

AGENDA
Municipal Services Committee
November 25, 2013
6:30 P.M. – Council Chambers

- 1. Call to Order & Roll Call**
- 2. Establishment of Quorum**
- 3. New Business**
 - a. Darien VFW Post 2838, 7515 Cass Avenue** – Requests a special use to permit a drinking establishment within the B-2 Community Shopping Center District
 - b. Darien VFW Post 2838** – Requests to waive their Class M liquor license fee, \$1,000 annual fee
 - c. Text Amendment to the Zoning Ordinance: Generators** – Consideration of a text amendment to the Zoning Ordinance to permit generators within interior and corner side yards
 - d. Text Amendment** – Amending Section 3-3-23 of the City Code
 - e. Video Gaming Signage** – Consideration of an amendment to Section 3-3-25 of the City Code to prohibit signage related to video gaming
 - f. Text Amendment** – Discussion regarding a text amendment to the Sign Code and to amend the regulations concerning electronic message board signs
 - g. Resolution** – Authorizing the Mayor to enter into an engineering agreement with Christopher B. Burke Engineering, Ltd. for pavement corings for the proposed 2014 Street Maintenance program in an amount not to exceed \$9,750.00
 - h. Resolution** – To enter into an agreement with Christopher B. Burke Engineering for the 2014 Street Maintenance program in an amount not to exceed \$25,730.00
 - i. Resolution** – To permit limited accessory structure and limited recreational activities on certain City of Darien owned property, located immediately east of the Darien Towne Center – PIN No: 09-29-400-020, Lot 3 of the Darien Towne Center PUD, and referred to as an Undisturbed/Buffer Area
 - j. Discussion** - Budget Comparison to Actual Expenditures
 - k. Minutes** – October 28, 2013 – Municipal Services Committee
- 4. Director's Report**

- a.** Discussion – 2014 Ditch Catalog
 - b.** Discussion – 2014-2016 Road Program Catalogs
- 5. Next scheduled meeting – December 23, 2013**
- 6. Adjournment**

Natural Features: None

Transportation: Property has frontage on Cass Avenue.

Documents Submitted

This report is based on the following information submitted to the Community Development Department by the petitioner:

1. Plat of Survey, 1 sheet, prepared by Genesis Survey, dated May 20, 1994.
2. Floor Plan, 2 sheets, prepared by petitioner.

Planning Overview/ Discussion

The Darien VFW proposes to establish a drinking establishment for their members at the Heritage Plaza shopping center. The petitioner describes the use as follows:

Our business model is to offer bar service to our members, active or reserve members of the military, and their guests. We will be offering bottled beer, hard alcohol and wine. We will have a TV for broadcasting sporting events as well. We will offer our space for rental, but do not anticipate this portion of our business model to be a major part of our operation.

A copy of their business plan is included with the memo.

Parking for the shopping center is based on the square footage of the center, not on individual businesses/organizations located within the center. Staff believes the parking needs for the petitioner will not overlap those of the other businesses within the center, as it is likely the petitioner's activities will occur mostly in the evenings when other businesses are closed. The petitioner should confirm.

The special use request must address the following criteria for approval:

1. That the special use is deemed necessary for the public convenience at the location specified.
2. That the establishment, maintenance, or operation of the special use will not be detrimental to, or endanger the public health, safety, or general welfare.
3. That the special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.
4. That the establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
5. That the exterior architectural design, landscape treatment, and functional plan of any proposed structure will not be a variation with either the exterior architectural

design, landscape treatment, and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district, as to cause a substantial depreciation in the property values within the neighborhood.

6. That adequate utilities, access roads, drainage, and/or necessary facilities have been or are being provided.
7. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
8. That the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified by the City Council pursuant to the recommendations of the Planning and Zoning Commission and the Municipal Services Committee.

Staff Findings/Recommendations

Staff supports the proposed use. The proposed use is consistent with uses typically located in a retail shopping center.

The proposed special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood, the proposed special use provides a public convenience at the location specified.

Therefore, staff recommends the Planning and Zoning Commission make the following recommendation to grant the special use petition:

Based upon the submitted petition and the information presented, the request associated with PZC 2013-09 is in conformance with the standards of the Darien City Code and, therefore, I move the Planning and Zoning Commission approve the petition as presented.

