

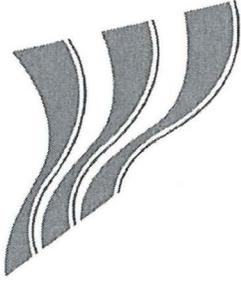
CITY OF WILLMAR

**COMMUNITY DEVELOPMENT COMMITTEE MEETING
4:45 PM, THURSDAY, MAY 14, 2015
CONFERENCE ROOM #1
CITY OFFICE BUILDING**

**Chair: Rick Fagerlie
Vice Chair: Andrew Plowman
Members: Tim Johnson
Audrey Nelsen**

AGENDA

1. Meeting Called to Order
2. Public Comment
3. MinnWest DEED Grant
4. Airport Terminal/Site Purchase Agreement
5. Unsafe Building Declaration
6. Historic 313 on Fourth, LLC
7. Adjourn



CITY OF WILLMAR, MINNESOTA
REQUEST FOR COMMITTEE ACTION

Agenda Item Number: 3

Meeting Date: May 14, 2015

Attachments: Yes No

CITY COUNCIL ACTION

Date: _____

- | | |
|-----------------------------------|---------------------------------|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Denied |
| <input type="checkbox"/> Amended | <input type="checkbox"/> Tabled |
| <input type="checkbox"/> Other | |

Originating Department: Planning and Development Services

Agenda Item: MinnWest DEED Grant

Recommended Action:

1. Approve a development agreement between the City of Willmar and MinnWest.
2. Approve a maintenance agreement between the City of Willmar and MinnWest.
3. Approve an easement to Kandiyohi County.

Background/Summary: The MinnWest street and parking project continues to move forward. Several additional documents are required to be executed to keep the project on schedule.

1. The first document is a development agreement between the City of Willmar and MinnWest Technology Campus Management Company, LLC that deals with property conveyance, payment of construction costs, and grant administration.
2. The second document is a management agreement between the City of Willmar and MinnWest Technology Campus Management Company, LLC for the management of the property. It basically shifts all maintenance responsibilities for the property that's being improved under the DEED grant to MinnWest. Furthermore, the management agreement indemnifies the City from any claims. The management agreement is a shorter, but similar version, of the agreement that exists for the MCROC project.
3. The third document is an easement from the City to Kandiyohi County which provides perpetual access to the County properties that are adjacent to the property being improved by the DEED grant. The easement is being redrafted as a license agreement.

Alternatives:

1. Approve the documents.
2. Not approve the documents and not construct the improvements.

Financial Considerations: The costs to the City are staff time and Attorney's time.

Preparer: Bruce D. Peterson, AICP
Director of Planning and Development Services

Signature:

Comments:

DEVELOPMENT AGREEMENT

This Development Agreement made and entered into this _____ day of _____, 2015, by and between the CITY OF WILLMAR, MINNESOTA, hereinafter called "City", and MINNWEST TECHNOLOGY CAMPUS MANAGEMENT COMPANY, LLC, a Minnesota limited liability company, hereinafter called "MinnWest".

RECITALS

- A. The City is a duly organized and existing home rule charter city, a body politic and corporate under the laws of the State of Minnesota, with lawful power and authority to enter into this Development Agreement.
- B. City and MinnWest desire to enter into this Development Agreement for acquisition, development of land that will be subject to Grant #IBDP-15-0002-O-FY15 under the Innovative Business Development Public Infrastructure Grant Program (the "Grant"). The Grant is being issued in accordance with the terms of that certain Grant Agreement – Construction Grant dated March 13, 2015 (the "Grant Agreement"), between the City and the Minnesota Department of Employment and Economic Development ("DEED").
- C. The City, after approval by the City Council, has agreed to acquire the real estate located in Kandiyohi County, Minnesota, to be legally described as follows:
- Common Interest Community Number 40, A Planned Community, MinnWest Technology Campus, Unit 35, according to the plat on file and of record in the office of the County Recorder of Kandiyohi County, Minnesota (the "Real Property").
- D. The City intends to grant an easement to MinnWest, and an easement to the County of Kandiyohi, for the use of the Real Property.
- E. The Property will be developed by MinnWest for the benefit of the City under the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the covenants and agreements herein set forth, City and MinnWest do hereby covenant, agree and bind themselves as follows:

