to conduct a one day gambling event Saturday, August 25, 2012 - 10am-5pm at our motorcycle dealership located at 745 High St. New Port, MN 55055.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Jacobson", written over a horizontal line.

**Mike Jacobson, Owner
Extreme Custom Choppers
745 High St. New Port, MN 55055
651-458-5883**

Minnesota Lawful Gambling
LG220 Application for Exempt Permit

An exempt permit may be issued to a nonprofit organization that:
 - conducts lawful gambling on five or fewer days, and
 - awards less than \$50,000 in prizes during a calendar year.

Application fee	
If application postmarked or received:	
less than 30 days before the event	more than 30 days before the event
\$100	\$50

ORGANIZATION INFORMATION Check# _____ \$ _____

Organization name Foster My Pet Previous gambling permit number _____

Minnesota tax ID number, if any _____ Federal employer ID number, if any 27-4207141

Type of nonprofit organization. Check one.
 Fraternal Religious Veterans Other nonprofit organization

Mailing address P.O. Box 120211 City New Brighton State MN Zip Code 55112 County Ramsey

Name of chief executive officer (CEO) Daniela von Arx Daytime phone number _____ Email address daniela.vonArx13@gmail.com

Attach a copy of ONE of the following for proof of nonprofit status.

- Do not attach a sales tax exempt status or federal employer ID number as they are not proof of nonprofit status.
- Nonprofit Articles of Incorporation OR a current Certificate of Good Standing .
 Don't have a copy? This certificate must be obtained each year from:
 Secretary of State, Business Services Div., 180 State Office Building, St. Paul, MN 55155
 Phone: 651-296-2803
 - IRS income tax exemption [501(c)] letter in your organization's name.
 Don't have a copy? To obtain a copy of your federal income tax exempt letter, have an organization officer contact the IRS at 877-829-5500.
 - IRS - Affiliate of national, statewide, or international parent nonprofit organization (charter)
 If your organization falls under a parent organization, attach copies of both of the following:
 a. IRS letter showing your parent organization is a nonprofit 501(c) organization with a group ruling, and
 b. the charter or letter from your parent organization recognizing your organization as a subordinate.

GAMBLING PREMISES INFORMATION

Name of premises where the gambling event will be conducted. For raffles, list the site where the drawing will take place. NewPort

Address (do not use PO box) 745 High Street City or township NewPort Zip Code 55055 County Washington

Date(s) of activity (for raffles, indicate the date of the drawing) _____

Check the box or boxes that indicate the type of gambling activity your organization will conduct:
 Bingo* Raffles Paddlewheels* Pull-Tabs* Tipboards*

* **Gambling equipment** for pull-tabs, bingo paper, tipboards, and paddlewheels must be obtained from a distributor licensed by the Gambling Control Board. EXCEPTION: Bingo hard cards and bingo number selection devices may be borrowed from another organization authorized to conduct bingo.

 To find a licensed distributor, go to www.gcb.state.mn.us and click on List of Licensed Distributors, or call 651-639-4000.

July

LOCAL UNIT OF GOVERNMENT ACKNOWLEDGMENT

If the gambling premises is within city limits, a city official must check the action that the city is taking on this application and sign the application.

- The application is acknowledged with no waiting period.
- The application is acknowledged with a 30 day waiting period, and allows the Board to issue a permit after 30 days (60 days for a 1st class city).
- The application is denied.

Print city name _____

On behalf of the city, I acknowledge this application.
Signature of city personnel receiving application

Title _____ Date _____

If the gambling premises is located in a township, a county official must check the action that the county is taking on this application and sign the application. **A township official is not required to sign the application.**

- The application is acknowledged with no waiting period.
- The application is acknowledged with a 30 day waiting period, and allows the Board to issue a permit after 30 days.
- The application is denied.

Print county name _____

On behalf of the county, I acknowledge this application.
Signature of county personnel receiving application

Title _____ Date _____

(Optional) TOWNSHIP: *On behalf of the township, I acknowledge that the organization is applying for exempted gambling activity within the township limits. [A township has no statutory authority to approve or deny an application [Minnesota Statute 349.166]]*

Print township name _____

Signature of township official acknowledging application

Title _____ Date _____

CHIEF EXECUTIVE OFFICER'S SIGNATURE

The information provided in this application is complete and accurate to the best of my knowledge. I acknowledge that the financial report will be completed and returned to the Board within 30 days of the date of our gambling activity.

Chief executive officer's signature *Penelope* Date _____

Complete a separate application for each gambling event:

- one day of gambling activity
- two or more consecutive days of gambling activity
- each day a raffle drawing is held

Send application with:

- a copy of your proof of nonprofit status, and
 - application fee for each event
- Make check payable to "State of Minnesota."

To: Gambling Control Board
1711 West County Road B, Suite 300 South
Roseville, MN 55113

Financial report and recordkeeping required

A financial report form and instructions will be sent with your permit, or use the online fill-in form available at www.gcb.state.mn.us. Within 30 days of the activity date, complete and return the financial report form to the Gambling Control Board.

Questions?

Call the Licensing Section of the Gambling Control Board at 651-639-4000.

This form will be made available in alternative format (i.e. large print, Braille) upon request.

Data privacy notice: The information requested on this form (and any attachments) will be used by the Gambling Control Board (Board) to determine your organization's qualifications to be involved in lawful gambling activities in Minnesota. Your organization has the right to refuse to supply the information; however, if your organization refuses to supply this information, the Board may not be able to determine your organization's qualifications and, as a consequence, may refuse to issue a permit. If your organization supplies the information requested, the Board will be able to process your organization's application.

Your organization's name and address will be public information when received by the Board. All other information provided will be private data about your organization until the Board issues the permit. When the Board issues the permit, all information provided will become public. If the Board does not issue a permit, all information provided remains private, with the exception of your organization's name and address which will remain public.

Private data about your organization are available to: Board members, Board staff whose work requires access to the information; Minnesota's Department of Public Safety; Attorney General; Commissioners of Administration, Minnesota Management & Budget, and Revenue; Legislative Auditor, national and international gambling regulatory agencies; anyone pursuant to court order; other individuals and agencies specifically authorized by state or federal law to have access to the information; individuals and agencies for which law or legal order authorizes a new use or sharing of information after this notice was given; and anyone with your written consent.

Reset Form



**Internal
Revenue
Service**

**Tax Exempt/Government Entities (TE/GE)
Facsimile Cover Sheet**

TO: FOSTER MY PET	FROM Sophia Brown
PHONE NUMBER	PHONE NUMBER 513-263-3779
FAXED NUMBER 651-309-6039	FAX NUMBER 513-263-3522
DATE 11-17-11	NUMBER OF PAGES (INCLUDING COVER SHEET)

COMMENTS *THIS* communication is intended for the sole use of the individual to whom it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this communication is not the intended recipient or the employee or agent for delivering the communication to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication may be strictly prohibited. If you have received this communication in error, please notify the sender immediately by telephone, and return the communication at the address via the United States Postal Service. Thank you.

Dear Foster My Pet,

Per your request, I am faxing a copy of your Determination Letter reflecting your address change.

Thank You,
Sophia Brown



Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

Date: November 17, 2011

FOSTER MY PET
PO BOX 120211 1505 18TH STREET NW
NEW BRIGHTON MF 55112

Person to Contact:

Sophia Brown # 02-02975

Toll Free Telephone Number:

877-829-5500

Employer Identification Number:

27-4207141

Dear Sir or Madam:

This is in response to your November 9, 2011 request for information regarding your tax-exempt status.

Our records indicate that you were recognized as exempt under section 501(c)(3) of the Internal Revenue Code in a determination letter issued in October 2011.

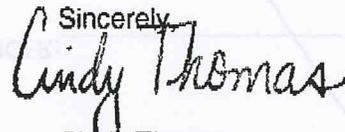
Our records also indicate you are not a private foundation within the meaning of section 509(a) of the Code because you are described in section 509(a)(1) and 170(b)(1)(A)(vi).

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

Please refer to our website www.irs.gov/eo for information regarding filing requirements. Specifically, section 6033(j) of the Code provides that failure to file an annual information return for three consecutive years results in revocation of tax-exempt status as of the filing due date of the third return for organizations required to file. The IRS maintains a list on our website of organizations whose tax-exempt status was automatically revoked under section 6033 (j) of the Code.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely,



Cindy Thomas
Manager, Exempt Organizations
Determinations

RESOLUTION NUMBER 2012-18

A RESOLUTION APPROVING STATUTORY APPOINTMENTS OF ELECTION JUDGES IN THE CITY OF NEWPORT AND ADOPTING ELECTION JUDGE POLICY

WHEREAS, the City of Newport City Council appoints its Election Judges to serve in the City's Primary and General Elections; and

WHEREAS, the City of Newport is required under Minnesota State Statutes 204B.21, subd. 2 to make various annual appointments and designations; and

WHEREAS, the City of Newport City Council values the commitment and allegiance of its Election Judges.

NOW, THEREFORE BE IT RESOLVED, that the Newport City Council hereby makes the following appointments for Election Judges to serve in the State Primary Election on Tuesday, August 14th, 2012, and the State General Election on Tuesday, November 6th, 2012:

- Everett Acker
- Caroline Clausen
- Penny Duff
- Gerald Ehlers
- Tim Finley
- Sandra Grochow
- Janice Kobe
- Mary Ann Newman
- Paski Paskaradevan
- Carol Petersen
- Barbara Wilcziek

Adopted this 19th day of July, 2012, by the Newport City Council.

Motion by: _____, Seconded by: _____

VOTE:	Geraghty	_____
	Ingemann	_____
	Sumner	_____
	Gallagher	_____
	Rahm	_____

Signed: _____
Tim Geraghty, Mayor

ATTEST: _____
Brian Anderson, City Administrator



MEMO TO: Brian Anderson, City Administrator
FROM: Barbara Dacy, Executive Director
Washington County HRA
DATE: July 12, 2012
RE: Resolution Supporting Livable Communities Development Account Application
for the Red Rock Gateway Redevelopment Project Phase 1

The Washington County HRA has submitted an application for Livable Communities Demonstration Account (LCDA) funding to the Metropolitan Council. The purpose of the LCDA grant application is to begin Phase I of the Red Rock Gateway Redevelopment project and has four parts. The application requests \$3,000,000 for:

- Land acquisition to construct senior housing and to expand Lions Park (\$1,750,667),
- Construction of place making elements to connect the proposed transit station with future developments (\$504,134),
- Bike and sidewalk connections to existing regional and local trails (\$663,599), and
- Completion of a comprehensive stormwater management plan (\$81,600).

If awarded the grant, the HRA will work with Sand Companies Inc. (SCI) to determine the appropriate location in Area 2 to site a 50-80 unit market rate senior housing building. SCI has indicated a commitment to this project through a Letter of Intent. The HRA will then begin the negotiation process with property owners. The HRA will relocate residents and businesses in compliance with the Uniform Relocation Act and then demolish structures on the site. The HRA will further work with the City and Washington County to make the bike trail and sidewalk improvements and place making elements which include landscaping, stylized signage, decorative street lighting, and other public furnishings. The inclusion of place making elements and public furnishings (i.e. sidewalk benches, bike racks, bike repair bollards, trash receptacles) is necessary to transform the area from its industrial character to a transit-oriented development. The HRA will also contract with an engineering firm to develop the stormwater management plan.

Metropolitan Council requires the city, as a participant in the Livable Community Act's Housing Incentives Program, to adopt a resolution to accompany the HRA's grant application.

RESOLUTION NUMBER 2012-19

A RESOLUTION IDENTIFYING THE NEED FOR LIVABLE COMMUNITIES DEMONSTRATION ACCOUNT FUNDING AND AUTHORIZING AN APPLICATION FOR GRANT FUNDS

WHEREAS, the City of Newport (the “City”) is a participant in the Livable Communities Act’s Housing Incentives Program for 2012 as determined by the Metropolitan Council, and is therefore eligible to apply for Livable Communities Demonstration Account funds (the “LCDA Funds”); and

WHEREAS, the City along with the Washington County Housing and Redevelopment Authority (the “Authority”) have identified a proposed project within the City that meets the Demonstration Account’s purposes and criteria and is consistent with and promotes the purposes of the Metropolitan Livable Communities Act and the policies of the Metropolitan Council’s adopted metropolitan development guide; and

WHEREAS, the Authority has the institutional, managerial and financial capability to ensure adequate project administration; and

WHEREAS, the Authority certifies that it will comply with all applicable laws and regulations as stated in the grant agreement; and

WHEREAS, the Authority agrees to act as legal sponsor for the project contained in the grant application submitted on July 9, 2012; and

WHEREAS, the City acknowledges Livable Communities Demonstration Account grants are intended to fund projects or project components that can serve as models, examples or prototypes for development or redevelopment projects elsewhere in the region, and therefore represents that the proposed project or key components of the proposed project can be replicated in other metropolitan-area communities; and

WHEREAS, only a limited amount of grant funding is available through the Metropolitan Council’s Livable Communities Demonstration Account during each funding cycle and the Metropolitan Council has determined it is appropriate to allocate those scarce grant funds only to eligible projects that would not occur without the availability of Demonstration Account grant funding.

NOW, THEREFORE, BE IT RESOLVED that, after appropriate examination and due consideration, the governing body of the City:

1. Has requested the Authority complete the Red Rock Gateway Redevelopment project as outlined in the redevelopment plan and Joint Powers Agreement.
2. Finds that it is in the best interests of the City’s development goals and priorities for the proposed project to occur at this particular site and at this particular time.
3. Finds that the project component(s) for which Livable Communities Demonstration Account funding is sought:
 - (a) will not occur solely through private or other public investment within the reasonably foreseeable future; and
 - (b) will occur within three years after a grant award only if Livable Communities Demonstration Account funding is made available for this project at this time.
4. Represents that the City and Authority have undertaken reasonable and good faith efforts to procure funding for the project component for which Livable Communities Demonstration Account funding is

sought but was not able to find or secure from other sources funding that is necessary for project component completion within three years and states that this representation is based on the following reasons and supporting facts:

- (a) the City has requested the Authority complete the redevelopment project as proposed in the grant application; and
 - (b) the City has evaluated available financing tools and determined that the Livable Communities Demonstration Account funding is the only viable source and is necessary for the project to be completed within three years.
5. Authorizes the Authority to submit an application for Metropolitan Council Livable Communities Demonstration Account grant funds for the project component(s) identified in the application, and to execute such agreements as may be necessary to implement the project on behalf of the City.

Adopted this 19th day of July, 2012 by the Newport City Council.

Motion by: _____, Seconded by: _____

VOTE:	Geraghty	_____
	Ingemann	_____
	Sumner	_____
	Gallagher	_____
	Rahm	_____

Signed: _____
Tim Geraghty, Mayor

ATTEST: _____
Brian Anderson, City Administrator



MEMO

TO: Newport City Council
Brian Anderson, City Administrator

FROM: Renee Helm, Executive Analyst

DATE: July 10, 2012

SUBJECT: Rezoning and Minor Subdivision Requests from Martin Vietoris

BACKGROUND

Please find attached a memo from Sherri Buss and Resolution No. 2012-20 and 2012-21 for a rezoning and minor subdivision requests by Martin Vietoris for property located at the southwest corner of Ford and Valley Roads. A public hearing was held at the July 12, 2012 Planning Commission meeting. Neither the Planning Commission nor Mr. Vietoris had any amendments to requests. The Planning Commission approved Resolutions No. P.C. 2012-5 and 2012-6 recommending that the City Council approve the rezoning and minor subdivision requests.

RECOMMENDATION

It is recommended that the City Council approve Resolution No. 2012-20 and Resolution No. 2012-21 approving a rezoning and minor subdivision requests by Martin Vietoris.