Planning and Zoning Commission Review – November 20, 2013

The Planning and Zoning Commission considered this matter at its meeting on November 20, 2013. The following members were present: Beverly Meyer – Chairperson, Donald Hickok, Ronald Kiefer, John Lind, Louis Mallers, Raymond Mielkus, Kenneth Ritzert, Michael Griffith – Senior Planner and Elizabeth Lahey – Secretary.

Members absent: Pauline Oberland, Susan Vonder Heid.

Michael Griffith, Senior Planner, reviewed the agenda memo. He stated the City Council recently created a liquor license to accommodate the petitioner's needs. He stated staff did not object to the proposed use.

Matt Goodwin, Post Commander, the petitioner, was present. Mr. Goodwin stated the Darien VFW has existed since 1985. He stated the proposed canteen is for VFW members and their guests only, a place for them to meet and socialize. He stated the canteen will not be open to the general public. He stated they are a non-profit organization, the canteen will have a fund raising purpose. He stated the Darien VFW provides scholarships to local students.

He stated they have already had post meetings with about 20 members and there has not been a parking problem. He stated that all but two of the businesses within the shopping center close at 6:00 PM, with their activities beginning around 7:00 PM.

Commissioner Mallers asked how many members they had and if they would seek a video gaming license.

Mr. Goodwin stated they have 140 members mostly in Darien and surrounding communities but a few further away. He stated they do not intend to seek a video gaming license.

Commissioner Hickok asked how they grow membership.

Mr. Goodwin stated having the canteen will help their organization grow because they will have their own place to meet and socialize.

Commissioner Hickok asked if they would serve food and how they will control the people drinking.

Mr. Goodwin stated they will not serve food, that the regulations for food service are cost prohibitive. They will serve beer, wine and alcohol. He stated their servers must be BASSAT trained to handle people who may drink too much. He stated this is their concern also, stating they all know each other, they have all invested into establishing the canteen and they do not want to cause problems for their place.

Commissioner Hickok asked if they were aware of the City's plans for the property, in terms of tearing down the structure or other development options.

Mr. Goodwin stated he is aware of the City's plans for the property, attending City Council meetings, including the City Council's recent goal setting session in which they discussed the redevelopment of the property.

Chairperson Meyer asked if there would be card playing.

Mr. Goodwin stated card games could go on but it would not be organized, it would not involve gambling.

Commissioner Ritzert questioned there not being food and their hours.

Mr. Goodwin said members could bring in food, they could have food catered but food service would not be provided. He stated they have not established hours yet, but it would likely be

Thursday to Sunday. They do not plan to be a 2:00 AM type establishment.

Mr. Griffith noted their liquor license regulates when alcohol can be served.

Felix Miscoti, Meadow Lane, asked how much they have invested in the location given the City's plans for the property and where they meet now.

Mr. Goodwin stated they have been meeting at various locations, including Eisenhower Junior High School. He stated their investment in this location is done knowing the City's plan for the property, most of the improvements they have made are portable. He stated their goal is to have a permanent location someday.

Without further discussion, Commissioner Kiefer made the following motion, seconded by Commissioner Hickok:

Based upon the submitted petition and the information presented, the request associated with PZC 2013-09 is in conformance with the standards of the Darien City Code and, therefore, I move the Planning and Zoning Commission approve the petition as presented.

**Upon a roll call vote, THE MOTION CARRIED by a vote of 7-0.
(Commissioners Oberland and Vonder Heide were absent.)**

Municipal Services Committee – November 25, 2013

Based on the Planning and Zoning Commission's recommendation, staff recommends the Committee make the following recommendation approving the petition as presented:

Based upon the submitted petition and the information presented, the request associated with PZC 2013-09 is in conformance with the standards of the Darien City Code and, therefore, I move the Municipal Services Committee approve the petition as presented.

Decision Mode

The Planning/Zoning Commission considered this item at its meeting on November 20, 2013. The Municipal Services Committee will consider this item at its meeting on November 25, 2013.