1. Conveyance of Real Property. MinnWest will acquire and convey the Real Property to the City. That conveyance is subject to the condition that MinnWest shall undertake all of the construction on the Real Property to create roadway and parking facilities, as contemplated under the terms of the Grant Agreement.
2. Costs and Construction. MinnWest shall be responsible for all construction, construction administration, and DEED administration costs for the Real Property during construction. The construction, construction administration and DEED administration for the improvements to the Real Property shall meet all the requirements of the Grant Agreement.

3. Grant Request. MinnWest shall request reimbursement for up to \$470,000.00 of funds under the Grant as provided in the Grant Application, after construction is complete.
4. Management Agreement. At the time that the Real Property is conveyed by MinnWest to the City, the parties shall enter into a Management Agreement by which MinnWest shall be obligated for all actions and costs for the ongoing management, maintenance and repair of the Real Property.
5. Counterparts. This Agreement may be signed in one or more counterparts which shall be as binding and effectual as the original.
6. Assignment. It is agreed that this Agreement shall not be assigned by MinnWest without the written consent of the City.
7. Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
8. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Minnesota.

IN WITNESS WHEREOF, the parties have set their hands to this Agreement the date and year first above written.

MinnWest Technology Campus Management Company, LLC **City of Willmar**

By: _____
 Name:
 Title:
 Date: _____

By: _____
 Name:
 Title:
 Date: _____

By: _____
 Title:
 Date: _____



MinnWest Technology Campus
1700 Technology Drive N.E. Suite 101
Willmar, MN 56201
Phone: 320-222-9770
Cell: 320-905-5361
Fax: 320-222-9788

MANAGEMENT AGREEMENT

AGREEMENT made _____, 2015, between MinnWest Technology Campus Management Company, LLC, a Minnesota limited liability company (the "Manager") and City of Willmar, a Minnesota municipality (the "City").

RECITALS

The City is the owner of Unit #35, Common Interest Community No. 40, A Planned Community, MinnWest Technology Campus, First Supplemental Common Interest Community Plat (the "Property") located on the MinnWest Technology Campus and Business Community ("MinnWest Campus") in the City of Willmar, Kandiyohi County, State of Minnesota. The City intends to provide use of the Property for roadway and parking purposes to owners, tenants, occupants and invitees on the MinnWest Campus under the terms of an Easement Agreement dated _____, 2015 (the "Easement").

Manager currently owns the rest of the MinnWest Campus. The City desires the assistance of the Manager in maintaining the Property.

AGREEMENT

Now, therefore, in consideration of the mutual promises herein contained, the parties agree as follows:

- Employment of Manager.* City hereby contracts with Manager to supervise, direct and control the management and maintenance of the Property for the term of this Agreement. The performance of all activities by the Manager shall be for the account of the City. The Manager shall, except as otherwise specifically provided in this Agreement, be responsible for the proper and efficient operation of the Property.
- Term.* The services of Manager shall commence as of the date hereof and shall terminate upon termination of the Easement, unless sooner terminated as herein provided.

3. *Manager's Operating Duties.* During the term of this Agreement, the Manager shall use its best efforts in the management and operation of the Property, and on behalf of the City, shall perform all of the duties and obligations of the City under the terms of the Easement. Such duties shall include, without limitation, the collection of funds and payment of all costs and expenses arising from the use and operation of the Property in connection with the Easement. The Manager shall also be responsible to act as the representative of the City in connection with all of the City's interests as an owner in the MinnWest Campus, including, without limitation, exercising all of the City's rights as a member of the MTC Owners Association.