RESOLUTION NO. 2012-20

A RESOLUTION BY THE NEWPORT CITY COUNCIL APPROVING A REZONING REQUESTED BY MARTIN VIETORIS, 2154 HASTINGS AVENUE, SUITE 100, NEWPORT, MN 55055, FOR PROPERTY LOCATED JUST WEST OF VALLEY ROAD AND SOUTH OF FORD ROAD, NEWPORT, MN 55055

WHEREAS, Martin Vietoris, 2154 Hastings Avenue, Suite 100, Newport, MN 55055 has submitted a request for a rezoning; and

WHEREAS, The proposed rezoning is for property located just west of Valley Road and south of Ford Road, Newport, MN 55055, and is more fully legally described as follows:

PID#25.028.22.32.0008 - SubdivisionName RED ROCK PARK Lot 1 Block 1 SubdivisionCd 55325

PID#25.028.22.32.0009 - SubdivisionName RED ROCK PARK Lot 2 Block 1 SubdivisionCd 55325

PID#25.028.22.32.0010 - SubdivisionName RED ROCK PARK Lot 3 Block 1 SubdivisionCd 55325

PID#25.028.22.32.0011 - SubdivisionName RED ROCK PARK Lot 4 Block 1 SubdivisionCd 55325; and

WHEREAS, The described property is zoned Business Park/Office/Warehouse (B-2); and

WHEREAS, The request is to rezone the property to Low Density Single Family Residential (R-1); and

WHEREAS, Chapter 13, Section 1310.02, Subdivision 3, of the Code of Ordinance states; “Proceedings for amendment, which are initiated by the petition of the owner or owners of the property, shall be filed with the Zoning Administrator. All applications shall be accompanied by an administrative fee as prescribed in Subsection 1310.01 and shall include the following information:

- A. The name and address of the applicant or applicants;
- B. A description of the area proposed to be rezoned; the names and addresses of all owners of property lying within such area and a description of the property owned by each;
- C. The present zone classification of the area and the proposed zone classification;
- D. A description of the present use of each separately owned tract within the area, and the intended use of any tract of land therein;
- E. A site plan showing the location and extent of the proposed building, parking, loading, access drives, landscaping and any other improvements;
- F. A statement of how the rezoning would fit in with the general zoning pattern of the neighborhood, and the zoning plan of the entire City;
- G. A map showing the property to be rezoned, and the present zoning of the surrounding area for at least a distance of three hundred fifty (350) feet, including the street pattern of such area, together with the names and addresses of the owners of the lands in each area.” and

WHEREAS, Following publication, posted, and mailed notice thereof, the Newport Planning Commission held a Public Hearing on July 12, 2012; and

WHEREAS, The Planning Commission recommended Council approval of the proposed rezoning, Resolution No. P.C. 2012-5; and

NOW, THEREFORE, BE IT FURTHER RESOLVED That the Newport City Council Approval for a Rezoning of the described property to applicant Martin Victoris, 2154 Hastings Avenue, Suite 100, Newport, MN 55055 based on the following:

- The parcels to the east of the subject property are zoned R-1 and used for residences. If the subject property is rezoned to R-1, it will be contiguous to other R-1 zoning.
- While zoned B-2, the parcel to the north is being used for a stormwater pond and will not be developed for commercial purposes. The stormwater pond will be compatible with proposed residential development, and may be an amenity for adjacent residential areas.
- The parcels to the south are zoned B-2, but the existing land use is single family residential.
- The parcel to the west is zoned and used for commercial purposes.
- The adjacent commercial parcel to the west and nearby commercial are oriented to Hastings Avenue. The subject property gains access from Ford Road. This section of Ford Road predominantly serves residential properties. The subject property may not be a desirable location for business due to its low visibility and location on a lower trafficked street, as compared to Hastings Avenue.

Adopted this 19th day of July, 2012 by the Newport City Council.

Motion by: _____, Seconded by: _____

VOTE:	Geraghty	_____
	Ingemann	_____
	Sumner	_____
	Gallagher	_____
	Rahm	_____

Signed: _____
Tim Geraghty, Mayor

ATTEST: _____
Brian Anderson, City Administrator

RESOLUTION NO. 2012-21

A RESOLUTION BY THE NEWPORT CITY COUNCIL APPROVING A PLANNED UNIT DEVELOPMENT AND MINOR SUBDIVISION REQUESTED BY MARTIN VIETORIS, 2154 HASTINGS AVENUE, SUITE 100, NEWPORT, MN 55055, FOR PROPERTY LOCATED JUST WEST OF VALLEY ROAD AND SOUTH OF FORD ROAD, NEWPORT, MN 55055

WHEREAS, Martin Vietoris, 2154 Hastings Avenue, Suite 100, Newport, MN 55055, has submitted a request for a Planned Unit Development and Minor Subdivision; and

WHEREAS, The proposed rezoning is for property located just west of Valley Road and south of Ford Road, Newport, MN 55055, and is more fully legally described as follows:

PID#25.028.22.32.0008 - SubdivisionName RED ROCK PARK Lot 1 Block 1 SubdivisionCd 55325

PID#25.028.22.32.0009 - SubdivisionName RED ROCK PARK Lot 2 Block 1 SubdivisionCd 55325

PID#25.028.22.32.0010 - SubdivisionName RED ROCK PARK Lot 3 Block 1 SubdivisionCd 55325

PID#25.028.22.32.0011 - SubdivisionName RED ROCK PARK Lot 4 Block 1 SubdivisionCd 55325;
and

WHEREAS, The described property is zoned Business Park/Office/Warehouse (B-2); and

WHEREAS, The City Council approved Resolution No. 2012-20 approving a rezoning request from Martin Vietoris to rezone the property from B-2 to R-1; and

WHEREAS, **Chapter 12, Section 1200.03**, of the Code of Ordinances states; *“The purpose and intent of this Chapter shall be to ensure that subdivisions are consistent with all applicable provisions of all applicable plans, laws, and regulations, and to provide for the orderly subdivision of land.”* And

WHEREAS, **Section 1360** of the Code of Ordinances states: *“Planned United Development is an approach to development that may provide a comprehensive procedure intended to allow greater flexibility in the development of neighborhoods or non-residential areas than would be possible under conventional standards...by departing from the strict application of required setbacks, yard areas, lot sizes, densities, minimum house sizes, minimum requirements, and other performance standards associated with traditional zoning, the PUD can maximize the development potential of the land while remaining sensitive to its unique and valuable natural characteristics;”*

WHEREAS, Following publication, posted, and mailed notice thereof, the Newport Planning Commission held a Public Hearing on July 12, 2012.

WHEREAS, The Planning Commission recommended Council approval of the proposed rezoning, Resolution No. P.C. 2012-6; and

NOW, THEREFORE, BE IT FURTHER RESOLVED That the Newport City Council Approve a a Minor Subdivision of the described property to applicant Martin Vietoris, 2154 Hastings Avenue, Suite 100, Newport, MN 55055, with the following conditions:

1. The Applicant shall submit a Final Plat that is substantially in conformance with the Preliminary Plat received by the City on June 20, 2012 with maximum lot coverage of 30%. Plans must meet the standards of Section 1200.12. Plans must include: Existing Conditions, Final Plans, Grading and Erosion Control Plan, and Utility Plan, and Landscaping Plan. Comments from the City Engineer and City Planner shall be addressed.
2. The Applicant shall finalize a developer agreement with the City for public improvements.
3. All lots, buildings and structures developed within the subdivision shall meet the setbacks, height requirements, other dimensional requirements and performance standards of the Zoning Ordinance that are not specifically allowed exception in the approved PUD.
4. The applicant shall assume all costs of water and sewer hook-ups. The applicant shall pay the City for costs of paving the alley.
5. The applicant shall address the City Engineer's recommendations for storm water management and other engineering requirements for the subdivision, including the following:
 - The applicant will need to add fill to the lots and grade the lots so that they drain to the street
 - The proposed alley must be graded to drain to Valley Road
6. The Applicant shall satisfy the City's park dedication requirements.
7. The Applicant shall provide a letter of credit or other financial guarantee acceptable to the City for completion of proposed alley improvements, as required in Section 1200.17 of the Subdivision Ordinance.
8. The applicant shall pay all fees and escrow associated with this application.

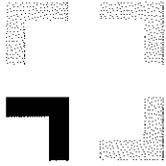
Adopted this 19th day of July, 2012 by the Newport City Council.

Motion by: _____, Seconded by: _____

VOTE:	Geraghty	_____
	Ingemann	_____
	Sumner	_____
	Gallagher	_____
	Rahm	_____

Signed: _____
Tim Geraghty, Mayor

ATTEST: _____
Brian Anderson, City Administrator



444 Cedar Street, Suite 1500
Saint Paul, MN 55101
651.292.4400
tkda.com

TKDA

Memorandum

To:	<u>City of Newport Planning Commission</u>	Reference:	<u>Martin J. Vietoris Rezoning and PUD-Minor Subdivision Request</u>
Copies To:	<u>Brian Anderson, City Administrator</u> <u>Renee Helm, Executive Assistant</u>	Project No.:	<u>15140.001</u>
From:	<u>Berry Farrington, AICP</u>	Routing:	<u>Sherri Buss, Planner</u>
Date:	<u>July 2, 2012</u>		

SUBJECT: Vietoris Property Rezoning and PUD-Minor Subdivision request

MEETING DATE: July 12, 2012

LOCATION: Red Rock Park Block 1, Lots 1, 2, 3 and 4,
at the southwest corner of Valley Road and Ford Road

APPLICANT: Martin J. Vietoris (Martin Joseph LLC)
2154 Hastings Ave, Suite 100
Newport, MN 55055

ZONING: B-2 (Business Park/Office/Warehouse)

ITEMS REVIEWED: Application Form and Preliminary Plat sketch received June 20, 2012;
Proposed alley improvements plan received June 27, 2012.

BRIEF DESCRIPTION OF THE REQUEST

The applicant is requesting a rezoning of four parcels from B-2 to R-1 (Business Park/ Office/ Warehouse to Low Density Single Family Residential). The applicant is also requesting a minor subdivision by Planned Unit Development (PUD). The minor subdivision would create 3 single-family residential lots. A PUD is requested because the proposed lots do not meet all standards of the R-1 District. The Zoning Ordinance allows for a PUD to vary from standards of the underlying zoning district if the PUD goals and requirements of the ordinance are met.

BACKGROUND

The subject property is 4 vacant lots located at the southwest corner of Valley Road and Ford Road, just east of Hastings Avenue. The total area of the parcels is approximately 28,350 square feet (.65 acres). The request is to create three parcels: Parcel A of 10,135 square feet, and Parcels B and C, each including 9,107 square feet.

The lots were created prior to the current zoning ordinance, and were permitted lots in a residential district at the time that they were created. Since that time, the area was rezoned to B-2, which does not allow single-family residential as a permitted use. The B-2 zone currently has a minimum lot size of 15,000 square feet. Therefore the applicant is seeking to rezone the property to R-1 to permit residential development. The minimum lot size in the R-1 district is 9,100 square feet. The applicant cannot develop four single family homes on the four existing lots because the zoning ordinance requires that if a nonconforming lot is adjacent to an existing vacant lot that is under the same ownership it must be combined to meet the standards of the district. Therefore, the four lots under the same ownership must be redrawn to create three lots that meet the minimum density standards of the proposed zoning district.

The applicant is seeking to rezone the property from B-2 to R-1 so that it may be developed as three single-family parcels. The applicant envisions that the City stormwater pond across Ford Road would be a natural and scenic amenity for residential property. The surrounding neighborhood to the east and south is existing residential development. The parcels in the area are of similar size and dimension to those proposed by the applicant. Parcels to the west are commercial land uses with frontage on Hastings Avenue. A new storm water pond is under construction to the north of the proposed subdivision.

The applicant is seeking approval of a PUD-Minor Subdivision to allow for flexibility in the following: the minimum lot width of 70 feet for interior lots and 90 feet for the corner lot, and maximum lot coverage of 25%, as required by the R-1 District. The applicant proposes that two of the three lots have a minimum lot width of 64.25 feet, and the corner lot would be 71.5 feet wide. The PUD ordinance allows the City discretion in approving lots that vary from the District standards, such as lot width and lot coverage, so long as the PUD goals and requirements are met.

EVALUATION OF THE REQUEST

Rezoning

The applicant is requesting to change the zoning from B-2 (Business Park/ Office/ Warehouse) to R-1 (Low Density Single Family Residential). Section 1310.02, Subd. 3 of the City's Zoning Ordinance addresses rezoning applications. Requests are evaluated based on existing and proposed land uses, how the proposed zoning would fit in with the general zoning pattern of the neighborhood and city, the conservation of property values, and advantages to the entire City. No change shall be recommended unless it is in the interest of public health, safety and welfare, and is compatible with the comprehensive plan.

The attached Zoning Map, Existing Land Use Map, and aerial photograph of the site illustrate the following conditions:

- The parcels to the east of the subject property are zoned R-1 and used for residences. If the subject property is rezoned to R-1, it will be contiguous to other R-1 zoning.

- While zoned B-2, the parcel to the north is being used for a stormwater pond and will not be developed for commercial purposes. The stormwater pond will be compatible with proposed residential development, and may be an amenity for adjacent residential areas.
- The parcels to the south are zoned B-2, but the existing land use is single family residential.
- The parcel to the west is zoned and used for commercial purposes.
- The adjacent commercial parcel to the west and nearby commercial are oriented to Hastings Avenue. The subject property gains access from Ford Road. This section of Ford Road predominantly serves residential properties. The subject property may not be a desirable location for business due to its low visibility and location on a lower trafficked street, as compared to Hastings Avenue.

The City Engineer indicated that the rezoning of four parcels from B-2 to R-1 would not have adverse effects on public services or public infrastructure, such as solid waste collection, wastewater treatment, stormwater management, streets or parks. These public services are already provided to residences in the area, and available infrastructure has the capacity to add four more single-family residential units.

The Comprehensive Plan's land use policies recommend that the Hastings Avenue area include residential as well as commercial land uses, and that Hastings Avenue itself should be redeveloped with a "Main Street" character. The Comprehensive Plan's future land use map currently guides the subject parcels for Commercial/Residential land use. This land use type calls for the integration of residential land uses with commercial land uses. The rezoning of the subject property from B-2 to R-1 and creation of three residential parcels is compatible with these comprehensive plan policies. If the City approves the rezoning, it should concurrently approve a comprehensive plan amendment, to guide the planned land use of the subject parcels as Single Family Detached (R-1).

The Planner finds that rezoning to R-1 is consistent with the existing land use and zoning of the surrounding neighborhood. The Planner finds that the proposed R-1 zoning fits in with the general pattern of the neighborhood and city – and that such a change in zoning would not have adverse impacts on public health, safety and welfare. The Planner finds that the request is compatible with the land use goals of the Comprehensive Plan.

PUD Requirements and Evaluation

The applicant is requesting approval of a preliminary plat for a minor subdivision using the Planned Unit Development (PUD) approach to development. The City's PUD ordinance requires that when a subdivision uses a PUD approach, the subdivision and PUD be reviewed simultaneously.

The PUD process and requirements are described in Section 1360 of the development code. The PUD process is designed to allow greater flexibility in development when the project offers benefits not only to the proposer, but to the City and the public interest. The ordinance states that the City shall consider the PUD based on the standards and purposes of the Comprehensive Plan, and the goals of the PUD, which may include:

- variety in site design,
- sensitivity to natural characteristics,

- efficiency with regard to public infrastructure and utilities,
- density transfer,
- zoning district integration, and
- mutual benefit to both the proposer and the public interest.

The PUD approach is requested in this case because the proposed lots would not meet the minimum lot width and maximum lot coverage standards of the R-1 District. The overall lot size

and proposed density meet the ordinance requirement. The proposed are deeper than the required minimum depth, and narrower than the minimum width required by the zoning ordinance.

Lot Width

The minimum lot width is 70 feet for interior lots, and 90 feet for a corner lot. The proposed lots are 64.25, 64.25, and 71.5 feet in width. Nearby residential parcels have lot widths similar to those requested, ranging from 40 to 70 feet because they were created under a previous zoning ordinance that permitted narrower lots than the current code.

Lot Coverage

The maximum lot coverage is 25% of the lot. The site plan shows each parcel with a house area and a garage area. The house area alone on each parcel exceeds the 25% lot coverage standard. The proposed house areas are: Parcel A of 2,575 square feet, and Parcel B and Parcel C each of 3,617 square feet. The proposed garage areas are approximately 640 to 920 square feet each. The combined house and garage area lot coverages are: Parcel A of approximately 32%, Parcel B of approximately 50%, and Parcel C of approximately 50%.

The lot coverage standard was established for two general purposes: to manage stormwater runoff from developed areas, and to maintain some general consistency in the density and intensity of development within a zoning district. The City engineer has indicated that the additional coverage will not create significant stormwater management concerns provided that the applicant is required to do the following:

- The applicant will need to add fill to the lots and grade the lots so that they drain to the street.
- The proposed alley must be graded to drain to Valley Road

The aerial photo indicates that some other lots in the area have a higher degree of coverage than the standard in the current ordinance.

GARAGE STANDARDS

In considering the flexibility the City might grant through the PUD, the City has the option to limit the degree by which the proposed minor subdivision may exceed the lot coverage standard. The size of the garage area or house area may be limited by the City in the conditions of the PUD. The zoning ordinance requires that a residential lot be allowed at least 500 square feet of garage space, as long as the required setbacks and other dimensional standards are met.

The zoning ordinance requires that garages be setback an additional 1 foot from the minimum front, side and rear setbacks for every 20 square feet in area over 900 square feet. If the proposed lot coverage is permitted, the proposed garages over 900 square feet in size would need to meet the additional setback requirement.

The proposed PUD offers benefits to the City in that allowance of the narrower lot and some degree of greater lot coverage would allow for greater efficiency of use of the public infrastructure and utilities in the area—including more efficient use of the existing street, wastewater and water conveyance systems.

The PUD ordinance requires that the plat conform to the density requirements of the underlying zoning. The R-1 District density standards do allow for three lots to be created from the subject land area. Two of the proposed lots are 9,107 square feet each, with the third lot proposed as 10,135 square feet. The R-1 District requires a minimum lot size of 9,100 square feet.

The Planner finds that the request is consistent with the PUD Ordinance's goal of efficiency and efficient use of infrastructure and utilities. By allowing for flexibility in lot width, the City would allow for more efficient use of the street and water/wastewater services, by allowing for three lots when the standard lot width requirement would limit the minor subdivision to two lots. The requested lot widths are consistent with the scale and character of the surrounding neighborhood. Some flexibility in lot coverage will also allow for more efficient use of public services through the allowance of three lots. The request meets the density requirements of the ordinance.