BUSINESS PLAN

Darien VFW Post Home Canteen



Darien Memorial Post 2838 Veterans of Foreign Wars

August 16, 2013

1. EXECUTIVE SUMMARY

1.1 Product

The Darien VFW supports and offers a full range of veteran and community service programs inclusive of scholarship programs, grants for military families in need, and serving as a conduit to the Veterans Administration on behalf of service members and veterans seeking assistance.

The Post Home Canteen is an extension of those aims by providing a location for veterans, service members, their families, and the community to come together in fellowship. The net profits of all activities in the Post Home Canteen directly support the wide range of programs the Darien VFW participates in as well as various community giving projects throughout the year.

1.2 Customers

The target audience for the Darien VFW Post Home Canteen is the local veterans, service members and VFW members and their guests that are seeking a relaxed environment to enjoy entertainment and refreshments in a way that will also help give something back to the community. Specifically, we seek to target the working professionals and the blue-collar tradesman in the community that desire an after work or evening refreshment or a place to enjoy a sports event on television with fellow fans; all while wanting to provide support to a veterans organization and the community they live in.

1.3 What Drives Us

The goal of the Darien VFW Post Home Canteen is to grow our business into a premier location for community members to share in camaraderie with veterans and service members. We also want to develop a steady cash flow to increase our support of veterans and community service projects that we participate in every year; ultimately to be the flagship volunteer service organization in the community when it comes to giving back.

2. COMPANY DESCRIPTION

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2.1 Mission Statement

The Darien VFW exists to foster camaraderie among United States veterans of overseas conflicts, and to serve our veterans, the military, and our communities. Our goal is to create a place where community members, veterans, and service members can come together in a veteran friendly atmosphere. We want our customers to enjoy a casual environment where they can enjoy refreshments and entertainment without the feeling of being in an overcrowded, noisy bar. We provide ambiance, atmosphere, entertainment, and service to create the place of choice for customers to enjoy their leisure time. The ultimate aim is to ensure that our net profits are used to further the veterans and community support programs we offer.

2.2 Principal Members

Our organization is a non-profit organization consisting of combat veterans ranging from WWII to the Global War on Terrorism. The Post Home Canteen is managed by a committee elected by members of the post. Matthew Goodwin is the Commander and chief elected executive of the Post. True ownership does not exist due to the non-profit nature of the organization.

Mr. Goodwin holds a Master's Degree from Lewis University and leads a group of members with various professional and technical backgrounds ranging from Chief Financial Officers of major corporations to leaders of major trade organizations.

2.3 Legal Structure

The Post Home Canteen operates as a sub-unit of the Darien Memorial Post 2838 of the Veterans of Foreign Wars of the United States, Inc.; a non-profit corporation registered in the State of Illinois with federal tax exempt status. The committee that manages the Post Home Canteen is elected of the post membership to a rotating three year tenure; that is, each year the three year committee member becomes the two year member, the two year member becomes the one-year member, and the post membership elects a three year member.

3. MARKET RESEARCH

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3.1 Industry

The bar/tavern industry is well established with a limited footprint in the City of Darien. The industry is frequently turning out new ideas and unique spins on old models. Customers are consistently looking for a new place to enjoy refreshments that offers an environment which best suits their personality and individual desires.

The unique quality of the Darien VFW Post Home Canteen is the environment and atmosphere provided as a veteran friendly environment where community members, veterans, and service members can come together in fellowship unlike anywhere else in the City. The current bar/tavern businesses (non-restaurant establishments) have a fixed identity with little growth or impact on our intended market group.

3.2 Customers

Our customers are the community veterans and service members looking for military friendly atmosphere as well as the working professionals and tradespeople looking for a relaxed environment to enjoy refreshments after work in a way that benefits the local community.

As we enter the market, we will specifically focus our targeting on the various non-profit or professional organizations looking for a social atmosphere to meet, as well as the membership of our organization, and the veterans and service members in the local community. With an eye to the future and within our growth projections, we want to carve out a niche as the preferred place for working professionals and blue collar tradespeople to come and enjoy refreshments after work or watch a sporting event in a friendly environment.