4. *Manager's Compensation.* As compensation for Manager's performance hereunder, Manager will be paid the sum of \$1.00 per year.

5. *Early termination of agreement.* This agreement and the employment of the Manager shall be terminated and, except as to liabilities or claims which shall have accrued or arisen prior to such termination, all obligations hereunder shall cease if:

- (a) There is mutual agreement of the parties.
- (b) By the City if there is any default by the Manager in its performance herein.
- (c) There is a termination of the Easement.

6. *Repairs and Maintenance.* The Manager shall repair and maintain the Property in good order and condition and in conformity with all applicable laws and regulations and in compliance with requirements of the Easement.

7. *Prohibition of assignment.* Without the express written consent of City, the Manager shall not assign this agreement or any of its rights hereunder; nor shall this agreement or any of the Manager's rights or obligations hereunder be transferable on the Manager's part by operation of law or otherwise. In the event City consents to an assignment of this Agreement or to the transfer any of the duties or responsibilities hereunder, the Manager shall nevertheless remain fully responsible to City for the full performance of this Agreement. Consent to an assignment by City shall not be deemed consent to any subsequent assignment and the permitted assignee shall be prohibited from any further assignments or transfers without the express written consent of City.

8. *Indemnification.* Manager shall indemnify, defend and hold harmless City, its representatives, agents, successors and assigns from and against all claims of whatever nature, including without limitation, claims for attorney's fees and expenses, brought by any party, arising from Manager's management and operation of the Property. It is also understood and agreed by the parties that all costs and expenses for the operation and use of the Property are intended to be paid by the Manager. Therefore, Manager shall indemnify, defend and hold harmless City, its representatives, agents, successors and assigns from and against having to pay any costs or expenses for the operation and use of the Property, whether or not arising under the terms of the Easement.

9. *Notices.* All notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth below or to such other address as such party may designate by notice given pursuant to this section:

If to the City: City of Willmar
 Planning & Development Services
 Attn: Director of Planning & Development Services
 P.O. Box 755
 333 SW 6th St.
 Willmar, MN 56201
 Facsimile No.: 320-235-4917
 E-mail: bpeterson@ci.willmar.mn.us

It to the Manager: MinnWest Technology Campus Management Company, LLC
 Attn: General Manager
 1700 Technology Drive NE, Suite 101
 Willmar, MN 56201
 Facsimile No.: 320-222-9788
 E-mail: steve.salzer@mnwesttechnology.com

10. *Non-waiver.* No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

11. *Headings.* Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

12. *Governing law.* This Agreement shall be construed in accordance with and governed by the laws of the State of Minnesota.

13. *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

14. *Binding effect.* The provisions of this Agreement shall be binding upon and inure to the benefit of both of the parties and their respective legal representatives, successors, and permitted assigns.

IN WITNESS WHEREOF the parties hereto have caused this instrument to be executed on the day and year first above written.

MANAGER

CITY

**MinnWest Technology Campus Management
Company, LLC**

City of Willmar

By: _____

By: _____

Name:

Name:

Title:

Title:

Date: _____

Date: _____

ROADWAY AND PARKING EASEMENT AGREEMENT

THIS ROADWAY AND PARKING EASEMENT AGREEMENT shall be effective as of the ____ day of _____, 2015, and is made and entered into by between the City of Willmar, a body politic and corporate under the laws of Minnesota, (hereinafter “Grantor”) and the County of Kandiyohi, a body politic and corporate under the Laws of Minnesota (hereinafter “Grantee”).

RECITALS

A. Grantor is the fee owner of certain real property located in the County of Kandiyohi, State of Minnesota, and legally described as follows:

Common Interest Community Number 40, A Planned Community, MinnWest Technology Campus, Unit 35, according to the plat on file and of record in the office of the County Recorder of Kandiyohi County, Minnesota.