The Planning Commission should discuss the request for flexibility from the standards for lot width and coverage. The Commission could recommend that the size of the proposed garages be reduced to the minimum ordinance requirement (500 feet) in order to bring the subdivision into closer compliance with the ordinance. However, even at the reduced size, some flexibility from the coverage standard would be required.

Minor Subdivision Ordinance Requirements and Evaluation

The Subdivision process and requirements are described in Chapter 12 of the City's Code. The subdivision must be consistent with the City's Comprehensive Plan, Zoning Ordinance and other adopted policies. It must be suitable to the physical character of the site and not cause environmental harm. The Subdivision Ordinance requires approval of the Preliminary Plat, and subsequent approval of the Final Plat.

As noted in the previous section, the proposed residential use is consistent with Comprehensive Plan goals for the Hastings Avenue area. The proposed parcels meet the minimum yard areas of the R-1 District (front yard of 30 feet, side yard of 10 feet, dwelling rear yard of 30 feet and garage rear yard of 5 feet).

Because the request is for a Minor subdivision rather than a major subdivision, the sketch plan supplied with the application provides sufficient detail for a preliminary plat evaluation. If the request proceeds to final plat, the final plat submittal must meet the standards of the Code addressing application requirements, required plan sheets and standards (Section 1200.12). Required plans include: Existing Conditions, Final Plans, Grading and Erosion Control Plan, Utility Plan, and Landscaping Plan.

The South Washington Watershed District reviews proposed development that includes 1 acre or more. Therefore, a permit from the South Washington Watershed District (SWWD) will not be required. The applicant will need to meet the City's stormwater management requirements. The City Engineer will review the final plan and make recommendations regarding stormwater management if the preliminary plat is approved.

The City Engineer has reviewed the preliminary plat submittal and has prepared a cost estimate for the paving of the alley located to the south of the subject property, attached. Final plans will be reviewed by the City Engineer and all Engineering comments must be addressed.

The Subdivision Ordinance includes standards for Park Dedication (Section 1200.14). Because of the small land area and location of the request, the City may wish to take cash in lieu of land dedication.

ACTION REQUESTED

The Planning Commission can recommend to the City Council:

1. Approval
2. Approval with conditions
3. Denial with findings
4. Table the request, if additional information is needed to make a decision

PLANNING STAFF FINDINGS AND RECOMMENDATIONS

The Planner recommends that the Planning Commission recommend approval of the Martin J. Vietoris (Martin Joseph LLC) request for a rezoning from B-2 to R-1, and associated Comprehensive Plan amendment to guide the land use as Single Family Detached; and approval of the Planned Unit Development (PUD) and Preliminary Plat for a Minor Subdivision to create three lots, with conditions of approval. The Planner recommends the City consider limiting the garage area to bring the subdivision closer to compliance with the lot coverage standards.

The Planner finds the following:

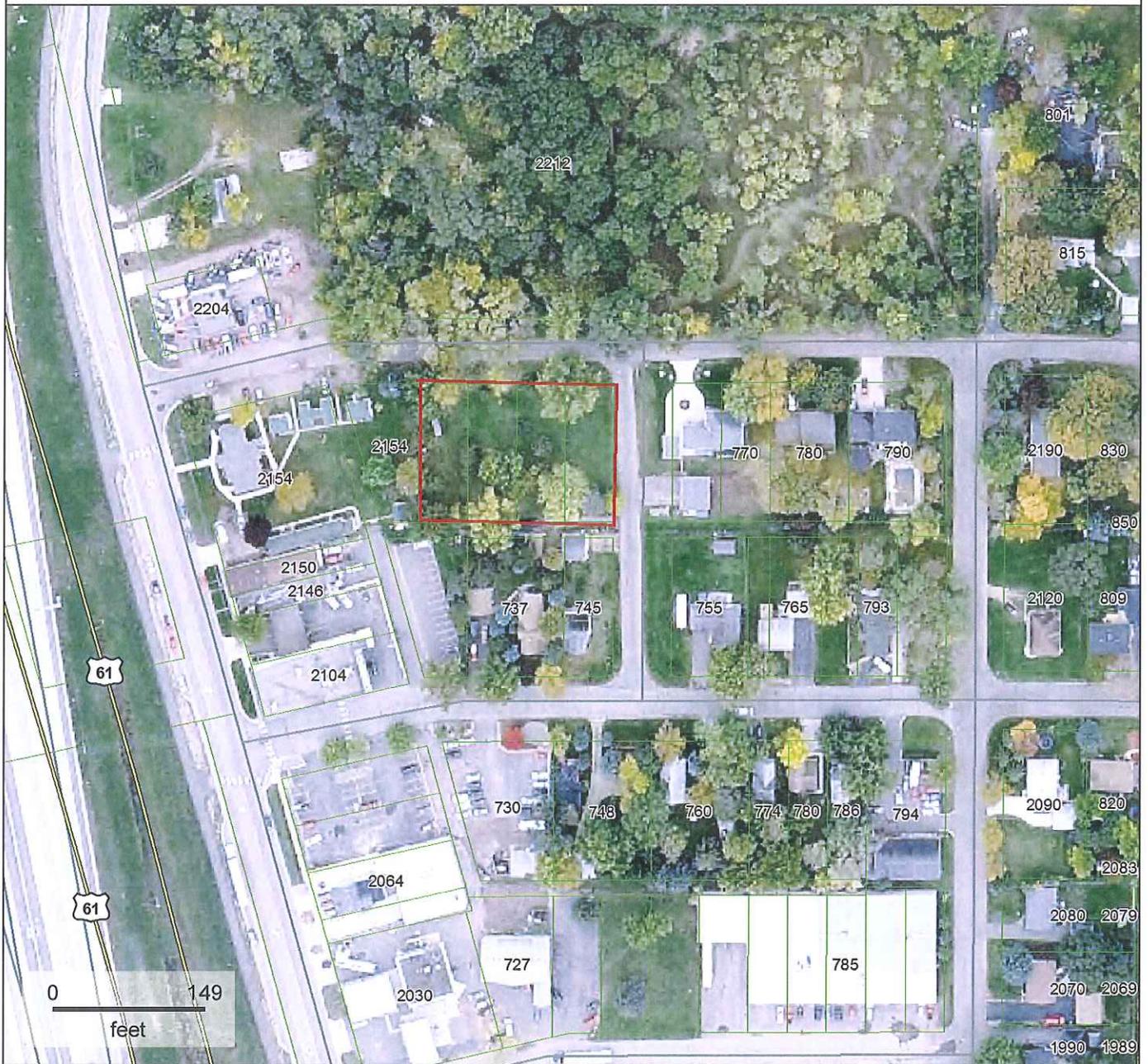
1. The proposed rezoning and PUD are consistent with the Comprehensive Plan's land use policies that the Hastings Avenue area will include residential as well as commercial land uses, and that Hastings Avenue should be redeveloped with a "Mainstreet" character.
2. The proposed R-1 zoning fits in with the general land use and zoning pattern of the neighborhood and city;
3. The proposed PUD will not compromise the health, safety and welfare of the community;
4. The proposed PUD is consistent with the PUD Ordinance's goal of efficiency and efficient use of infrastructure and utilities.
5. The lot widths proposed in the PUD are consistent with the scale and character of the surrounding neighborhood.

6. The proposed PUD meets the density requirements of the R-1 District.
7. The proposed PUD is not in conflict with the purpose and intent of the Zoning Ordinance and Subdivision Ordinance.

The Planner recommends the following conditions for the proposed PUD and Minor Subdivision:

1. The Applicant shall submit a Final Plat that is substantially in conformance with the Preliminary Plat received by the City on June 20, 2012. Plans must meet the standards of Section 1200.12. Plans must include: Existing Conditions, Final Plans, Grading and Erosion Control Plan, and Utility Plan, and Landscaping Plan. Comments from the City Engineer and City Planner shall be addressed.
2. The Applicant shall finalize a developer agreement with the City for public improvements.
3. All lots, buildings and structures developed within the subdivision shall meet the setbacks, height requirements, other dimensional requirements and performance standards of the Zoning Ordinance that are not specifically allowed exception in the approved PUD.
4. The applicant shall assume all costs of water and sewer hook-ups. The applicant shall pay the City for costs of paving the alley.
5. The applicant must the City Engineer's recommendations for storm water management and other engineering requirements for the subdivision, including the following:
 - The applicant will need to add fill to the lots and grade the lots so that they drain to the street
 - The proposed alley must be graded to drain to Valley Road
6. The Applicant shall satisfy the City's park dedication requirements.
7. The Applicant shall provide a letter of credit or other financial guarantee acceptable to the City for completion of proposed alley improvements, as required in Section 1200.17 of the Subdivision Ordinance.
8. The applicant shall pay all fees and escrow associated with this application.

Washington County, MN



Property Information

Property ID
Location



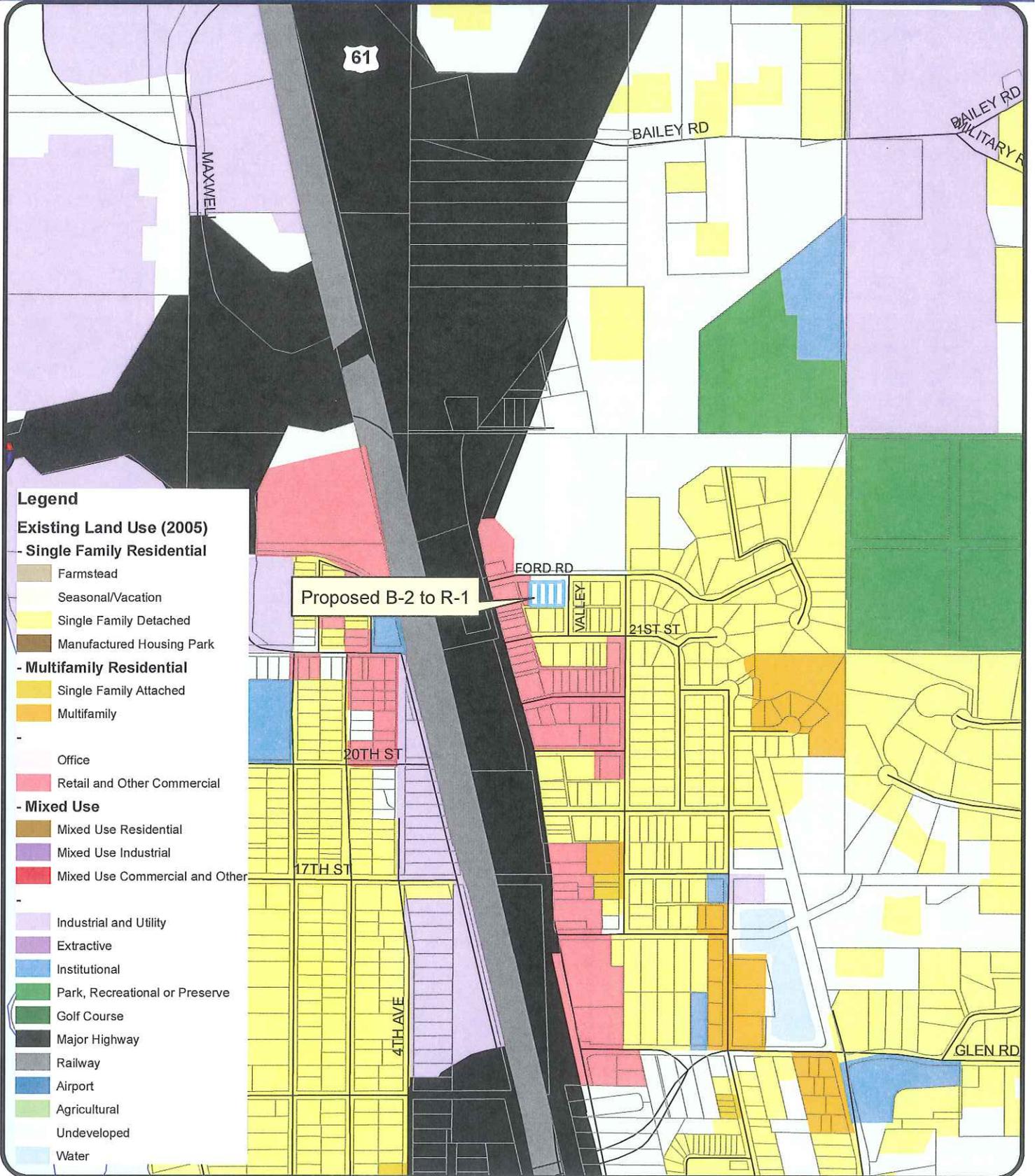
MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

This drawing is a result of the compilation and reproduction of land records as they appear in various Washington County offices. The drawing should be used for reference purposes only. Washington County is not responsible for any inaccuracies.



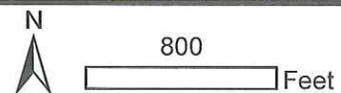


Existing Land Use: Martin Victoris PUD and Rezoning Request City of Newport



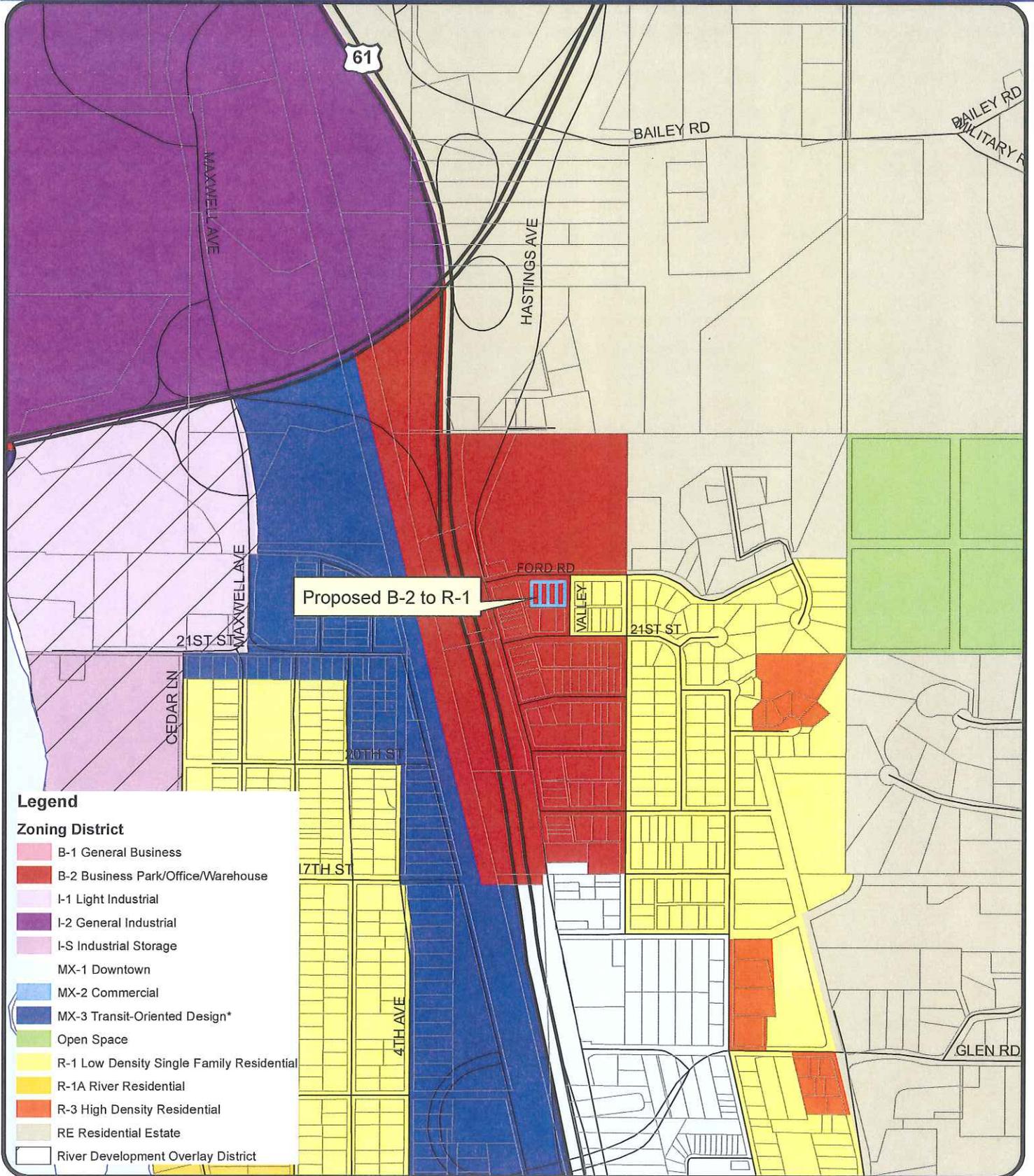
- Legend**
- Existing Land Use (2005)**
- **Single Family Residential**
 - Farmstead
 - Seasonal/Vacation
 - Single Family Detached
 - Manufactured Housing Park
 - **Multifamily Residential**
 - Single Family Attached
 - Multifamily
 - **Office**
 - **Retail and Other Commercial**
 - **Mixed Use**
 - Mixed Use Residential
 - Mixed Use Industrial
 - Mixed Use Commercial and Other
 - **Industrial and Utility**
 - **Extractive**
 - **Institutional**
 - **Park, Recreational or Preserve**
 - **Golf Course**
 - **Major Highway**
 - **Railway**
 - **Airport**
 - **Agricultural**
 - **Undeveloped**
 - **Water**