3.3 Competitors

The only traditional bar/tavern in Darien is the Dry Dock Inn. Secondary competitors include Q Bar and Grill and Chuck's Southern Comforts Cafe. The Dry Dock Inn is geographically separated and relatively unseen by passing traffic and both Q Bar and Grill and Chuck's Southern Comforts Cafe have alternative business models wherein their bar/tavern business is secondary to billiards/live entertainment and full-service restaurant service, respectively.

3.4 Competitive Advantage

Our Post Home Canteen is located in a highly visible area of Darien, which allows for greater exposure to more customers. Further, we offer an environment where socialization with veterans, service members and community members can flourish without distraction from restaurant patrons/business, loud bands, video games, or table top entertainment. Finally, our organization exists to support a disadvantaged social demographic as well as the local community. Patrons of our business will have the peace of mind knowing that all net proceeds from our business go to help veterans, families and the local community; not into someone's pocket.

3.5 Regulation

Our organization is bound by the by-laws and procedures of the National VFW which designates specific rules for the conduct of a post home canteen by local VFW units. Additionally, we are regulated by the Illinois Liquor Control Act, the liquor ordinances of the City of Darien and any applicable Health Department regulations regarding the beverage service industry.

3.6 Constraints

The future of the building which houses our Post Home is tenuous. Currently owned by the City of Darien, research is being conducted on whether the building will be renovated or rebuilt to suit the City's future economic development of that particular retail corridor. Parking at the location is at a premium with 6 other business occupying units in the strip mall. The anticipated volume of patrons to the Post Home at any given period will not impact the availability of parking for the other tenants nor will their busy periods interfere with our periods of operation. Adequate parking exists within the property to meet the needs of any sized gathering at our facility in addition to normal traffic to the other units as well.

4. PRODUCT/SERVICE LINE

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4.1 Product or Service

Our Post Home Canteen will offer a variety of domestic and import beers as well as a line of liquor for basic mixed drink selections. We pride ourselves on being a simple bar where people go without having to read an entire menu to find a drink they like. We will also provide rental services of our establishment for private parties and gatherings with and without alcohol service.

As a VFW post, we offer a myriad of services to veterans and their family members as well. Having a welcoming, comfortable atmosphere to talk to veterans, service members and their families allows us to open the lines of conversation with these individuals that may need additional help for service connected problems. Unlike other bars/taverns, those who are in need of assistance will have a full network of combat experienced veterans and families to rely on for help.

4.2 Pricing Structure

The Post Home Canteen will maintain a pricing structure that is competitive to other bar/tavern businesses in the area. With a specific clientele at our post home, the concern of major impact to other community businesses is low while affording our post home with sufficient numbers of patrons to be highly profitable. Based on research in the local market, our pricing structure is lower on the same product and our profit structure is based on volume not per unit profits.

5. MARKETING & SALES

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5.1 Growth Strategy

To grow our business, the Darien VFW Post will:

- Continuously offer prices that are below the local market average
- Offer a friendly and inviting atmosphere that entices people to patronize our business
- Participate in local community events and increase our donations and support of local programs (e.g. sponsoring a youth sports team)

5.2 Communication

To communicate with our customers Darien VFW Post 2838 will:

- Engage the full spectrum of social and web media assets to market our Post Home Canteen
- Utilize the local Chamber of Commerce as a conduit to inform the local business community

5.3 Prospects

The products and services of our Post Home Canteen will be offered at retail in our current location. Changes to the location based on future plans the City of Darien has for the site will impact sales, however no projection is being made due to uncertainty surrounding those plans. As interest grows based on product pricing and the atmosphere that we provide, the hours of operation can be expanded to allow more patronage.