(the “Easement Property”).

B. Grantee is the owner of the property located in the County of Kandiyohi, State of Minnesota, and legally described as follows:

Common Interest Community Number 40, A Planned Community, MinnWest Technology Campus, Proposed Future Unit 15 and Proposed Future Unit C.E. C1, according to the plat on file and of record in the office of the County Recorder of Kandiyohi County, Minnesota.

(the “County Property”).

C. Grantee has requested that Grantor grant an easement in order for Grantee to have access to the Easement Property, and Grantor has agreed to do so in accordance with the provisions contained in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of all the covenants, terms and conditions herein contained, and intending to be legally bound hereby, the parties agree to the following terms and conditions:

1. Grant of Easement. For and in consideration of the sum of One and 00/100 Dollar (\$1.00), the receipt and sufficiency of which is hereby acknowledged, and in consideration of the promises, conditions, and covenants contained herein, Grantor hereby grants a non-exclusive easement as a roadway for ingress and egress, and for parking areas, on and across the Easement Property.

2. Use. Non-exclusive use of the Easement Property is hereby granted to Grantee, so that Grantee may use the roadway and parking areas on the Easement Property in connection with the ownership and use of the County Property. That use is not exclusive and Grantor reserves the right to allow the Easement Property to be used by itself or others provided that such use does not interfere in any way with the easement granted herein to Grantee or damage the roadway and parking areas located on the Easement Property. Grantee shall be permitted to temporarily occupy and block parking spaces within the Easement Property if necessary for Grantee to complete any repairs to the improvements located on the County Property.

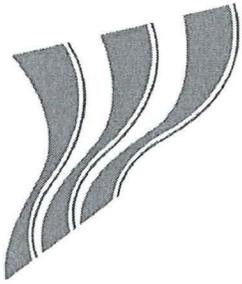
3. Repair and Maintenance. Grantor or any successor in interest shall be solely responsible for the maintenance of and all repairs to the roadway located on the Easement Property, including, but not limited to, snow removal and any other measures necessary to maintain the operation and safety of the roadway.

4. Sale or Lease of Property. The easement created and granted by way of this Roadway and Parking Easement Agreement shall not prevent or prohibit Grantor from selling or leasing any or all of its interest in the Easement Property, provided that such sale or lease acknowledges the existence of this Roadway and Parking Easement Agreement and such purchaser or lessee takes such property subject to the easement created thereby and agrees to perform all functions of Grantor thereunder.

5. Compliance with Laws. In conducting its activities hereunder, Grantee will, at its sole expense and effort, comply with all applicable laws, ordinances, permits, rules and regulations, enacted by any federal, state, or local governmental agency having jurisdiction or control over any activity occurring upon the Easement Property resulting from or applicable to usage based upon this Easement.

6. Liability. Grantor and Grantee agree that each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof.

7. Amendment. This Easement and any provision herein contained may be terminated, extended, modified or amended, only with the express written consent of Grantor and Grantee.



CITY OF WILLMAR, MINNESOTA
REQUEST FOR COMMITTEE ACTION

Agenda Item Number: 4

Meeting Date: May 14, 2015

Attachments: Yes No

CITY COUNCIL ACTION

Date: _____

- Approved Denied
- Amended Tabled
- Other

Originating Department: Planning and Development Services

Agenda Item: Airport Terminal/Site Purchase Agreement

Recommended Action: Approve the purchase agreement with conditions when the final land release is in hand, introduce an ordinance for the sale of the property.

Background/Summary: Staff will present a purchase agreement for the sale of the former airport terminal building and site. The Committee has the option of going into closed session to discuss the purchase agreement, or the Committee can discuss it in open session. Staff will leave that to the discretion of the Committee Members.