Data sources: City of Newport, Washington County, Metropolitan Council
Map printed June 26, 2012





Zoning Map: Martin Viotoris PUD and Rezoning Request City of Newport



Legend

Zoning District

- B-1 General Business
- B-2 Business Park/Office/Warehouse
- I-1 Light Industrial
- I-2 General Industrial
- I-S Industrial Storage
- MX-1 Downtown
- MX-2 Commercial
- MX-3 Transit-Oriented Design*
- Open Space
- R-1 Low Density Single Family Residential
- R-1A River Residential
- R-3 High Density Residential
- RE Residential Estate
- River Development Overlay District

Data sources: City of Newport, Washington County, Metropolitan Council
Map printed June 26, 2012



800

Feet



CITY OF NEWPORT

APPLICATION FOR CONSIDERATION OF PLANNING REQUEST

PUBLIC HEARING/DATE _____ DATE OF APPLICATION 6/20/12

APPLICANT NAME MIRIAM J. VIETORIS PHONE 651-248-5093

ADDRESS 7154 HASTINGS AVE. Suite 100 Newport, MN. 55055
Street City State Zip

OWNER NAME MIRIAM JOSEPH RICH ESTATE LLC PHONE 651-769-2828

ADDRESS 2154 HASTINGS AVE Suite 100 Newport, MN 55055
Street City State Zip

ADDRESS / LOCATION OF PROPERTY: CONVEN OR FOND Rd. + VARIANCE ^{Pl.}

LEGAL DESCRIPTION OF PROPERTY & P.I.D. #
Red Rock Park Block 1 Lot 1, 2, 3, 4

P.I.D.'s: 25.028.22.32.0008, 25.028.22.32.009
25.028.22.32.0010, 25.028.22.32.011

<u>PLANNING REQUEST</u>	<u>APPLICATION FEE</u>
<input type="checkbox"/> Comprehensive Plan Amendment	\$500 or Actual Cost Plus \$50 for Additional Staff Hours (10 Hour Minimum)
<input checked="" type="checkbox"/> Rezoning	<u>\$500</u>
<input type="checkbox"/> Zoning Amendment	\$500
<input type="checkbox"/> Variance	\$300
<input type="checkbox"/> Conditional Use Permit	\$300 - Residential \$450 - Commercial
<input checked="" type="checkbox"/> Subdivision Approval	<u>\$300</u> - Minor Subdivision -\$2,000 Parkland Dedication Fee
<input checked="" type="checkbox"/> PUD	\$500 - Major Subdivision (Plus \$50 Per Lot) -Parkland Dedication Fee is 10% of land value or a fee per lot as established by City Council

Other (Specify) _____

APPLICABLE ZONING CODE CHAPTER: _____ SECTION: _____

SUB-SEC: _____

Best number to call

\$500 -

ALL MATERIALS/DOCUMENTATION, INCLUDING A SITE-PLAN, MUST BE SUBMITTED WITH APPLICATION THAT IS APPLICABLE TO PLANNING REQUEST.

I HEREBY DECLARE THAT ALL STATEMENTS MADE ON THIS REQUEST AND ON THE ADDITIONAL MATERIAL ARE TRUE.

Walter J. Victor
SIGNATURE OF APPLICANT

SIGNATURE OF OWNER
(IF APPLICABLE)

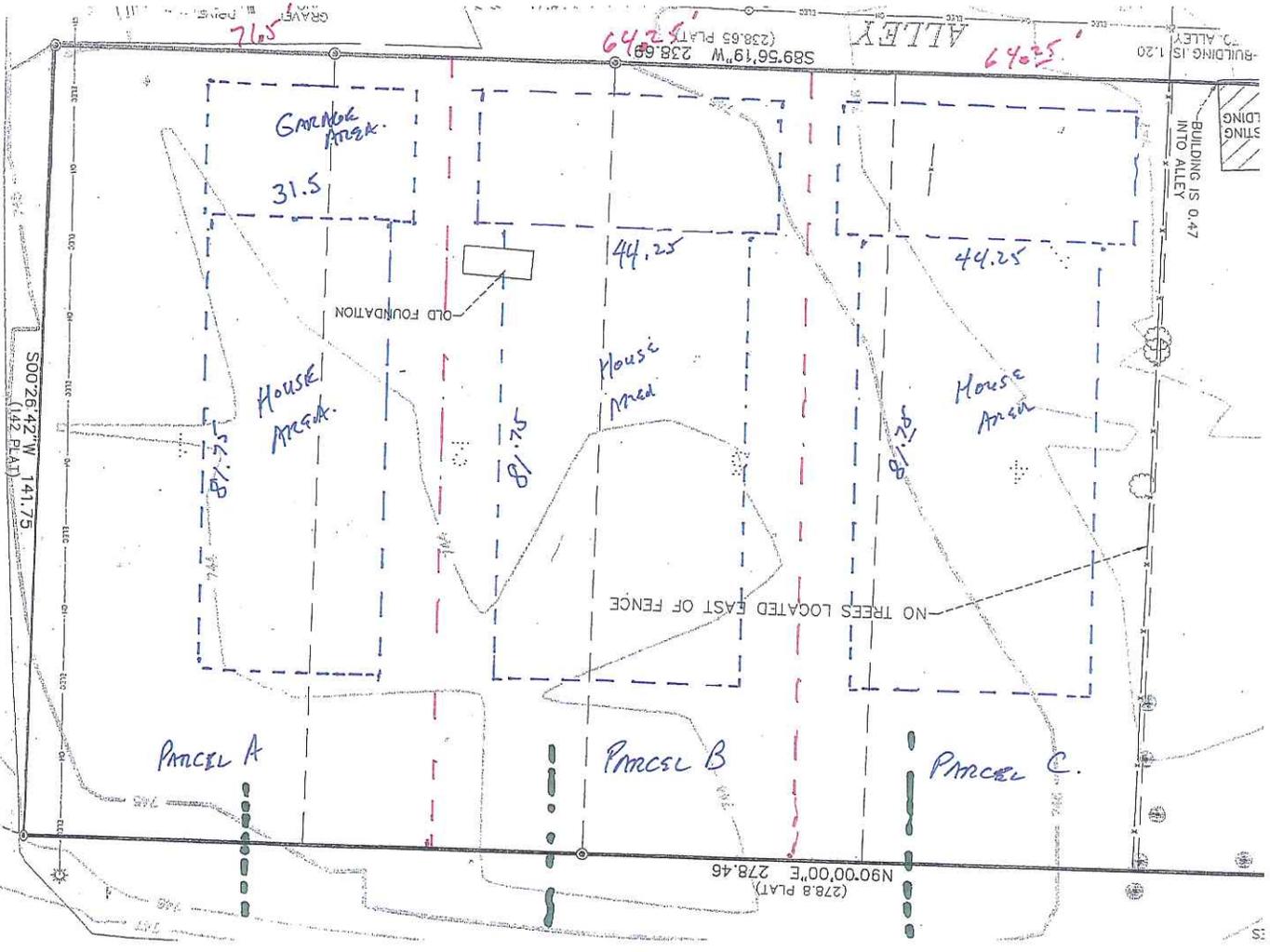
6/20/12
DATE

RECEIVED BY

OFFICE USE ONLY	
FEE \$	_____
RECEIPT #	_____
PUBLICATION OF NOTICE DATE	_____
PUBLIC HEARING DATE	_____
P.C. RES. #	_____
COUNCIL ACTION DATE	_____
COUNCIL RES. #	_____

Proposed Splits
 Parcel A
 10,135.25
 50.6'
 Parcel B + C
 9107.44
 50.6' SA

Parcel A
 Belinda's House Area
 2575.13
 Parcel B + C
 Bruce's House Area
 3617.44
 EACH

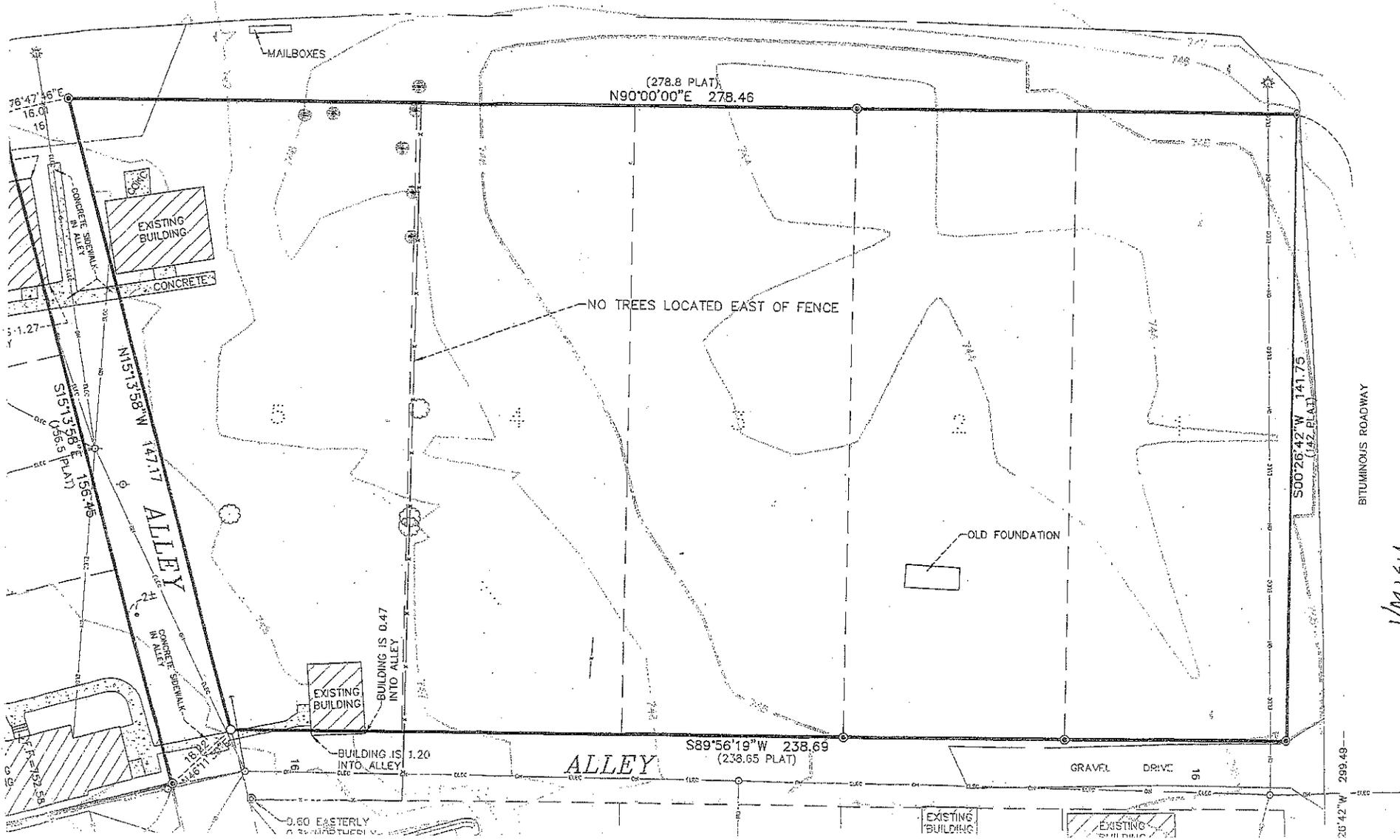


Ford Road

BITUMINOUS ROADWAY

AVENUE

99



78°47'36" E

16.0

16

(278.8 PLAT)
N90°00'00"E 278.46

S1.27

S151°35'58"E 156.415
(142 PLAT)

N151°35'58"W 147.17
ALLEY

S00°26'42"W 141.75
(142 PLAT)

S89°56'19"W 238.69
(238.65 PLAT)

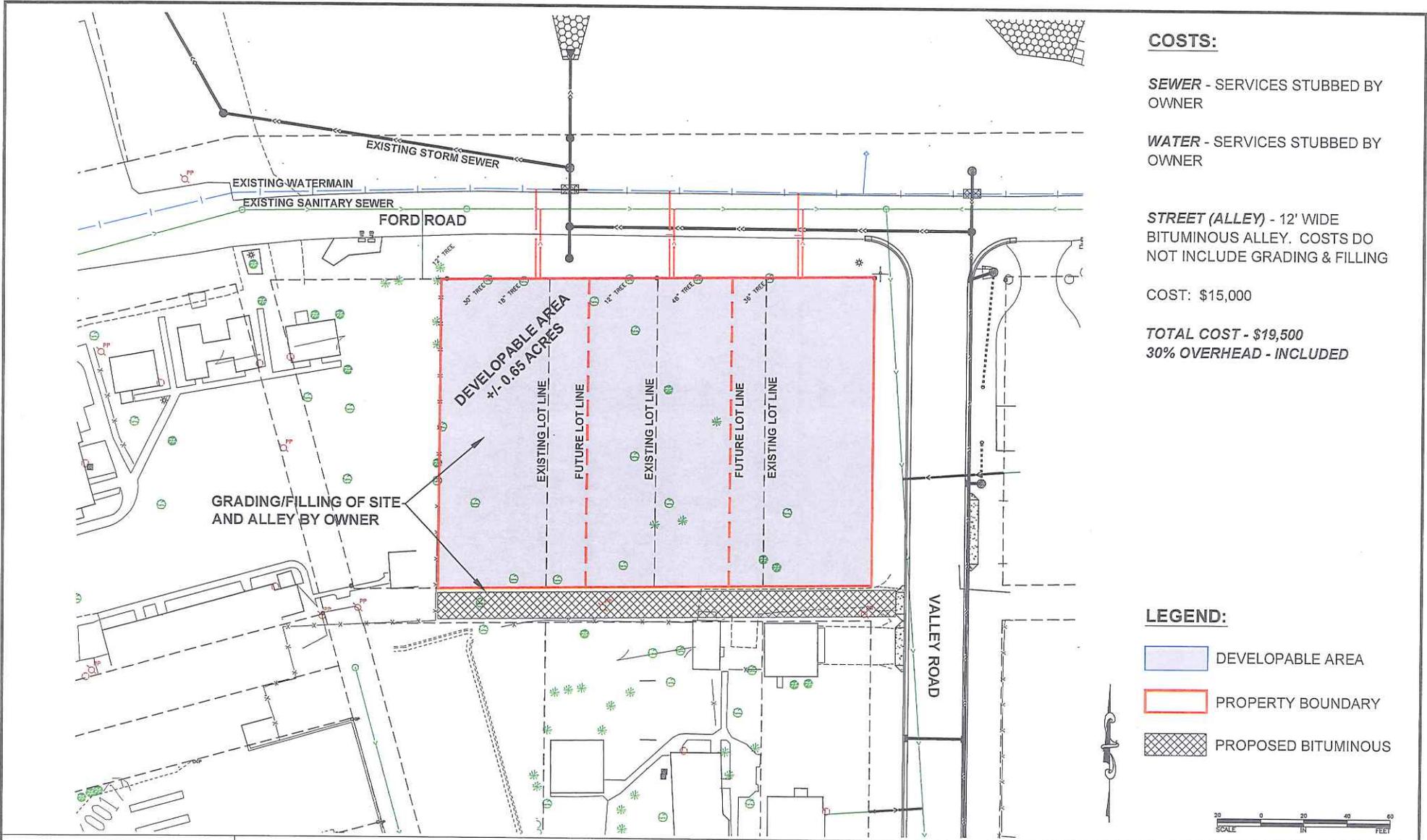
ALLEY

26°42'W 299.49

60

BITUMINOUS ROADWAY

Maisy STREET



COSTS:

SEWER - SERVICES STUBBED BY OWNER

WATER - SERVICES STUBBED BY OWNER

STREET (ALLEY) - 12' WIDE BITUMINOUS ALLEY. COSTS DO NOT INCLUDE GRADING & FILLING

COST: \$15,000

TOTAL COST - \$19,500
30% OVERHEAD - INCLUDED

LEGEND:

- DEVELOPABLE AREA
- PROPERTY BOUNDARY
- PROPOSED BITUMINOUS





MEMO

TO: Newport Planning Commission
Brian Anderson, City Administrator

FROM: Renee Helm, Executive Analyst

DATE: July 11, 2012

SUBJECT: Veolia Environmental Services – Appeal of Denied Building Permit

BACKGROUND

At the December 8, 2011 Planning Commission meeting, the members discussed a request from Veolia Environmental Services to install a 10,000 gallon above-ground storage tank at its facility, located at 1545 7th Avenue. City staff informed both the Planning Commission and Veolia that the building became nonconforming when the zoning district changed to MX-1 in 2000 and that expansion is only allowed for an existing use, building or structure. The Planning Commission informed Veolia that their request is not allowed per the Code and requested that the City continue to work with Veolia regarding their request. City staff met with Veolia in January and informed Veolia that an aboveground storage tank of any size is considered a new accessory use and therefore is not allowed per the Code. After the meeting, Veolia submitted a building permit application for a 15,000 gallon above-ground storage tank, at which time City staff denied the permit. Veolia appealed staff's decision to deny the building permit and the Planning Commission held two Board of Appeals meetings on April 12 and April 19, 2012. At the April 19, 2012 meeting, the Planning Commission, acting as the Board of Appeals, approved a Findings of Facts upholding staff's decision to deny the building permit.