6. FINANCIAL PROJECTIONS

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6.1 Profit & Loss

	Year 1 (Partial)	Year 2	Year 3
Sales	\$20,416	\$38,500	\$40,425
Costs/Goods Sold	\$7,467	\$14,080	\$15,488
GROSS PROFIT	\$12,949	\$24,420	\$24,937

OPERATING EXPENSES

Salary (Office & Overhead)	\$0	\$0	\$0
Payroll (taxes, etc.)	\$0	\$0	\$0
Outside Services	\$0	\$0	\$0
Supplies (office & operation)	\$875	\$1,650	\$1,650
Repairs & Maintenance	\$1,167	\$2,500	\$3,000
Advertising	\$0	\$0	\$0
Car, delivery & travel	\$0	\$0	\$0
Accounting & legal	\$500	\$500	\$500
Rent	\$0	\$0	\$0
Telephone	\$0	\$0	\$0
Utilities	\$1,167	\$2,000	\$2,000
Insurance	\$350	\$650	\$700
Taxes (real estate, etc.)	\$0	\$0	\$0
Interest	\$0	\$0	\$0
Depreciation	\$0	\$0	\$0
Other expenses (licenses)	\$3,000	\$3,000	\$3,000
TOTAL EXPENSES	\$7,059	\$10,300	\$10,850

NET PROFIT BEFORE TAXES

Income Taxes	\$3,000	\$3,300	\$3,465
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NET PROFIT AFTER TAX

	\$2,890	\$10,820	\$10,622
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ADJUSTED TO RETAINED

Owner Draw/Dividends	\$0	\$0	\$0
	\$2,890	\$10,820	\$10,622

6.2 Cash Flow (12/1/2013 to 07/01/2016)

	Pre-Startup EST	Year 1 (Partial)	Year 2	Year 3	Total Item EST
Cash on hand	\$24,500	\$10,000	\$15,890	\$30,060	\$80,450
CASH RECEIPTS					

Cash Sales	\$0	\$20,416	\$38,500	\$40,425	\$99,341
Collections from CR Accounts	\$0	\$0	\$0	\$0	\$0
Loan/Cash Injection	\$0	\$0	\$0	\$0	\$0
TOTAL CASH RECEIPTS	\$0	\$20,416	\$38,500	\$40,425	\$99,341
TOTAL CASH AVAILABLE	\$24,500	\$30,416	\$54,390	\$70,485	\$179,791
CASH PAID OUT					
Purchases	\$0	\$7,467	\$14,080	\$15,488	\$37,035
Gross Wages	\$0	\$0	\$0	\$0	\$0
Outside Services	\$0	\$0	\$0	\$0	\$0
Supplies	\$0	\$875	\$1,650	\$1,650	\$4,175
Repairs & Maintenance	\$0	\$1,167	\$2,500	\$3,000	\$6,667
Advertising	\$0	\$0	\$0	\$0	\$0
Car, delivery & travel	\$0	\$0	\$0	\$0	\$0
Accounting & legal	\$0	\$500	\$500	\$500	\$1,500
Rent	\$0	\$0	\$0	\$0	\$0
Telephone	\$0	\$0	\$0	\$0	\$0
Utilities	\$0	\$1,167	\$2,000	\$2,000	\$5,167
Insurance	\$0	\$350	\$600	\$600	\$1,550
Taxes (real estate, etc.)	\$0	\$0	\$0	\$0	\$0
Interest	\$0	\$0	\$0	\$0	\$0
Other expenses	\$0	\$3,000	\$3,000	\$3,000	\$9,000
SUBTOTAL	\$0	\$14,526	\$24,330	\$26,238	\$65,094
Loan principal payment	\$0	\$0	\$0	\$0	\$0
Capital purchase	\$0	\$0	\$0	\$0	\$0
Other startup costs	\$10,000	\$0	\$0	\$0	\$10,000
Reserve and/or Escrow	\$0	\$0	\$0	\$0	\$0
Others withdrawal	\$0	\$0	\$0	\$0	\$0
TOTAL CASH PAID OUT	\$10,000	\$14,526	\$24,330	\$26,238	\$75,094
CASH POSITION	\$14,500	\$15,890	\$30,060	\$44,247	\$104,697