Alternatives:

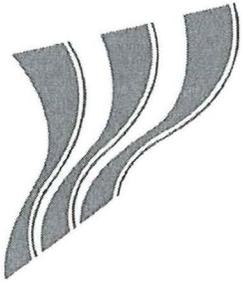
1. Accept the offer with conditions.
2. Continue negotiations.

Financial Considerations: The City would receive a substantial payment as its first sale of the former airport property, terms not to be disclosed at this time.

Preparer: Bruce D. Peterson, AICP
Director of Planning and Development Services

Signature:

Comments:



CITY OF WILLMAR, MINNESOTA
REQUEST FOR COMMITTEE ACTION

Agenda Item Number: 5

Meeting Date: May 14, 2015

Attachments: Yes No

CITY COUNCIL ACTION

Date: _____

- Approved Denied
- Amended Tabled
- Other

Originating Department: Planning and Development Services

Agenda Item: Unsafe Building Declaration

Recommended Action: To declare the structure located at 810 Campbell Avenue Northwest as unsafe, and to initiate the removal process.

Background/Summary: In July, 2014 the City of Willmar issued a permit to the owner of 810 Campbell Avenue Northwest for the demolition of the abandoned structure. Since that time, the property has changed ownership. The new owner was advised in early April, 2015 that the structure needed to be voluntarily removed or action would be taken to seek removal. The property has not been demolished as proposed; it is beyond the point of salvage.

Alternatives:

1. Declare the structure to be unsafe and require demolition.
2. To allow the structure to remain.

Financial Considerations: Cost of demolition in to be borne by the property owner.

Preparer: Bruce D. Peterson, AICP
Director of Planning and Development Services

Signature:

Comments:



WILLMAR



PLANNING AND DEVELOPMENT SERVICES

City Office Building
333 SW 6th Street, Box 755
Willmar, MN 56201
320-235-8311
Fax: 320-235-4917
www.willmarmn.gov

MEMO

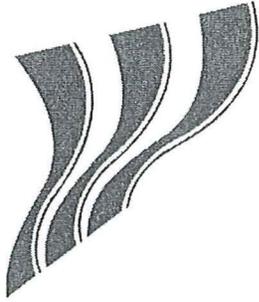
TO: Bruce D. Peterson, Director of Planning and Development

FROM: Randy Kardell, Building Official *rk*

Date: May 8, 2015

RE: **810 Campbell Avenue Northwest**

Voluntary orders were issued on 810 Campbell Avenue Northwest, with a compliance date of May 7, 2015. As of today, there has been no forward progress. This property needs to have a declaration of an "Unsafe Building" with the Willmar City Council to initiate the formal removal process. This matter needs to be turned over to the City Attorney for the removal actions as allowed by Minnesota State Statutes, Section 463.15 to 463.26.



PLANNING AND DEVELOPMENT SERVICES

City Office Building
333 SW 6th Street, Box 755
Willmar, MN 56201
320-235-8311
FAX: 320-235-4917

April 7, 2015

RICHARD GRAF
800 CAMPBELL AVE NW
WILLMAR MN 56201

Dear Mr. Graf:

On April 7, 2015 the City of Willmar Building Inspector conducted an inspection of a structure located at **810 Campbell Ave NW**. The City of Willmar currently enforces the 2015 Minnesota State Building Code. The Code states in Chapter 1300.0180 "Unsafe Buildings and Structures" that:

A building or structure regulated by the code is unsafe, for purposes of this part, if it is structurally unsafe, not provided with adequate egress, a fire hazard, or otherwise dangerous to human life. Building service equipment that is regulated by the code is unsafe, for purposes of this part, if it is a fire, electrical, or health hazard; an unsanitary condition; or otherwise dangerous to human life. Use of a building, structure, or building service equipment constituting a hazard to safety, health, or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage, or abandonment is, for the purposes of this part, an unsafe use. Parapet walls, cornices, spires, towers, tanks, statuary, and other appendages or structural members that are supported by, attached to, or a part of a building and that are in deteriorated condition or otherwise unable to sustain the design loads that are specified in the code are unsafe building appendages. The building official may order any building or portion of a building to be vacated if continued use is dangerous to life, health, or safety of the occupants. The order shall be in writing and state the reasons for the action.