DISCUSSION

Veolia has requested to appeal to the Board's decision to the City Council. I have attached the packets from the April 12 and 19 meetings, as well as the approved Findings of Fact.

The City Council will need to discuss this matter and make a final decision about whether or not an above-ground storage tank of any size is allowed at this property. Please note that Veolia has temporarily moved out of its office and maintenance building located on 7th Avenue stating that it was too expensive to operate out of Newport. This should not have any effect on your final decision.

RECOMMENDATION

It is recommended that the City Council uphold the Board's decision to deny the building permit to install a 15,000 gallon above-ground storage tank.



**CITY OF NEWPORT
BOARD OF APPEALS
NEWPORT CITY HALL
APRIL 12, 2012 – 6:00 P.M.**

Chairperson:	Susan Lindoo	City Administrator:	Brian Anderson
Vice-Chair:	Daniel Lund	Executive Analyst:	Renee Helm
Commissioner:	Janice Anderson	Council Liaison:	Tom Ingemann
Commissioner:	Katy McElwee-Stevens		
Commissioner:	Matt Prestegaard		

AGENDA

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. APPEAL FROM VEOLIA ENVIRONMENTAL SERVICES**
 - A. Appeal of Denied Building Permit to Install a 15,000 Gallon Above-Ground Storage Tank
- 4. ADJOURNMENT**



MEMO

TO: Newport Planning Commission
Brian Anderson, City Administrator

FROM: Renee Helm, Executive Analyst

DATE: April 5, 2012

SUBJECT: Veolia Environmental Services – Appeal of Denied Building Permit

BACKGROUND

At the December 8, 2011 Planning Commission meeting, the members discussed a request from Veolia Environmental Services to install a 10,000 gallon above-ground storage tank at its facility, located at 1545 7th Avenue. City staff informed both the Planning Commission and Veolia that the building became nonconforming when the zoning district changed to MX-1 in 2000 and that expansion is only allowed for an existing use, building or structure. The Planning Commission informed Veolia that their request is not allowed per the Code and requested that the City continue to work with Veolia regarding their request. City staff met with Veolia in January and informed Veolia that an aboveground storage tank of any size is considered a new accessory use and therefore is not allowed per the Code. After the meeting, Veolia submitted a building permit application for a 15,000 gallon above-ground storage tank, at which time City staff denied the permit.

DISCUSSION

The following is attached for your review:

- Memorandum from Fritz Knaak, City Attorney
- Memorandum from Sherri Buss, TKDA Planner, that was distributed prior to the December 8, 2011 meeting
- Various letters from Veolia
- Denied building permit

The Planning Commission will need to discuss this matter and make a final decision about whether or not an above-ground storage tank of any size is allowed at this property. Please note that Veolia has temporarily moved out of its office and maintenance building located on 7th Avenue stating that it was too expensive to operate out of Newport. This should not have any effect on your final decision. Staff feels that there are better uses for this site if Veolia were to move out completely.

RECOMMENDATION

It is recommended that the Planning Commission denies Veolia's request for a building permit to install a 15,000 gallon above-ground storage tank.

KNAAK & ASSOCIATES, P.A.

Attorneys at Law

Frederic W. Knaak*
Donald W. Kohler

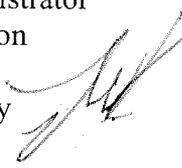
**Also Licensed in
Wisconsin & Colorado*

4501 Allendale Drive
St. Paul, MN 55127
Telephone: (651) 490-9078
Facsimile: (651) 490-1580

Of Counsel
Thomas M. Dailey, P.A.
Matthew E. Ludt
Joseph B. Marshall

MEMORANDUM

TO: Brian Anderson, City Administrator
Newport Planning Commission

FROM: Fritz Knaak, City Attorney 

Date: April 5, 2012

RE: Veolia Environmental Services

I have been asked to review the materials before the Planning Commission in its consideration of Veolia's appeal from the denial of a building permit for an outside fuel storage structure for its trucks operating out of its Newport facility. These consist primarily in the application, the denial, various letters from Veolia and its legal counsel, as well as the Memorandum from the City Planner, Sherri Buss.

The central document for review, in my opinion, is Ms. Buss' excellent summary of the ordinances and the appeal itself in her memorandum to the Commission. There are two key points to her analysis: 1) Veolia's current operation is a non-conforming use, and 2) outside storage of fuel materials is neither an allowed use in that particular zoning district, nor a proper new ancillary use or structure in that zone.

Those two points alone could serve as a reasonable basis for denial of the appeal.

Veolia's response to this obvious position is quite interesting and subtle. In its best light, what Veolia essentially argues is that the storage of fuel at their location was always an incidental part of their operation that they are now seeking to modestly expand. The fact that they had not previously invested in a fuel tank at that site was nothing more than an economic decision that current, successful operations now requires them to remedy. It was always, they are arguing, an intrinsic part of the nature of their operation. This is not a "new" use, they would argue, but merely an "intensification" of an allowed non-conforming use.

While Minnesota courts and law have not specifically addressed this issue, in neighboring Wisconsin a relatively recent case can throw light on the argument. In Racine County v. Cape,

250 Wis. 2d 44, 2002 WI App. 19. 639 N.W. 2d 782 (Ct. App. 2001), a Wisconsin appellate court addressed the issue of whether placement of sizeable new crushing equipment in an outdoor gravel operation that significantly increased efficiency on the site was an unlawful expansion of that non-conforming use.

Holding that installation of the modern equipment to the outdoor usage of the site was an allowed intensification, the Court in Cape noted:

... Wisconsin law protects expansion of a legal non conforming use **so long as the essential character of the use is not identifiably changed.**....(W)e now conclude that a change in the method or quantity of production of a nonconforming use is not an entirely new use **when the original character of the use remains the same.** This holding allows the operator of a nonconforming use to incorporate modern technology into his or her business without fear of losing that business. Cape, supra, at 2202 WI App 19, p. 5 (Emphasis added).

In this case, this argument takes on the “flavor” of saying that increasing the fueling capabilities of the site is modernizing the non-conforming use and improving its efficiency, not adding an additional use to the site. Moreover, Veolia is taking pains to say that the underlying use of the facility is not changing or expanding, as such.

The problem with this argument, however, is that the Newport Code does identify outdoor fuel storage as an allowed use in other districts for certain specified uses, none of which apply to this case in this zoning district. In other words, outside fuel storage is not an unanticipated specific use that is clearly incidental to this business. Rather, it has been recognized as a specific use and accommodated only in those places in which it is expressly allowed or provided for. For purposes of interpretation of the Code, it is my assessment that the Planner’s analysis that this is a recognized use in the City in other districts and a new (ancillary) use in this instance is the correct one.

Given the foregoing, I concur in the analysis of the Planner.

MEMORANDUM

To: Newport Planning Commission Brian Anderson, City Administrator	Reference: Veolia Request for New Accessory Use in MX-1
Copies: Renee Helm, Executive Analyst	
From: Sherri Buss, R.L.A., Planner	Proj. No.: 14842.000
Date: November 28, 2011	Routing:

BACKGROUND

Veolia Environmental Services is located at 1375 7th Avenue in Newport, within the MX-1 Zoning District. It is a nonconforming use in the MX-1 District, and was developed when the area was zoned differently. Veolia is requesting that the City approve adding an above-ground fuel storage tank (AST) approximately 10,000 gallons in size at their facility. This proposed use would expand the nonconforming use on the property by adding a new accessory use.

Veolia provided a letter to the City dated November 28, 2011 that includes the company's rationale for allowing the AST on their site. In brief, their rationale includes the following:

- The AST should be considered as an Accessory Use that is needed to support the principle use on the site.
- Their current nonconforming use should be allowed to expand. Veolia suggests that the expansion should be allowed due to the length of time that their business has been in operation, that there will be no adverse impacts on surrounding properties, and the expansion is consistent with the implementation of the Comprehensive Plan.

The sections that follow address the Veolia request to allow the addition of an AST on their site.

USES IN THE M-X 1 DISTRICT

The City's Development Code Section 1330.04 *Uses* allows Storage and Distribution of Bulk Petroleum Products, Oil and Gasoline only in the IS (Industrial Storage) District, with a Conditional Use Permit. An AST is not permitted as a Primary or Accessory Use in the MX-1 District on the table included in 1330.04. Other sections of the code discuss permitted accessory uses in various zoning districts, such as garages, exterior storage, parking, etc. An AST is not identified as a Permitted Use or Accessory Use in the MX-1 District anywhere in the Development Code. Fuel storage is explicitly identified as a Permitted Use only in the IS (Industrial Storage) District.

Section 1330.04 states the following regarding permitted and accessory uses: *"Within the City's zoning districts, no land or buildings may be used or occupied in any manner except for the uses set forth in the following land use classifications chart and described in the following subsections. If a use is not identified in the following land use classification chart, the Zoning Administrator shall issue a statement of*

clarification, finding that the use is or is not substantially similar in character and impact to a use regulated in the land use classification chart. If the use is not substantially similar to any other use regulated in the land use classification chart, the Zoning Administrator shall refer the matter to the City Council for determination. The Zoning Administrator and City Council shall take into consideration if the use meets the City's goals and plans, what zoning district may be most appropriate for the use as well as what conditions and standards should be imposed relating to development of the use." Section 1310.13 of the Code indicates that the Zoning Administrator should refer the determination of similar use to the Planning Commission, which will make a recommendation to the City Council regarding the proposed use. The Council will make the final determination related to similar use.

In this case, staff suggest that the proposed AST use is most similar to the "storage and distribution of bulk petroleum products, oil and gasoline" use identified on the chart in Section 1330.04. This use is permitted with a Conditional Use Permit in the Industrial Storage district, and is not identified as a Permitted or Permitted Accessory use in any other district in the Code.

Veolia suggests that the AST should be considered an Accessory Use that is needed to support the Principal Use (hauling company). However, Veolia has operated for 20 years on its site without an AST, and the AST was not permitted as an accessory use that was required for the primary use. The situation is not similar to the underground storage tanks permitted for convenience stores and retail gas sales. Underground tanks are typically permitted as a part of those uses at the time the use is permitted, because the tanks are required for operation of the use.

Zoning Ordinances in Neighboring Communities

Staff reviewed zoning ordinances of other cities around Newport to identify code requirements for bulk fuel storage in above-ground tanks. Other codes also limit this use to Industrial districts, and often require a conditional use permit for the use:

- Woodbury limits the location of above-ground fuel storage tanks to its Light Industrial District. In addition to this limit on location, Woodbury's code requires that bulk storage tanks in the Light Industrial District "be hidden from public view with materials and designs matching those used for the principal structure. Where equipment cannot be fully hidden with matching building materials, landscaping may be used as additional screening."
- Cottage Grove limits the location of outside, above ground storage facilities for fuels to its Industrial Districts. They are permitted as an accessory use in those districts.
- St. Paul Park allows above-ground fuel storage tanks only in its I-2 General Industrial District, with a Conditional Use Permit.

POTENTIAL EXPANSION OF A NONCONFORMING USE

The Veolia letter notes that it is a nonconforming use in the MX-1 District. As noted, it is allowed to continue its current use under section 1320.02 of the Development Code.

The Section 1320.03 allows expansion of the existing nonconforming use, building or structure under some conditions. However, Veolia is not requested to expand an existing use, building or structure. It is requesting to add a new accessory use, above-ground fuel storage, in the MX-1 District, which does not allow this use. Sections 1320.03 and 1320.09 cited in the letter refer only to expansion of permitted or existing uses, including accessory uses, not new uses.

Development Codes generally operate to limit or prohibit the expansion of nonconforming uses, in order to bring uses and structures within districts into compliance with the code over time.

PURPOSE AND USES IN THE MX-1 DISTRICT

The Comprehensive Plan notes that the specific intent of the “MX-1 Downtown District shall be to provide sites for small scale retail and service commercial uses to support a mix of residential and office type uses in an aesthetically pleasing and dense but safe and walkable development pattern... In order to build and strengthen a pedestrian oriented environment, this district is primarily intended for more pedestrian-oriented uses such as specialty retail stores, professional services, sit-down restaurants, coffee shops, floral shops, etc...” This District was established after the adoption of Newport’s 2020 Comprehensive Plan, over 10 years ago. The goals and purpose of the district were reaffirmed in the 2030 Comprehensive Plan.

Veolia notes in its letter that its business was established over 20 years ago. In that era, a variety of highway and auto-oriented uses were permitted by the zoning ordinance in areas adjacent to Highway 61. With the recent changes in access to Highway 61 and physical relationship to the roadway, the City has revised its goals, zoning map and purposes of the districts along Hastings Avenue and 7th Street so that these areas will evolve into mixed use districts including residential, commercial and office uses with a pedestrian and transit-oriented character.

While the Development Code allows existing, nonconforming uses to continue operating in the MX-1 District, and allows limited expansion of existing uses and structures, adding new uses that are not permitted in the MX-1 District is not compatible with the goals of the Comprehensive Plan, and the Development Code that implements the plan.

PLANNING COMMISSION ACTION

The Planning Commission should consider the Veolia request to add a new use (Storage of Petroleum Products) to its site within the MX-1 District, and make a recommendation regarding the following:

- Whether the use is similar to another permitted use or permitted accessory use in the MX-1 District, and may therefore be permitted;
- If the use may be permitted, whether a Conditional Use Permit or other zoning permit is required to permit the use;
- Whether the use is only permitted in the IS District, and may not be permitted as an expansion of the use on the Veolia site.



**SOLID WASTE
NORTH AMERICA**

November 28, 2011

Mr. Brian Anderson
City Administrator
City of Newport
596 7th Avenue
Newport, Minnesota 55055

Re: Aboveground Storage Tank Installation
1545 – 7th Avenue
Newport, Minnesota

Dear Mr. Anderson:

Veolia ES Solid Waste Midwest, LLC (Veolia) previously met with you the Newport City Administrator to discuss our intent to install a 10,000 gallon diesel fuel aboveground storage tank (AST) for consumption by our hauling company operating at the our property located at 1545 7th Avenue in Newport, MN. It is Veolia's opinion that local approval for the installation of this AST is already provided within the City of Newport Municipal Zoning Code. However, per our discussions, City administration does not agree with this interpretation and is directing Veolia Representatives to appear before the City's Planning Commission at the December meeting to discuss the proposed project.

With regard to Veolia and its predecessors' use of the property, the operation of a solid waste management fleet operation, the Principal Use, has been located at the property for over 20 years. This use predates any of the current City zoning codes which would regulate the parcel of land in question. Currently, the City of Newport zoning map indicates the property is zoned MX-1 or Downtown District.

Section 1330.04 provides a chart regarding the allowed and conditional "Uses" in the MX-1 zoning district. "Use" is defined in a number of ways in Section 1300.01 Definitions:

Subd. 117 Use. "Use" shall mean the purpose for which land or premises or a building thereon is designated, arranged or intended, or for which it is or may be occupied or maintained.

Subd. 118 Use, Accessory. "Use, Accessory" shall mean a use subordinate to the principal use on a lot and exclusively used for purposes incidental to those of the principal use.

Subd. 120 Use, Permitted. "Use, Permitted" shall mean a use which may be lawfully established in a particular district, provided it conforms with all requirements, regulations, and performance standards of such district.

Subd. 121 Use, Principal. "Use, Principal" shall mean the main use of land for an activity which is an allowable use of the zoning district in which the land is located.

Given these definitions, the correct application of the "Land Uses" column identified in the Chart are the definitions in Subd 120 and 121.

Based on our discussions, this Chart provides the basis for the City's position relative to the installation of an AST at the property. As you are aware, the table is a simple matrix listing the Land Use, Land Use Classification/Zoning District, and the level of approval for the "Principal Use" of the property. The approval levels in part consists of "Permitted" uses, those uses requiring "Special" or "Conditional" approval, as well as those "Not Permitted". City personnel have indicated that the designation of 'Storage and Distribution of Bulk Petroleum Products, Oil and Gasoline' not having a 'P' within the MX-1 Zoning District box of this chart provides justification for not permitting the installation of the AST.

This would be accurate provided that this was the "Principal Use" of the property. In that case, the "Principal Use" would provide the basis for the "Permitted Use". In this particular situation, the Use is an "Accessory Use" (as defined in Subd 118) to our "Principal/Permitted Use" which is the operation of the hauling company and the AST is simply necessary to support that "Principal Use". This would be comparable to convenience stores operated in conjunction with petroleum sales. In this particular situation, the Petroleum Storage Tanks are an accessory use to the principal use of the convenience store and would be a permitted use within this zoning designation. Additionally, auto services; automobile parts/accessories retail sales and installations; and gas, diesel or other motor fuel retail sales are all conditional uses within this district that may use AST for petroleum storage.

Veolia's proposed use is more closely aligned to retail sales than to storage and distribution of bulk petroleum. Veolia is neither storing nor distributing petroleum with the AST. Veolia will use the AST for consumption only by Veolia trucks. There is no distribution of petroleum occurring, nor is the intent to store for any significant period of time. The section of the zoning code related to bulk storage appears to be intended to limit expansion of the existing petroleum tank farms present within the City of Newport and/or adjacent municipalities.