6.3 Financial Assumptions

6.3.1 Assumptions for Profit and Loss Projections

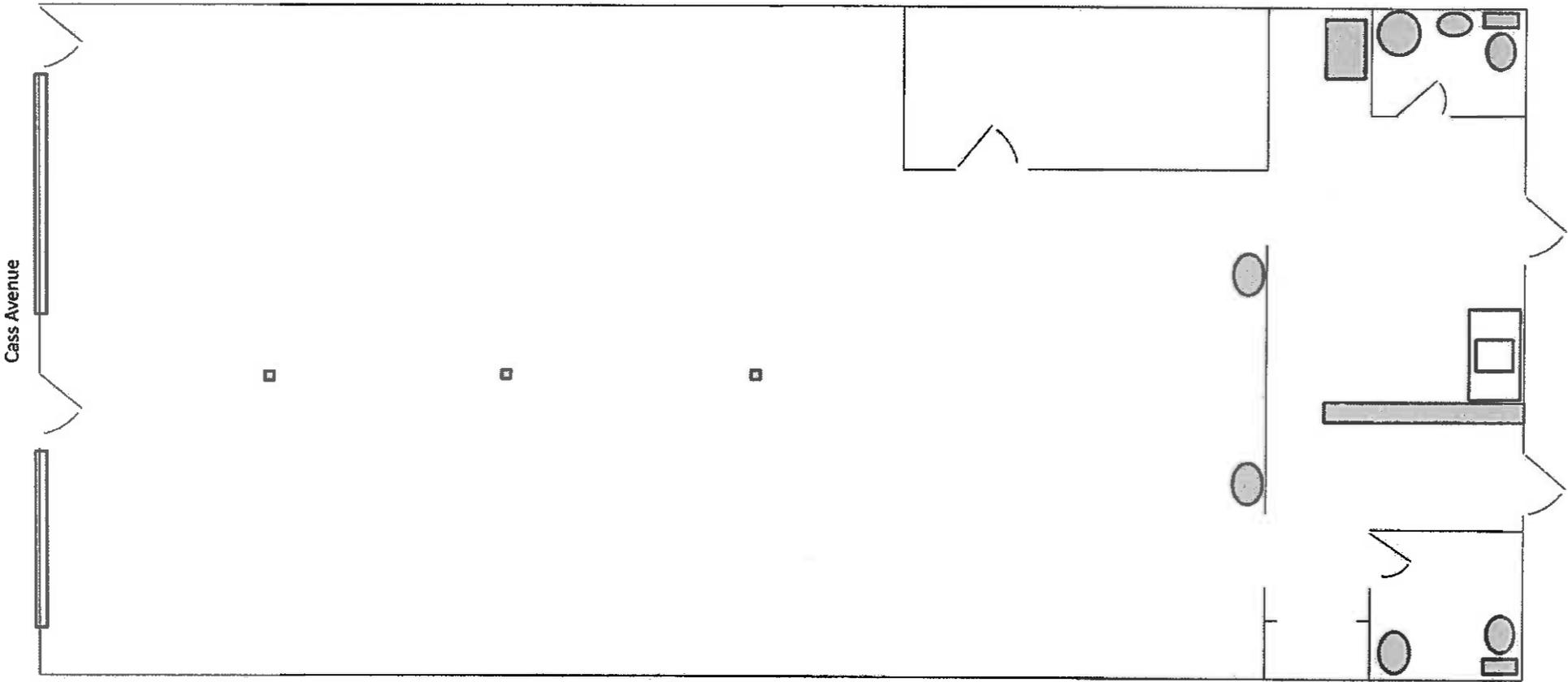
The P&L assumes the Post Home Canteen will operate four days a week or 16 days per month. It assumes an annual increase in utilities and insurance, but no increase in rent or sales tax over the three year period. Additional anticipated costs in repairs and maintenance are projected based on wear and tear of equipment purchased for use in the canteen. Growth from year one to year two is anticipated at 10% with growth from year two to year three estimated at 5%. The projected profit figures are estimates only since there are no existing sales numbers for extrapolation. Furthermore, the profits are based on the volume and price for beer sales and does not include profits realized from sale of hard alcohol or wine, facility rental, or special events hosted at the post home.

6.3.2 Assumptions for Cash Flow Analysis

These figures are based on these same assumptions for the P&L. Additionally, these figures calculate a business model of "cash only" sales; credit card sales could significantly increase the margin.