All unsafe buildings, structures, or appendages are public nuisances and must be abated by repair, rehabilitation, demolition, or removal according to Minnesota Statutes, sections 463.15 to 463.2.6.

Your residential structure has been declared an unsafe building because of the following conditions as listed below:

1. Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.
2. Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of a fire or panic.
3. Whenever the stressing of any materials, member or portion thereof, due to all dead and live load, is more than one and one half times the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose or location.
4. **Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location.**
5. **Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.**
6. **Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one half of that specified in the Building Code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the Building Code for such buildings.**
7. Whenever any portion thereof has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.
8. **Whenever the building or structure, or any portion thereof, because of (i) dilapidation, deterioration or decay; (ii) faulty construction; (iii) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.**
9. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.
10. Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one third of the base.

11. Whenever the building or structure, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or members, or 50 percent damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.
- 12. Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become (i) and attractive nuisance to children; (ii) a harbor for vagrants, criminals or immoral persons; or as to (iii) enable persons to resort thereto for the purpose of committing unlawful or immoral acts.**
13. Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this jurisdiction, as specified in the Building Code or Housing Code, or of any law or ordinance of this state or jurisdiction relating to the condition, location or structure of buildings.
14. Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting part, member or portion less than 50 percent, or in any supporting part, member or portion less than 66 percent of the (i) strength, (ii) fire-resisting qualities or characteristics, or (iii) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.
15. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the building official to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.
- 16. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the fire marshal to be a fire hazard.**
17. Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.
- 18. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.**

You are hereby ordered to repair / remove such unsafe structure by not later than Friday, May 8, 2015. Any failure to comply with this order is a misdemeanor violation of Minnesota Statutes, section 16B.69. If the structure is not removed or repaired within the time allotted in this order, the City of Willmar shall begin the removal process as defined by Minnesota State Statutes 463.15 to 463.26. This legal process allows the City, by court order, the authority to abate the public nuisance and provides the City with a means of recovering all associated costs involved with the abatement process. If you have any questions, feel free to call me at (320) 214-5185.

Sincerely,

A handwritten signature in black ink that reads "Randy L. Kardell". The signature is written in a cursive, slightly slanted style.

Randy L. Kardell
Building Official

BUILDING PERMIT IS REQUIRED FOR ALL REMOVAL OR REPAIRS



810 Campbell Ave. NW
4/7/2015 8:35:59 AM
RLK



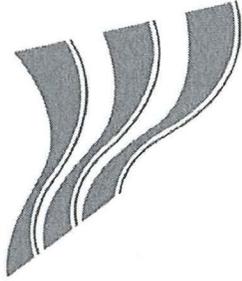
810 Campbell Ave. NW
4/7/2015 7:37:03 AM
RLK



810 Campbell Ave. NW
4/7/2015 8:37:16 AM
RLK



810 Campbell Ave. NW
4/7/2015 8:40:56 AM
RLK



CITY OF WILLMAR, MINNESOTA
REQUEST FOR COMMITTEE ACTION

Agenda Item Number: 6

Meeting Date: May 14, 2015

Attachments: Yes No

CITY COUNCIL ACTION

Date: _____

- Approved Denied
- Amended Tabled
- Other

Originating Department: Planning and Development Services

Agenda Item: Historic 313 on Fourth, LLC

Recommended Action: Receive the petition for improvement and the waiver of assessments. Approve the development agreement contingent upon approval by City's bond counsel.