Further review of the zoning code, specifically Section 1320, Non-Conforming Uses, Lots and Structures outlines the conditions under which non-conforming uses may continue and expand. The applicable sections are:

1320.02 Continuance of Nonconforming Uses, Lots and Structures. Any legal structure, legal lot or legal use existing upon the effective date of the adoption of this ordinance or its amendment and which does not conform to the provisions of this Chapter may be continued subject to the following conditions:

A. The use or structure has existed in substantially its present form for at least 15 years.

B. No adverse impacts on the property or surrounding properties have been or are created by the nonconformity.

C. Continuation of the nonconformity will not hinder local plans for redevelopment or conflict with implementation of the Comprehensive Plan.

1320.03 Expansion. *A nonconforming use, building or structure shall not be expanded, enlarged, or extended to occupy a greater height or area of land except if the conditions specified in section 1320.02 are satisfied a use may be expanded by 20% as follows;*

A. If the non-conforming use or structure is a commercial use in a residential area 20% shall mean 10% of the Gross Leasable Area of the non-conforming use.

B. If the non-conforming use or structure is a residential use or home, 20% shall mean 20% of the foundation size of the existing structure (foundation size excludes the foundation of any attached garage).

C. The expansion meets all setback, lot coverage, building height, and lot dimension requirements of the respective zoning district.

Veolia's current operation meets all of the conditions provided for within Section 1320.02. The property has been used as a solid waste management facility for more than 20 years. We do not adversely affect our property or the surrounding properties by our continued operation, and our long-term continued operation on this property in no way hinders redevelopment or conflicts with the Comprehensive Plan. Further, installation of the AST will in no way cause any of those conditions to change. It will not increase traffic or noise, nor will it otherwise adversely affect the property or the surrounding properties.

Additionally, the proposed AST installation meets all of the conditions outlined in Section 1320.03 for expansion. The installation of the AST will not expand actual area of the building or operations at all, thereby meeting the less than 20% requirement of the Section. Additionally, while not specifically a commercial use in a residential area, the proposed AST installation does not increase Gross Leasable Area.

Section 1320.09 Accessory Structures and Garages provides for the construction/installation of additional structures if they meet all requirements for setbacks, etc. Specifically,

1320.09 Accessory Structures and Garages. *Accessory structures and garages shall be permitted where non-conforming uses may be present provided that the new structure meets all the necessary standards of the appropriate district and that no accessory structure or garage already exists on the property.*

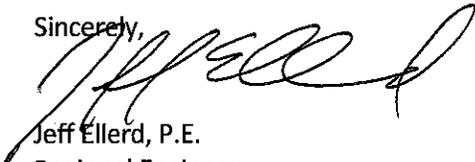
It can be argued that the installation of the AST is an accessory structure or use for the property and is thereby already permitted by the existing City Zoning Code.

Veolia believes that a review of the applicable code sections supports our position that the installation of the AST is already permitted under the existing code as applied to the property in question. We look forward to your prompt review of this issue and resolution allowing us to continue our operations in Newport. Veolia is a long-standing member of the Newport community and appreciates the partnership we have established with the City.

Please do not hesitate to contact me with any additional questions or concerns you might have at (651) 403.5705 or at Jeffrey.ellerd@veoliaes.com.

Thank you in advance for your time and consideration.

Sincerely,



Jeff Eller, P.E.

Regional Engineer

Veolia ES Solid Waste Midwest, LLC

CC: David Schneider, Veolia ES
Jay Warzinski, Veolia ES
Melissa Bachhuber, General Counsel, Veolia ES



January 30, 2012

Mr. Brian Anderson
City Administrator/Zoning Administrator
City of Newport
596 – 7th Avenue
Newport, Minnesota 55055

Re: Request for Building Permit – New Aboveground Storage Tank
Veolia Newport Maintenance Facility
1545 – 7th Avenue
Newport, Minnesota

Dear Mr. Anderson:

Veolia ES Vasko Solid Waste Midwest, LLC is submitting this letter in support of the enclosed Application for Building Permit for the installation of a 15,000 gallon highway diesel fuel aboveground storage tank (AST) at our maintenance facility located at 1545 – 7th Avenue in Newport. This letter, the attached application, the attached site plan, and the attached drawings and specifications for the proposed AST comprise our building permit application for the AST installation. The estimated total project cost is \$100,000.

A site plan of our existing maintenance facility is included as Figure 1. A Detailed AST Installation Map is depicted in Figure 2. This figure shows the specific storage tank location, along with the fueling station and other ancillary equipment. This AST is essential for Veolia to keep its operations competitive within the industry. Fuel costs are one of the largest expenditures that we have as part of our operations. The use of a third party fueling vendor causes Veolia to incur significant additional expenses that are not sustainable.

The proposed AST is a Fireguard Fire-Rated Tank with a cylindrical design, and a capacity of 15,000 gallons. This tank is designed with secondary containment integral to the tank itself. The fueling system will include Dresser Wayne Fleet Dispensers and an OPW Fuel Management System designed to control access to the fuel and document individual user data of the fuel. Details and specifications regarding the tank, the dispensers and the fuel management system is provided as Attachment A to this application. This includes the structural design for the AST and the associated tank saddles. The proposed system is state-of-the-art and meets all applicable local, state, and federal requirements for an aboveground storage tank installation. As part of this application, our Contractor, Zahl Petroleum and Maintenance, will also be seeking necessary State and local fire marshal approvals for the tank installation.

Veolia's tank installation contractor, Zahl Petroleum Maintenance Company previously began the process of obtaining the necessary permits. Those permits or approvals were not issued by the City and the applications were withdrawn. These permits were not previously issued due to the City's earlier contention that the AST is not allowed within the current zoning (MX-1) for the site. Pursuant to Section 1300, Subdivision 118 of the City of Newport Zoning Code, the AST serves as an Accessory Use. A 'Use, Accessory' is defined in the City Code as 'a use subordinate to the principal use on a lot and exclusively used for purposes incidental to those of the principal use'. The principal use of the property has been and will continue to be the operation of a fleet maintenance facility with all of the activities necessary to conduct those operations.

The site is a legal non-conforming use within the City of Newport. The City of Newport zoning code has specific provisions (see Section 1320, specifically Section 1320.03 Expansion of a Non-Conforming Use) allowing for the expansion of a non-conforming use. Within this section, the code allows for an 'expansion of up to 20% (10% of gross leasable area of the non-conforming use when in a residential zoning district), as long as the proposed expansion meets all setback, lot coverage, building height, and lot dimension requirements of the respective zoning district'. As can be seen on the attached site plan, the existing building improvements cover 32,000 square feet and 13,000 square feet respectively, for a total of 45,000 square feet. The proposed AST expands the existing operation by less than 1,500 square feet, from the current square footage, an expansion of approximately 3% (3.3%). Moreover, Section 1320.09 expressly provides that: "Accessory structures and garages shall be permitted where non-conforming uses may be present provided that the new structure meets all the necessary standards of the appropriate district and that no accessory structure or garage already exists on the property." Further, the installation location is within our current operational area west of existing facilities and within the existing parking lot area. This entire area is fenced with screening minimizing any impacts to nearby or surrounding properties. The proposed AST location meets all applicable setback and coverage requirements of the City Zoning Code.

Veolia vigorously disagrees with the City's previous position on applicable zoning for the site. The proposed AST is an accessory use to the site; the primary use of the property is fleet maintenance. Therefore, the current MX-1 zoning requirements are not applicable.

Veolia is eager to continue our operations at our Newport facility, our strong employment base and our commitment to the Newport community. In order to do so, we need to install this AST as soon as possible. Please advise me as soon as the permit is ready for pickup and the fee associated with the permit. I will have a check hand delivered to your office. I appreciate anything you can do to expedite the issuance of this permit. Please do not hesitate to contact me with any additional questions or concerns you might have at (651) 403.5705 or at Jeffrey.ellerd@veoliaes.com.

Thank you in advance for your time and consideration.

Sincerely,



Jeff Eller, P.E.

Regional Engineer

Veolia ES Solid Waste Midwest, LLC

CC: David Schneider, General Manager, Veolia St. Paul/Newport
David Sonnentag, Regional Manager, Veolia ES Solid Waste Midwest
Melissa Bachhuber, Assistant General Counsel, Veolia Environmental Services North America
Tim Keane, Malkerson, Gunn, Martin, LLP



February 21, 2012

Mr. Brian Anderson
City Administrator/Zoning Administrator
City of Newport
596 – 7th Avenue
Newport, Minnesota 55055

Re: Appeal of Building Permit Request – New Aboveground Storage Tank
Veolia Newport Maintenance Facility
1545 – 7th Avenue
Newport, Minnesota

RECEIVED
FEB 07 2012
BY: *[Signature]*

RECEIVED
FEB 21 2012
BY: *[Signature]*

Dear Mr. Anderson:

On January 30, 2012, Veolia ES Vasko Solid Waste Midwest, LLC submitted a building permit application to the City of Newport for the installation of a 15,000 gallon highway diesel fuel aboveground storage tank (AST) at our maintenance facility located at 1545 – 7th Avenue in Newport (the “Property”). In a letter dated January 31, 2012, the City denied this application. This letter is submitted taking an appeal of the determination of the Zoning Administration in the denial of the building permit referenced herein and request for a hearing before the Board of Appeals and Adjustments pursuant to Section 1310.03 and 1310.05 of the City of Newport Code.

Veolia disagrees that the proposed installation is an Accessory Use to the principle use of the Property. In the determination letter from the City, the denial is based on the interpretation that the proposed AST installation constitutes a change to the operation and is a new accessory use for the property. The Property is operated as a legal non-conforming use within the City of Newport. The City of Newport zoning code has specific provisions (see Section 1320.03 Expansion of a Non-Conforming Use) allowing for the expansion of a non-conforming use. Within this section, the code provides for an ‘expansion of up to 20% (10% of gross leasable area of the non-conforming use when in a residential zoning district), as long as the proposed expansion meets all setback, lot coverage, building height, and lot dimension requirements of the respective zoning district’. Further, Section 1320.09 expressly provides that: “Accessory structures and garages shall be permitted where non-conforming uses may be present provided that the new structure meets all the necessary standards of the appropriate district and that no accessory structure or garage already exists on the property.” Such an interpretation is consistent with and contemplated in the “Determination of Substantially Similar Use” provisions set forth in City Code Section 1310.13.

Based on this determination, the installation of the AST is permitted per the City code and furthermore does not require a Conditional Use Permit (CUP) or any other zoning approvals for installation, provided it meets the intent of the applicable district with regard to coverage and setbacks. Nowhere within the City code is there a reference of aboveground storage tanks and the applicability of a CUP to this evaluation. Because of the accessory use determination and the existing non-conforming use designation, neither the provisions of the CUP, nor the MX-1 zoning district, are applicable to this application.

To assist in the appeal process, I have included the original building permit application along with this letter. Please forward this appeal and any necessary paperwork to the appropriate parties within the City. Please advise if there is a filing fee for this appeal and if there is any other information you might need to process this request. Please do not hesitate to contact me with any additional questions or concerns you might have at (651) 403.5705 or at Jeffrey.ellerd@veoliaes.com.

Thank you in advance for your time and consideration.

Sincerely,



Jeff Ellerd, P.E.

Central Region Engineer

Veolia ES Solid Waste Midwest, LLC

CC: David Schneider, General Manager, Veolia St. Paul/Newport
David Sonnentag, Regional Manager, Veolia ES Solid Waste Midwest
Melissa Bachhuber, Assistant General Counsel, Veolia Environmental Services North America
Tim Keane, Malkerson, Gunn, Martin LLP



CITY OF NEWPORT

596 7th Avenue
Newport, Minnesota 55055
(651) 459-5677
Fax: (651) 459-9883

January 31, 2012

Jeff Ellerd
Regional Engineer
Veolia Environmental Services
1375 7th Avenue
Newport, MN 55055

Re: Building Permit Application for Aboveground Storage Tank

Dear Mr. Ellerd:

Please find attached Veolia's recent request for a building permit to install a 15,000 gallon aboveground storage tank. The City is denying this request due to the fact that the proposed tank is not an allowable use in the MX-1 District. As the City has recently informed Veolia, the buildings located at 1375 and 1545 7th Avenue are currently nonconforming uses in the MX-1 District and expansion is only allowed for an existing use, building or structure. The City feels that the tank is a new accessory use since Veolia has operated without one for the past 20 years. Since it is considered a new use, the tank is not an allowable expansion of a nonconforming business.

At the December 8, 2011 Planning Commission meeting, the Planning Commission stated that Veolia's previous request to install a 10,000 gallon aboveground storage tank was not allowed per the Code and recommended that the City continue to work with Veolia regarding their request. The City met with you in January and informed you again that an aboveground storage tank of any size is considered a new accessory use and therefore is not allowed per the Code. The City informed you that the next step would be to apply for a Conditional Use Permit, which was not done. Please find attached the application for a Conditional Use Permit. Once the City receives the application from Veolia, it will move forward with scheduling a Public Hearing for the Planning Commission. The City will need to receive the application and payment of \$450 by February 9, 2012 in order for it to be on the March 8, 2012 Planning Commission agenda.

Please do not hesitate to contact me at (651) 556-4600 / banderson@newportmn.com if you have additional questions.

Sincerely,

Brian Anderson
City Administrator
City of Newport



City of NEWPORT Building Permit Application

Newport City Hall ♦ 596 7th Avenue ♦ Newport ♦ Minnesota ♦ 55055 ♦ Telephone 651-459-5677 ♦ Fax 651-459-9883

Application Date: 24 JAN 12

Permit No. _____

DENIED

Applicant Information

Contractor License Number MPCA # 37 (ZAHL)

Name: VEOLIA ES SOLID WASTE MIDWEST LLC

Telephone: 651.403.5705

Mailing Address: 1375 - 7th AVENUE

Telephone: 612.709.7906

City/State/Zip: NEWPORT MN 55055

JEFF ELLERD

Property Owner Information

Name: VEOLIA ES SOLID WASTE MIDWEST LLC

Telephone: 651.403.5705

Mailing Address: 1375 - 7th AVE

Telephone: 612.709.7906

City/State/Zip: NEWPORT MN 55055

JEFF ELLERD

Project Information

Site Address: 1545 - 7th AVENUE Subdivision: RIVERWOOD AC

Lot #: 1-14 Blk #: 3

PID# _____

#4

Type of Construction: _____ Use of Building: _____

Occupancy Group: _____ Occupancy Load: _____ Variance Granted, Date: _____ Zoning District: MX-1

Off Street Parking: Spaces Required 0 Spaces on Plan 0 Fire Sprinklers Required: Yes No (NON-CONFORMING)

Type of Permit (Circle One): Residential / Non-Residential If not residential, specify: COMMERCIAL

Type of Work (Circle One): New / Addition / Repair / Remodel

Project Cost: \$95,000

- Other: Fireplace Mechanical Plumbing Sewer/Water Finish Basement Residing Deck Porch Garage
 Business Sign Swimming Pool Storage Shed (Larger than 10'X12') Residential Demolition Commercial Demolition
 Residential Reroofing Commercial Reroofing Commercial Fencing Residential Retaining Wall (Over 4')
 Commercial Retaining Wall (Over 4')

Description of Proposed Project or Work to be Done: INSTALLATION OF 15,000 GALLON DIESEL ABOVEGROUND STORAGE TANK.

Size/Dimensions of Parcel: _____ Size/Dimensions of Structure: 30' x 60'

Is the property in the floodplain? No Yes : Circle: 100 year 500 year

*If 100 year, regulatory Flood Protection Elevation must be determined and as-built elevations must be certified.

Professionals Involved

General Contractor: ZAHL-PETROLEUM MAINTENANCE License Number: MPCA # 37 Telephone: JIM LARSON 612.331.8550

Plumbing: _____ License Number: _____ Telephone: _____

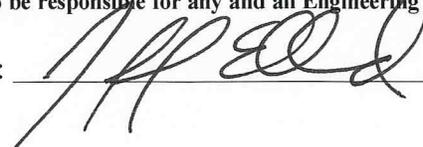
Mechanical Contractor: _____ License Number: _____ Telephone: _____

Electrical: _____ License Number: _____ Telephone: _____

Other: _____ License Number: _____ Telephone: _____

Applicant Statement and Acknowledgements

I understand, that I am required to comply with City Ordinances, Minnesota State Building Code and all other applicable codes, and that this building permit will expire within 180 days if work is not commenced. I further understand, that before the "C of O" is issued the driveway must be completed and the "Certificate of Survey" Requirements must be met. I will also be responsible for any and all Engineering Services specifically required for this project.