Darien Memorial VFW Post 2838 Post Home/Canteen

As Built



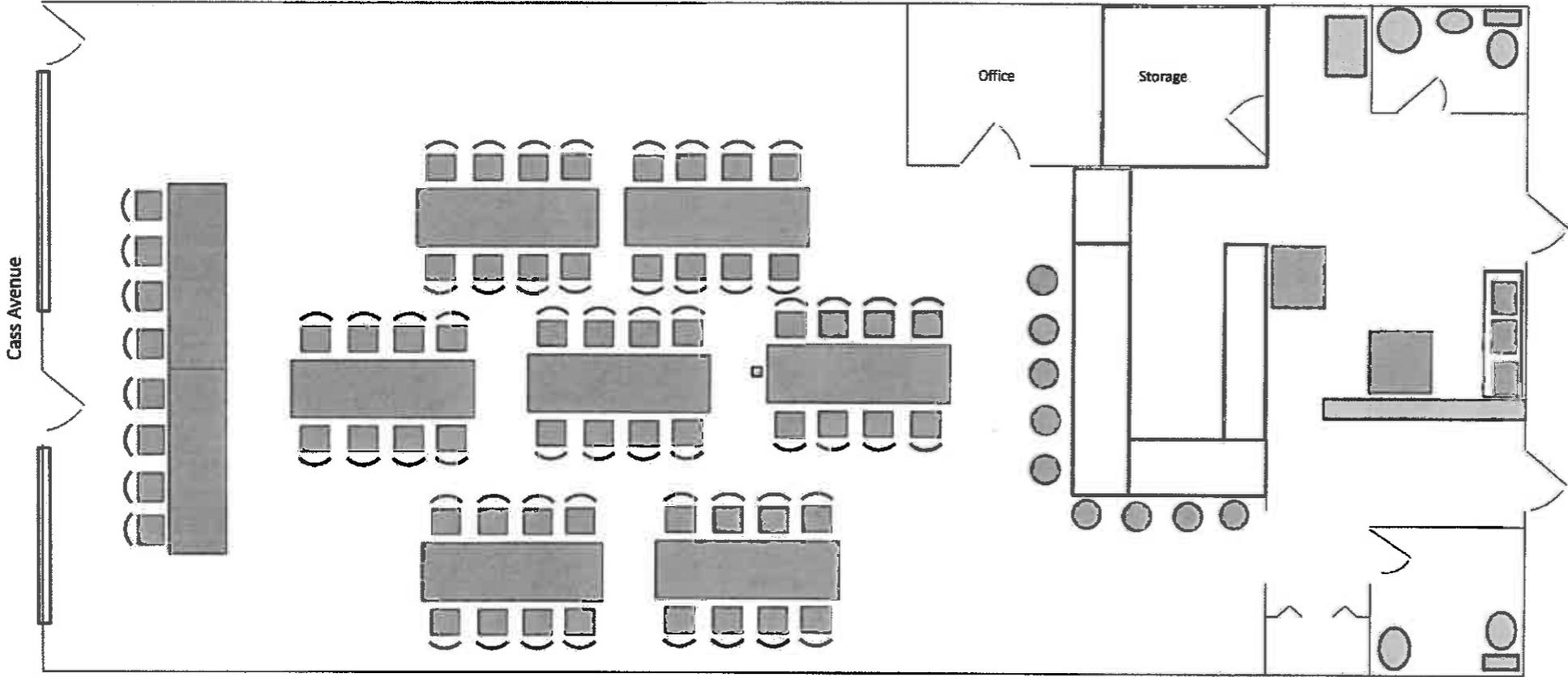
Heritage Plaza
7515 South Cass Avenue Unit J
Darien, IL 60561