Background/Summary: City staff has been working with Historic 314 on Fourth, LLC to find a way to assist with bringing a water service into the building they own at 313 SW 4th Street. Due to the reuse of the building for dining establishments, as well as a brewpub, it is necessary to upgrade the water service to increase the domestic sizing and provide for a fire sprinkler system. The best method identified by staff to assist them is to attempt to include the service line from the main to their building as part of a City project, and to assess them for the work. It is anticipated that the signed petition, waiver and development agreement will be made available to City staff prior to the May 14th Committee meeting. Staff is waiting for an opinion from bond counsel regarding the City's ability to include it in the bond sale. If allowable, the City will take quotes on the work, have the project constructed and assess the property over a 10 year period.

Alternatives: To not assist Historic 313 on Fourth, LLC through the improvement process.

Financial Considerations: The City has incurred and will continue to incur costs for staff time and inspections. Engineering fees will be built into the project costs and assessed to the owners.

Preparer: Bruce D. Peterson, AICP
Director of Planning and Development Services

Signature:

Comments:

100% PETITION FOR IMPROVEMENTS

We, the undersigned, being the owners of all of the real property abutting upon the following street, alley, or public way between the point indicated: 4th Street Southwest at 313 4th ST Southwest hereby petition the City Council of Willmar, Minnesota to undertake without a public hearing under Minnesota Statutes, Section 429.031, the following improvements along said street, alley, or public way: sanitary sewer and water services, as needed and to assess the entire cost thereof against our property abutting said improvements based on benefits received without regard to cash valuation.

Signature of Owners*	Address	Date
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____
7. _____	_____	_____
8. _____	_____	_____

**Property owned in joint tenancy should be signed by each owner.*

I hereby certify that I have examined the above petition and appropriate real estate records and find that said petition is in proper form and signed by all the owners of property abutting said improvements.

WITNESS my hand as such Clerk and the seal of said City this _____ day of _____.

CITY CLERK
CITY OF WILLMAR

**WAIVER OF NOTICE OF HEARING AND
CONSENT TO SPECIAL ASSESSMENTS**

The undersigned, Michael Bjornberg, President, Historic 313 on Fourth, LLC being the owner(s) of all that part of parcel number 95-003-5250 described as: SECTION 15, TOWNSHIP 119, RANGE 35, BLOCK 44 WILLMAR, TOWN OF (ORIGINAL) N 1.08FT. OF LOT 9 EXC. E 30 FT.; LOT 10 EXC. E. 30 FT. S ½ OF LOT 11 do hereby consent and agree to an assessment of \$_____dollars against said parcel, which assessment if for sanitary sewer and water services, as needed. The Undersigned acknowledge that they may pay this assessment in cash or in yearly installments in accordance with all other parcels assessed under Project No. _____. The Undersigned acknowledge that they are waiving notice of an improvement hearing and notice of any assessment hearing, both in accordance with Chapter 429 of Minnesota Statutes, and agree to the assessment herein specified. The Undersigned further agree that the City of Willmar may assess the above described parcel in accordance with the terms of the above provisions of this Agreement.

IN WITNESS WHEREOF, the said _____
_____ have executed this Agreement this _____
_____ day of _____, 2015.

AGREEMENT FOR UTILITIES AND PUBLIC IMPROVEMENTS

THIS AGREEMENT, Made and entered into this ____ day of _____, _____, by and between THE CITY OF WILLMAR, a municipal corporation, hereinafter "CITY"; and Historic 313 on Fourth, LLC, hereinafter "DEVELOPER",

WHEREAS, DEVELOPER has made request of CITY for sanitary sewer and water services as needed _____, hereinafter "utilities", in 313 4th Street SW _____, hereinafter "Development" and

WHEREAS, CITY has approved the installation of utilities in the development with certain conditions and requirements, and

WHEREAS, a promise to pay with suitable security is required of DEVELOPER by CITY in order to insure payment of special assessments which will result from said utilities, and

WHEREAS, DEVELOPER has agreed to pay said special assessments and to provide security therefore,

NOW, THEREFORE, It is hereby agreed by and between the parties as follows:

1. CITY agrees to finance said utilities through its municipal bonding authority, and to levy special assessments against said property for the payment of the bonds sold to finance the utilities.