Applicant/Agent Printed Name: JEFF ELLERD Signature: 

Fees (To be filled in by City)

Permit Fee \$ _____
Plan Check Fee \$ _____
Penalty Fee \$ _____
State Surcharge Fee \$ _____
MCES SAC Fee (\$2,100) \$ _____
Plumbing Fee (See Schedule) \$ _____
Mechanical Fee (See Schedule) \$ _____
Sewer Hookup Fee (\$100) \$ _____
Water Hookup Fee (\$100) \$ _____
Water Tapping Fee (1" - 1 1/2" \$400) \$ _____
(2" and Over) \$ Time and Material
Main Trunk Fee: Water (\$1,500) \$ _____
Sewer (\$1,500) \$ _____
City SAC Fee (\$750) \$ _____
City WAC Fee (\$750) \$ _____
Utility Service Agmt. Deposit (\$300) \$ _____
(If Applicable)
Engineering Fee (\$150) \$ _____
TOTAL PERMIT FEES: \$

Make Check Payable to: CITY OF NEWPORT

Payment made: _____, 20__ Receipt # _____ Check # _____ or Cash _____

***** ITEMS BELOW ARE FOR CITY BUILDING OFFICIAL USE *****

Submittals and Approvals Received by CITY Building Official / Date Application Received: _____

_____ Environmental Health Approval _____ Site Plan _____ Energy Calculations _____ Completed Application
_____ Zoning Approval _____ Construction Plans _____ Applicable Waivers _____ Other

Comments/Conditions: _____

Building Official Approval: _____ **Date:** _____



**CITY OF NEWPORT
BOARD OF APPEALS
NEWPORT CITY HALL
APRIL 19, 2012 – 5:00 P.M.**

Chairperson:	Susan Lindoo	City Administrator:	Brian Anderson
Vice-Chair:	Daniel Lund	Executive Analyst:	Renee Helm
Commissioner:	Janice Anderson	Council Liaison:	Tom Ingemann
Commissioner:	Katy McElwee-Stevens		
Commissioner:	Matt Prestegaard		

AGENDA

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. APPROVAL OF BOARD OF APPEALS MINUTES**
 - A. Board of Appeals Minutes of April 12, 2012
- 4. APPEAL FROM VEOLIA ENVIRONMENTAL SERVICES**
 - A. Appeal of Denied Building Permit to Install a 15,000 Gallon Above-Ground Storage Tank at 1545 7th Avenue
- 5. ADJOURNMENT**



**City of Newport
Board of Appeals Minutes
April 12, 2012**

1. CALL TO ORDER

Chairperson Lindoo called the meeting to order at 6:10 P.M.

2. ROLL CALL -

Commissioners present – Susan Lindoo, Dan Lund, Katy McElwee-Stevens, Matt Prestegaard

Commissioners absent – Janice Anderson

Also present – Brian Anderson, City Administrator; Renee Helm, Executive Analyst; Tom Ingemann, Council Liaison; Fritz Knaak, City Attorney

3. APPEAL FROM VEOLIA ENVIRONMENTAL SERVICES

A. Appeal of Denied Building Permit to Install a 15,000 Gallon Above-Ground Storage Tank

Attorney Knaak and presented on this item as outlined in the April 12, 2012 Board of Appeals packet and provided information on the board of appeals process. The packet is attached as part of the official minutes. The Board of Appeals will be making a final decision to determine whether or not the decision to deny the building permit was correct.

The Public Portion opened at 6:14 p.m.

Tim Keane, Attorney for Veolia Environmental Services, presented on this item as outlined in his letter dated February 21, 2012. Mr. Keane’s letter is attached as part of the official minutes.

Dan Lund – On the first page of your letter you stated “The inability of Veolia to fuel its vehicles at this location creates a distinct impediment in its ability to continue to operate competitively at this location,” could someone expand on that?

Dave Schneider, Area Manager for Veolia – Tim had managed the disadvantage of fueling offsite, but the trucks have always been fueled on site, a company comes in to fuel the trucks. The only thing changing is that we would have our own tank there. The disadvantage that you were asking about is that on average it’s about \$0.23 per gallon more for us to fuel our trucks onsite than have a tank.

Admin. Anderson presented on this item as outline in the April 12, 2012 Board of Appeals packet.

Dan Lund – What was this zoned as before this was changed to mixed-use?

Admin. Anderson – I believe it was light industrial.

Dan Lund – So in your understanding of the land use classification, this wouldn’t have even been allowed in light industrial.

Admin. Anderson – You would have to take a look at that, there may have been a conditional use permit for that but if you just go by the code, then no.

Susan Lindoo – As I understand it, our comprehensive plan is our guiding principle and it confirms that this is a mixed-use district. You go with what the law is presently, and the comp plan is our guiding principle.

Admin. Anderson – I don't think they even submitted something for an interim use permit, which would be for three years. I still don't see how that could be an option. I don't mean to try to play hardball but I think we would have a lot of questions as to why we're allowing it. It's not written in our code that we allow it. That's the way I see it, our planner sees it, and our attorney sees it.

Attorney Knaak – I would like to focus on the issue. I think everyone would agree that a standalone tank on a vacant piece of land in the MX-1 district is not allowed. The only real issue here is, by virtue of the fact that you have this existing non-conforming use, whether that should be the basis for allowing this to be used as an accessory use. It has not been used as an accessory use for the last 25 years so essentially the argument is "We didn't use it but we could have." It really boils down to whether or not it's a new use. They're arguing that they're fueling there already, which would indicate that this is not a substantial increase. I think the applicant needs to be aware of that Newport is aware of issues relating to above-ground storage of fuel. If the code says or doesn't say that it's an allowed use in one place or another, you need to assume that the City knows where it does and does not want above-ground storage tanks. If you have an alternative to constructing it, which it sounds like you do, that weakens your argument a little bit.

Admin. Anderson – No other city allows above-ground storage tanks in their mixed-use districts.

Attorney Knaak – You will need to stay focused on what your code allows or doesn't allow.

Mr. Schneider – What is your definition of fueling store above ground on the site? We have 50 trucks with 60 gallon tanks that are stored there permanently; I don't see a difference from that to the above-ground storage tank.

Dan Lund – We have a land use that's called out in the City code, the exact language is "storage and distribution of bulk, petroleum products, oil and gasoline."

Jeff Ellerd, Area Engineer for Veolia – I would argue two things related to that. First off, that chart is for primary uses, not accessory uses, so defaulting to that right off the bat is not accurate. Secondly, this is not bulk petroleum storage, this is for consumption for our business.

Dan Lund – So how many gallons do you need for bulk petroleum storage?

Jeff Ellerd – Well it's for definition for what it's for. We're doing it for consumption by our own fleet. The point I would make is that nowhere in your code does it outline above-ground versus under-ground storage tanks. Your code allows a gas station in this district and nowhere does it state that their tanks need to be underground. So the Super America, across the street, which has an above-ground propane tank, could put an above-ground storage tank and there would be no problem according to your code.

Matt Prestegaard – I was wondering if someone could expand on Super America.

Attorney Knaak – That said, you're dealing with a district, where the policy is for mixed-uses and certainly an automobile related service such as gasoline sales is part of that. Really, what this comes down to is whether or not you view this as an accessory use to this operation. Again, the problematic thing is they've never done this before. Why hasn't it happened there before? They should be coming in to say that this will eliminate the fuel truck that comes in already. I indicated to you the issue of modernization. You're not required to watch the technology run by if you have a non-conforming use. You're allowed to invest in newer technologies. I don't think you've heard whether or not this is a modernization. There is no indication that it's safer and better for the other residents, which you need to take into effect.

Susan Lindoo – I think we’ve heard from all sides and I think it’s time that we...

Mr. Schneider – I didn’t really come to argue the legal part, I was going to talk to you from a business standpoint. I’m surprised from all the resistance that we’ve received from the Administration Department. It seems that at a time when everyone is trying to attract businesses, we’re trying to be pushed out. Even by the notation in the memo from Renee that states we’ve temporarily moved out, which we haven’t. I have put it down to the bare minimum operations. Even noting that they have better plans for the property.

Admin. Anderson – I asked her to put that in there so that it wouldn’t come as a surprise to the Planning Commission.

Mr. Schneider – To us, it sounds like you want us out.

Admin. Anderson – That’s a statement, that’s a fact. You guys have moved out.

Mr. Schneider – We’re still running there. You’re presumption is pretty insulting.

Admin. Anderson – It could be redeveloped because it is zoned MX.

Mr. Schneider – You’re talking about 50 jobs here, 50 patrons to your local businesses.

Attorney Knaak – Since we’re talking about perception, one of the things that the City is used to is applicants disrespecting the City by thinking that it’s an industrial area and we don’t care what it looks like, that’s the City’s problem. I am seeing this attitude reflected a little bit in this argument. You get that attitude that consistently comes before the City, that “Really, you want to stop this? You think this will make things worse for the City?” You don’t need to get into those kinds of...

Mr. Schneider – I don’t think that assumption has ever been made from us. It’s strictly business, no disrespect to the City.

Attorney Knaak – I’m just saying that the attitudinal thing cuts both ways.

Susan Lindoo – Do you have more questions or should we get on with our decision?

Dan Lund – I have a question for Mr. Keane. Is it your opinion that the case law plus your position, would require us to approve this use or is it our discretion to not approve the application?

Mr. Keane – I’m arguing that it is well within your discretion to conclude that this is an accessory use to this property and its expansion is certainly permitted and consistent with your ordinance. You would not be doing either violence to your code or straining your regulations by coming to the conclusion that this use is allowed. The point is that it’s well within your use to do so.

Dan Lund – Are you agreeing that we’re not required to do so?

Mr. Keane – That’s not my determination and my conclusion won’t make any difference to this body. I did put forth the supreme courts guiding premise that zoning ordinances should yield to the reasonable use of private property when there’s interpretation.

Dan Lund – Are you aware of the zoning rules at the time when this property was built?

Mr. Keane – No, we contacted the planner but she couldn’t find them.

Matt Prestegaard – I would make a comment to Section 1300.03(H) which states “To prohibit the use of buildings, structures, and lands that are incompatible with the intended use or development of lands within specified zones.” I think the intent of MX-1 is clear, which I was compelled by. I feel the intent of the zoning is clear.

Susan Lindoo – I think it’s a difficult case because it feels like a no-win. My feeling is much closer to Matt’s, which is that we’re abiding by a comp plan that precedes the MX district has being a certain type of district. A 15,000 gallon tank is storage of bulk products and that is the perception that a resident would have and the fact that this is the first time that this is necessary in 20-some years. If I obey our code and our comp plan then it feels this is not allowed in the MX district.

Dan Lund – I kept trying to get to the bottom of it. It’s not clear that they were ever allowed to have the tank on this site per the code. I think the argument that this is a substantially similar use is a bit of a red herring.

Susan Lindoo – I’m sorry, we’re...

Mr. Ellerd – You never closed the public hearing, can I address that please? I would argue that the Super America is bulk storage, they have more fuel underground then we would have in our above-ground tank and nowhere in your code does it distinguish between above-ground and below-ground tanks.

Dan Lund – It distinguishes between retail sales because that is a specific land use, bulk petroleum storage is a separate land use. There are two categories, I think this falls under the bulk petroleum storage. I know you made the argument that this isn’t the primary use but I don’t think you can take that argument to the ends of the earth, that you’re primary use is allowed so you can have these other uses too, that doesn’t make a lot of sense. It’s specifically prohibited here. I think it’s pretty clear.

The Public Portion closed at 7:08 p.m.

Susan Lindoo – I think it’s time for someone to make a motion to accept or reject the appeal.

Matt Prestegaard – Could we clarify the Super America issue at the next meeting?

Susan Lindoo – I think what we would be voting on next time is the final decision.

Motion by Lund, seconded by McElwee-Stevens to affirm the finding of the City Administrator to reject the building permit and to direct staff to establish a Findings of Fact. With 4 Ayes, 0 Nays, 1 Absent, the motion carried.

Motion by McElwee-Stevens, seconded by Prestegaard, to continue the proceedings until April 19, 2012 at 5:00 p.m. With 4 Ayes, 0 Nays, 1 Absent, the motion carried.

Signed: _____
Susan Lindoo, Chairperson

Respectfully submitted,

Renee Helm
Executive Analyst



CITY OF NEWPORT

596 7th Avenue
Newport, Minnesota 55055
(651) 459-5677
Fax: (651) 459-9883

April 24, 2012

Jeff Ellerd
Regional Engineer
Veolia Environmental Services
1375 7th Avenue
Newport, MN 55055

Re: Findings of Fact and Determination

Dear Mr. Ellerd:

Please find attached the Findings of Fact and Determination of the Newport Board of Appeals regarding the application of Veolia for a building permit to construct a 15,000 gallon aboveground fuel storage tank at 1545 7th Avenue in Newport.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Renee Helm', with a long horizontal flourish extending to the right.

Renee Helm
Executive Analyst
City of Newport



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FINDINGS OF FACT AND DETERMINATION OF THE NEWPORT BOARD OF APPEALS REGARDING THE APPLICATION OF VEOLIA ES SOLID WASTE MIDWEST, LLC FOR A BUILDING PERMIT TO CONSTRUCT AN ABOVE-GROUND FUEL STORAGE TANK AT ITS LOCATION AT 1545 7TH AVENUE IN NEWPORT, MINNESOTA.

UPON A HEARING held the 12th of April, 2012, before the Newport Planning Commission sitting in its capacity as the Board of Appeals and Adjustments (hereinafter, "the Board"), the Board makes the following:

FINDINGS

1. The documents submitted by Veolia and the City, as well as the arguments of counsel and others made on their behalf at the hearing herein are expressly incorporated into the record herein and serve in substantial part as the basis of the subsequent determination noted below.
2. The matter arose when Veolia applied for a building permit to construct a standalone fuel storage and fueling facility intended to be used for the fueling of its refuse trucks based at its facility in the City of Newport, Minnesota, at 1545 7th Avenue (hereinafter, "the property").
3. The application for the building permit was denied by the City Administrator of the City upon a determination that the standalone fuel storage structure and facility was not an allowed use in the MX-1 Downtown District zone in the City. The property is located in the MX-1 Downtown District zone in the City.
4. The determination of the City Administrator was duly appealed by Veolia and is properly before the Board.
5. Veolia's current use of the property as a base for its fleet of refuse hauling trucks is a permitted non-conforming use under the Newport Zoning Code.
6. Outdoor or above-ground storage of fuels is not an allowed use in the MX-1 Downtown District zoning district.
7. Veolia has argued, in bringing this appeal, the above-ground storage of fuel is a use ancillary to the legal non-conforming use currently in place on the property.
8. Veolia has used the property for its current use since the mid-1980s.
9. Veolia has not fueled trucks with on-site storage tanks during the period in which it has operated at that location. Trucks based at the property were fueled elsewhere or fuel trucks were brought to the site to fuel the vehicles and then removed.
10. There is no evidence establishing that construction of a fueling facility on the property is essential to the continuation of its current, allowed non-conforming use or that it is a necessary modernization of the non-conforming use at that location.
11. The storage of a large volume of fuel in tanks on the site for trucks at the property is a substantially new use of the property that changes the character of the non-conforming use inasmuch as it places on the property substantial and new amounts of volatile fuels and fumes.
12. The proposed use is inherently dangerous and hazardous to the public and a detriment to the health and safety of the citizens of the City and no citizen of the City could

reasonably be expected to have anticipated the outdoor storage of fuels as a usual and ordinary part of the business conducted at that location.

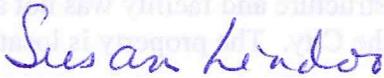
13. Storage of large amounts of fuel in above-ground containers are not usual and ancillary to the conduct of the non-conforming business at the property, as evidenced by over two decades of use without the presence of those facilities on the site and that fueling operations or mobile fueling trucks have historically always been off of the property.
14. No same or similar uses have been allowed in the MX-1 Downtown District Zone.
15. The addition of fueling operations to the current non-conforming use would represent both an unpermitted change of character and increase in intensity of the non-conforming use at the property.

THEREFORE, based upon the foregoing determinations and findings, the Newport Board of Appeals and Adjustments, hereby makes the following:

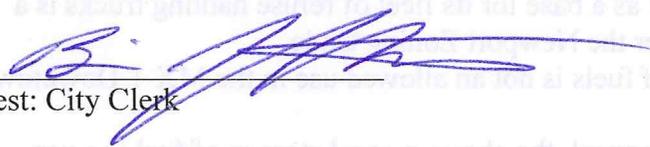
DECISION

1. The Appeal of the Denial of the Building Permit in the aforesaid matter is DENIED.

Decided the 19 day of April, 2012. There being 5 votes in favor of this Decision and 0 votes against.



Chairperson, Board of Appeals and Adjustments


Attest: City Clerk



MEMO

TO: Mayor and City Council
Brian Anderson, City Administrator

FROM: Renee Helm, Executive Analyst

DATE: July 9, 2012

SUBJECT: Deer Hunting Ordinance

BACKGROUND

At the June 7, 2012 City Council meeting, Mr. Aguilar-Downing presented recommendations from residents of the Wild Ridge Estates area on how the Deer Hunting Ordinance can be improved. At that meeting the City Council directed staff to contact the Metro Bowhunters Resource Base (MBRB) regarding a controlled hunt and to amend the ordinance to allow for a controlled hunt in some Newport Parks and to clean up the ordinance.

DISCUSSION

Attached for Council's review is Ordinance No. 2012-9 amending Section 760, Archery Deer Hunting. The amended ordinance states that individuals who wish to conduct archery deer hunting in Newport must complete the MBRB Proficiency Test Certificate on an annual basis and must have it in their possession when hunting. Furthermore, it states that the City Administrator may work with MBRB to conduct controlled hunts in Loveland Park and Bailey School Forest after October 15th of each year. Finally, the ordinance adds language that prohibits the feeding of deer.

One item that the City Council will need to discuss is whether or not to amend the lots that may be hunted on. The neighborhood group recommended that individuals only be allowed to hunt on single parcels that are five (5) acres or more instead of the current ordinance that states that parcels may be combined to create five (5) acres. Attached is the current map and an amended map that shows all of the single parcels with five or more acres.

RECOMMENDATION

It is recommended that the City Council approve Ordinance No. 2012-9. If the City Council decides to amend the acreage regulation, City staff will amend Section 760.03 and the map.

**CITY OF NEWPORT
ORDINANCE 2012-9**

**AN ORDINANCE OF THE CITY OF NEWPORT, MINNESOTA, AMENDING THE CITY CODE OF
ORDINANCES CHAPTER 7, GENERAL REGULATIONS AND OFFENSES**

THE CITY COUNCIL OF THE CITY OF NEWPORT, MINNESOTA, HEREBY ORDAINS THAT:

Section 760 – Archery Deer Hunting

760.04 Regulations.

Subd. 1 Persons who wish to conduct archery deer hunting in Newport shall complete the Metro Bowhunters Resource Base (MBRB) Proficiency Test Certificate on an annual basis at an approved location. Individuals must possess the MBRB Proficiency Test Certificate when conducting archery deer hunting in Newport.

Subd. 5 Hunting on public land is prohibited unless authorized by the City.

Subd. 6 Persons successful in harvesting deer shall notify the City.

760.05 Deer Management Program. The City Administrator may designate times and dates for the MBRB to conduct a controlled hunt in Loveland Park and Bailey School Forest after October 15th of each year.

760.06 Feeding of Deer.

Subd. 1 No person may place or permit to be placed on the ground, or within five feet (5') of the ground surface any grain, fodder, salt licks, fruit, vegetables, nuts, hay or other edible materials (including feed for birds), which may reasonably be expected to intentionally result in deer feeding, unless such items are screened or protected in a manner that prevents deer from feeding on them. Living fruit trees and other live vegetation shall not be considered as deer feeding.

Subd. 2. Exceptions. This prohibition shall not apply to:

- A. Veterinarians, city animal control officers or county, state or federal game officials who are in the course of their duties, have deer in custody or under their management;
- B. Persons authorized by the City of Newport to implement the Deer Management Program approved by the City Council; or
- C. Any food placed upon the property for purposes of trapping or otherwise taking deer where such trapping or taking is pursuant to a permit issued by the Minnesota Department of Natural Resources.

760.07 Enforcement.

760.08 Violations and Penalties.

The foregoing Ordinance was moved by Councilmember _____ and seconded by Councilmember _____.

The following Councilmembers voted in the affirmative:

The following Councilmembers voted in the negative:

Effective Date

This Ordinance becomes effective upon its passage and publication according to law.

Adopted by the City Council of the City of Newport, Minnesota on the 19th day of July, 2012.

Signed: _____
Tim Geraghty, Mayor

Attest: _____
Brian Anderson, City Administrator

Section 760 – Archery Deer Hunting

760.01 Definitions. As used in this Section, the following terms have the meanings given:

Subd. 1. Archery Deer Hunting. “Archery Deer Hunting” shall mean the sport of shooting a deer with a bow and arrow.

760.02 Designated Hunting Areas. The Newport City Council shall determine, by Resolution, areas for archery deer hunting. The said Resolution shall define the area(s), by map, which may be hunted. This map shall be effective for the stated hunting season.

760.03 Hunting Permitted. Archery deer hunting shall be permitted on private lots consisting of a minimum of five (5) contiguous acres as allowed by Resolution. A combination of parcels may be used to create five (5) contiguous acres of land. All hunting must be done in accordance with archery deer hunting regulations set forth by Minnesota State Statutes and the Ordinances of the City. Hunters must obtain written permission from the landowner(s) to hunt on the property owner’s land.

760.04 Regulations.

Subd. 1 ~~Persons archery deer hunting must have completed and have in their possession the Newport Proficiency Test Certificate.~~ **Persons who wish to conduct archery deer hunting in Newport shall complete the Metro Bowhunters Resource Base (MBRB) Proficiency Test Certificate on an annual basis at an approved location. Individuals must possess the MBRB Proficiency Test Certificate when conducting archery deer hunting in Newport.**

Subd. 2 Written permission from the landowner(s) must be in the possession of the hunter at the time of hunting, along with adequate identification.

Subd. 3 Persons may hunt deer with a bow and arrow on land approved by the map provided they are at least:

- A. Twenty feet (20’) from any property with a zoning classification other than those areas identified by the hunting map.
- B. Twenty feet (20’) from any public right-of-way.
- C. Twenty feet (20’) from any land or building not owned by the landowner, unless permission has been granted.

Subd. 4 Deer shall be the only animal allowed to be hunted. No other small or large game hunting shall be permitted.

Subd. 5 Hunting on public land is prohibited **unless authorized by the City.**

Subd. 6 Persons successful in harvesting deer shall notify the City.

760.05 Deer Management Program. The City Administrator may designate times and dates for the Metro Bow Hunters Resource Base (MBRB) to conduct a controlled hunt in Loveland Park and Bailey School Forest after October 15th of each year.

760.06 Feeding of Deer.

Subd. 1 No person may place or permit to be placed on the ground, or within five feet (5') of the ground surface any grain, fodder, salt licks, fruit, vegetables, nuts, hay or other edible materials (including feed for birds), which may reasonably be expected to intentionally result in deer feeding, unless such items are screened or protected in a manner that prevents deer from feeding on them. Living fruit trees and other live vegetation shall not be considered as deer feeding.

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- A. Veterinarians, city animal control officers or county, state or federal game officials who are in the course of their duties, have deer in custody or under their management;
- B. Persons authorized by the City of Newport to implement the Deer Management Program approved by the City Council; or
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760.07 Enforcement.

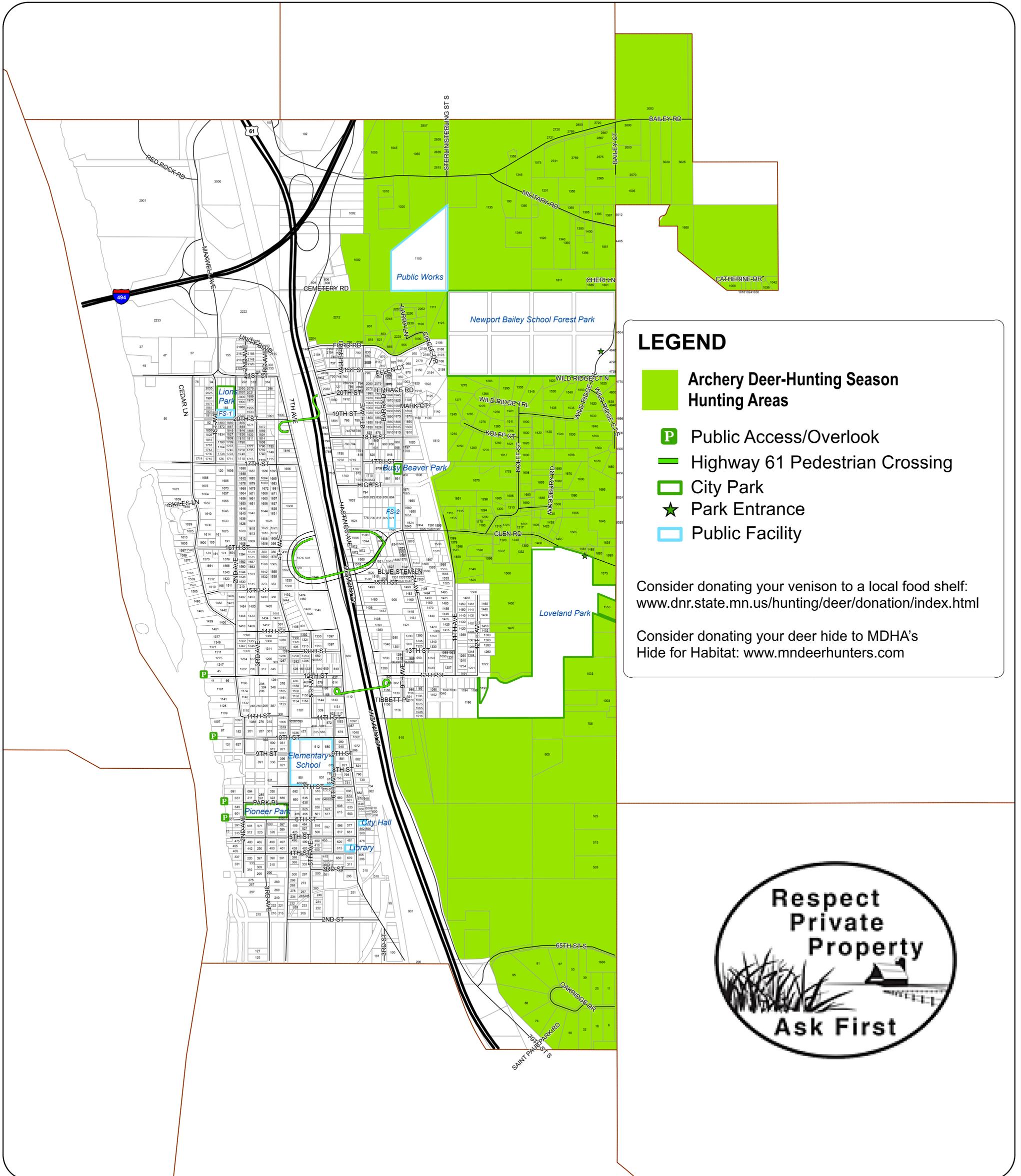
Subd. 1 Authority of Peace Officers. A peace officer is hereby authorized and empowered to enforce all requirements of this Ordinance and related Minnesota State Statutes.

Subd. 2 Seizure, Confiscation, and Disposal of Deer and Property. A peace officer is hereby authorized and empowered to seize and confiscate any deer taken in violation of this Ordinance and to seize, confiscate, and dispose of all guns, firearms, bows and arrows, boats, or vehicles used by the owner or any other person with his or her knowledge in unlawfully taking or transporting such deer in violation of this Ordinance. Articles which have no lawful use may be summarily destroyed. Upon conclusion of the prosecution of any case, the guns, firearms, bows and arrows, boats, or vehicles seized pursuant to this subsection shall be returned to the lawful owner thereof upon payment to the City of all costs incurred by the City in the seizure, to include towing fees and storage or impound fees. In the event the lawful owner cannot be determined or located, the property shall be disposed of in compliance with court order

760.08 Violations and Penalties. Any person violating, or otherwise refusing to comply with any provisions of this Ordinance, shall be guilty of a misdemeanor and subsequent penalties shall apply.



City of Newport Archery Deer-Hunting Season Hunting Areas



LEGEND

-  Archery Deer-Hunting Season Hunting Areas
-  Public Access/Overlook
-  Highway 61 Pedestrian Crossing
-  City Park
-  Park Entrance
-  Public Facility

Consider donating your venison to a local food shelf:
www.dnr.state.mn.us/hunting/deer/donation/index.html

Consider donating your deer hide to MDHA's
Hide for Habitat: www.mndeerhunters.com



Data sources: City of Newport, Washington County
Map printed May 24, 2011

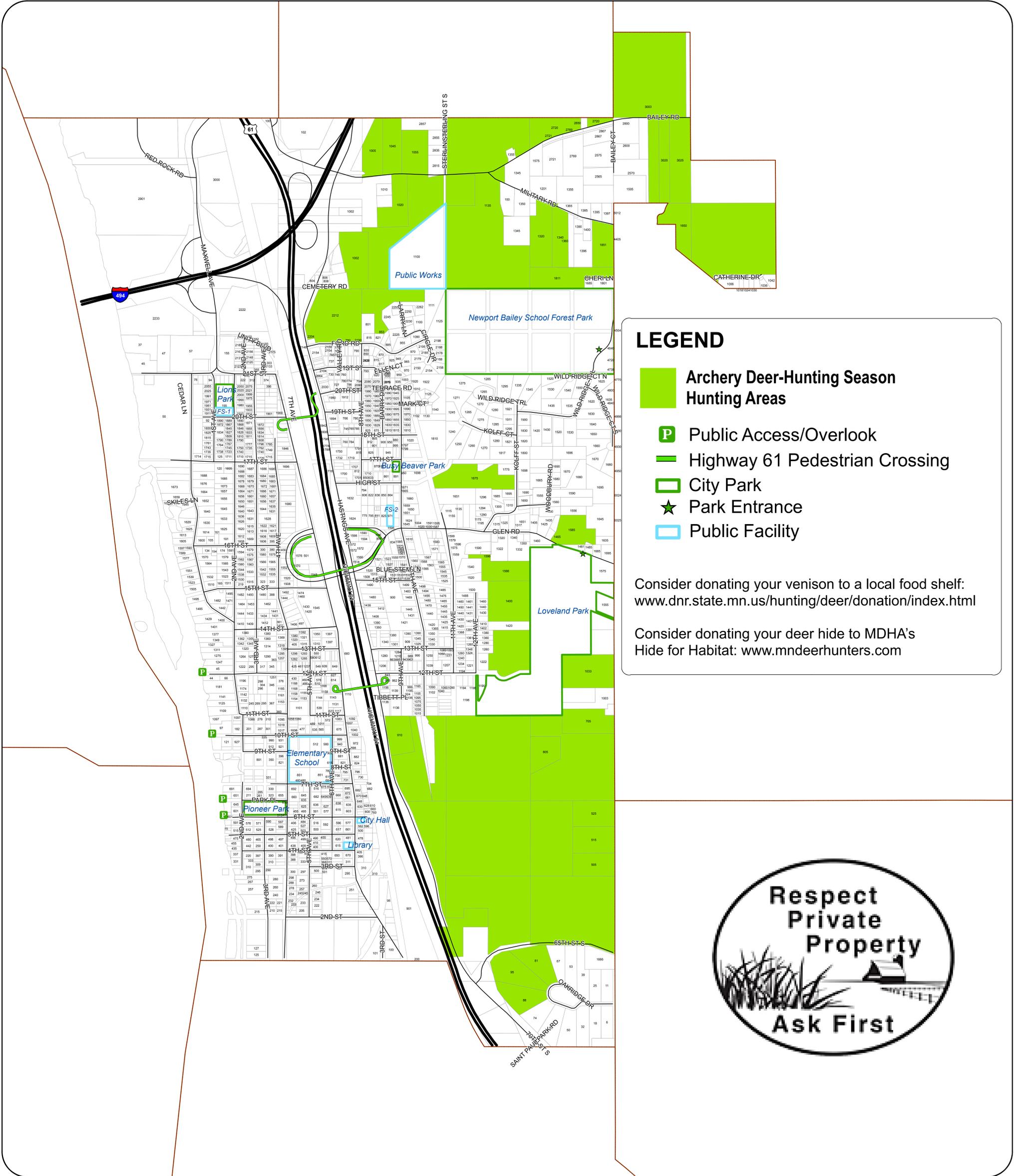


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Feet



City of Newport Archery Deer-Hunting Season Hunting Areas



LEGEND

-  Archery Deer-Hunting Season Hunting Areas
-  Public Access/Overlook
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www.mndeerhunters.com



Data sources: City of Newport, Washington County
 Map printed June 19, 2012



2,000 Feet

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June 2012

Newport Police Department
Activity Report

		Monthly Total	Yearly Total
ACCIDENTS		9	37
ADMINISTRATIVE		81	489
ALARMS		6	39
ANIMAL CALLS		15	51
ARRESTS	Felony	4	11
	Misdemeanor	8	29
	Gross Misd.	3	11
ASSAULTS	Aggravated		
	Simple	2	13
ASSIST OTHER DEPT/OFFICER		51	353
ASSIST PUBLIC		146	869
AUTO THEFT		2	6
	Attempted		2
BURGLARY		1	11
	Attempted		1
CHILD ABUSE/NEGLECT		2	6
CIVIL DISPUTES		10	38
CRIMINAL SEXUAL CONDUCT			1
CURFEW			
DAMAGE TO PROPERTY		7	30
DEATH INV.			3
DISORDER CONDUCT		1	12
DOMESTICS		4	65
DRIVING COMPLAINT		12	55
DRUGS/PARAPHERNALIA			2
DRUNKS/DETOX		1	6
D.W.I.		3	12
FIRECALLS		11	42
FORGERY			2
FOUND PROPERTY			10
HAR/COMM		1	14
HANG UPS (911)		3	18
JUVENILE PETTY CITATIONS			12
JUVENILE PROBLEMS		12	32
LOCK-OUTS		5	27
MEDICAL CALLS		22	112
MISSING PERSONS			1
ORDINANCE VIOLATIONS		36	100
ORDINANCE WINTER PARK			27
PROWLERS			
ROBBERY			
	Attempted		
RUN-AWAY			1
STOLEN AUTOS RECOVERED		3	7
SUSPICIOUS ACTIVITY		26	158
THEFT		11	80
	Attempted		
CITATIONS		105	620
TRAFFIC WARNINGS		71	467
		Monthly Total	Yearly Total
Overall Grand Total All Events		674	3882