2. Subsequent to the execution of this Agreement and prior to the call for bids to construct the utilities, DEVELOPER agrees to furnish to CITY, cash or other security in an amount equal to 30% of the estimated costs for the construction of said utilities (as determined by CITY); said cash or other security to be retained and utilized by CITY pursuant to this Agreement, or to be returned to DEVELOPER upon satisfaction of all of the terms and conditions of this Agreement as hereinafter provided. The security, other than cash, which is furnished to CITY may be certificates of deposit, negotiable instruments, or a letter of credit, provided that the form and sufficiency thereof shall be subject to the approval of CITY, and CITY may, in its sole discretion, accept or reject the form of security which is offered by DEVELOPER.

3. DEVELOPER shall have the right to cancel this agreement at any time prior to the award of a contract for construction of the utilities; provided, that written notice of such cancellation shall be delivered to CITY at least 72 hours prior to the time scheduled for such contract award and provided further, that DEVELOPER pays to CITY, at the time of delivery of such written notice, an amount which is equal to 0.5% of the estimated costs for the construction of said utilities (as determined by CITY) or \$5,000,

have been certified for collection, CITY shall have a cause of action against DEVELOPER for the remaining balance of all unpaid special assessments on all unimproved lots located in the development.

The parties hereto understand and agree that this Agreement is made as an inducement for installation of utilities in the development by CITY and that the remedy provided herein is in addition to any and all statutory remedies provided for collection of delinquent taxes and special assessments.

8. At such time that the security furnished by the DEVELOPER to the CITY pursuant to this Agreement, exceeds 50% of the unpaid balance of special assessments levied against the unimproved lots, whether certified for collection or not, such excess security shall be returned to the DEVELOPER upon written application of the developer to the CITY. It being the intention of the CITY that at no time shall the security required under this Agreement exceed 50% of the unpaid balance of the special assessment levied against the unimproved lots in the development. It is specifically understood and agreed that "improvement" means construction of a building such as a house, apartment building, office building or commercial structure or other principal building reflecting the intended use of the property. Construction of a garage, storage building or other accessory type structure shall not constitute "improvement" of a lot pursuant to this Agreement.

9. DEVELOPER hereby agrees to indemnify the CITY for any expenses involved in the enforcement of this Agreement, including, but not limited to, reasonable attorneys fees and costs.

10. This Agreement shall be binding upon the parties hereto and their respective successors and assigns. Transfer or conveyance of any or all of the lots in the development shall not relieve DEVELOPER of any of its responsibility under the terms of this Agreement. This Agreement shall be deemed to be separable, and the failure of any of its terms shall not constitute failure of the remaining terms of the Agreement, and the terms and conditions of this Agreement shall be interpreted in accordance with the laws of the State of Minnesota

STATE OF MINNESOTA)

)ss.

COUNTY OF KANDIYOHI)

On this _____ day of _____, 20_____, before me, a notary public within and for Kandiyohi County, personally appeared _____ and _____ to me personally known who by me duly sworn, did say that they are the Developer and Developer's witness ("Developer") named in the foregoing instrument; that said instrument was signed on behalf of said Developer; and said _____ and _____ acknowledged said instrument to be the free act and deed of said DEVELOPER.

Notary Public

STATE OF MINNESOTA)

)ss.

COUNTY OF KANDIYOHI)

On this _____ day of _____, 20_____, before me, a notary public within and for Kandiyohi County, personally appeared _____ and _____ to me personally known who by me duly sworn, did say that they are the Developer and Developer's witness ("Developer") named in the foregoing instrument; that said instrument was signed on behalf of said Developer; and said _____ and _____ acknowledged said instrument to be the free act and deed of said DEVELOPER.

Notary Public