Scale 1/4" IN = 1 FT approximately

Prepared by: Martin Schaefer

Darien Memorial VFW Post 2838 Post Home/Canteen

Proposed Layout v1



Heritage Plaza
7515 South Cass Avenue Unit J
Darien, IL 60561

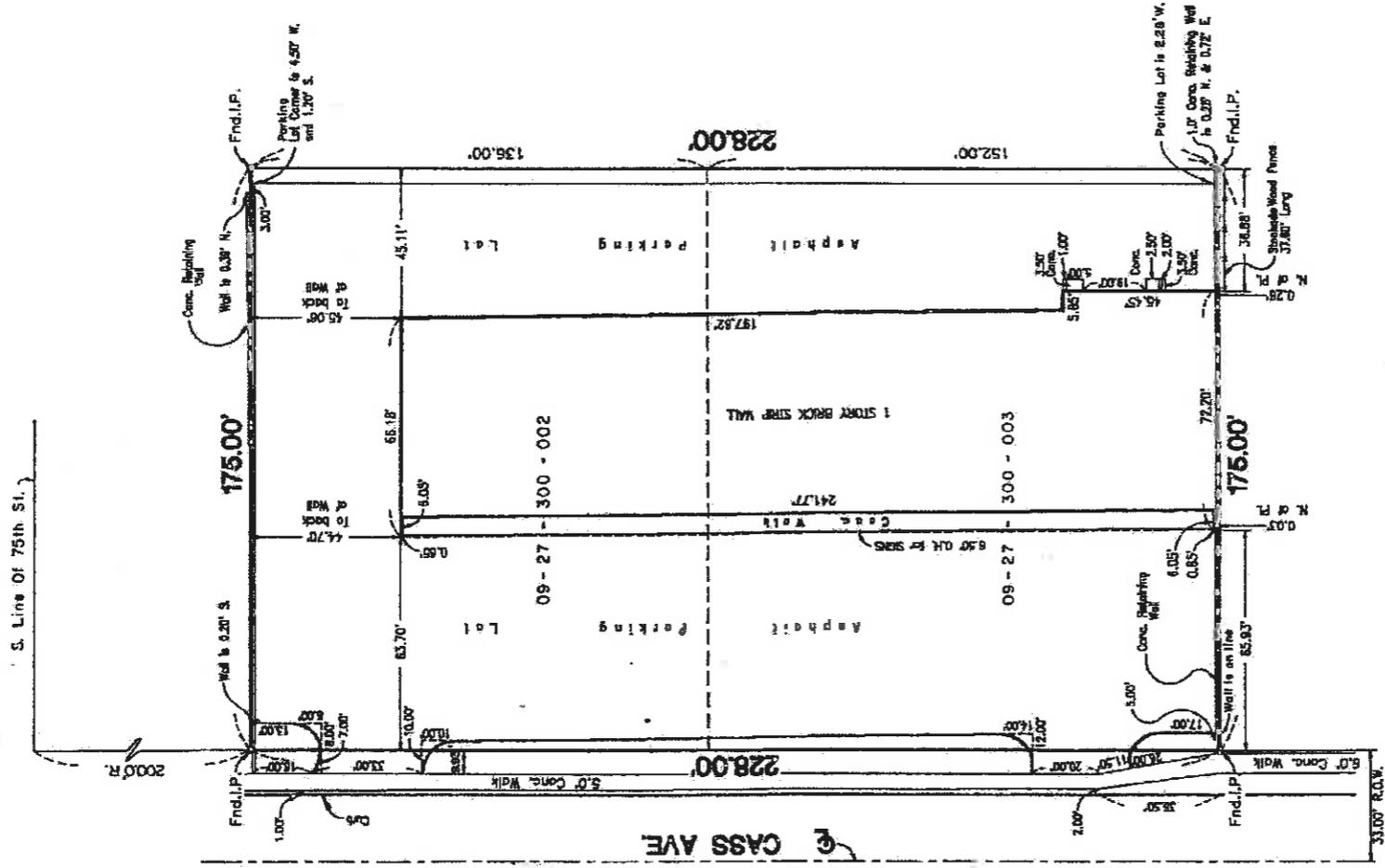
Scale 1/4 IN = 1 FT approximately

Prepared by: Martin Schaefer

BLUES FOR DAZZLE

5

THE WEST 175 FEET OF LOT 4 IN BROOKHAVEN PLAZA BEING A SUBDIVISION OF PART OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.



SCALE 1"=40'

THIS SURVEY IS NOT VALID WITHOUT THE SURVEYOR'S IMPRESSED SEAL. COMPARE THE DESCRIPTION ON THIS PLAT WITH YOUR DEED, ABSTRACT, OR CERTIFICATE OF TITLE; ALSO COMPARE ALL POINTS BEFORE BUILDING BY SAME, AND AT ONCE REPORT ANY DIFFERENCE.

BUILDING LINES ARE SHOWN ONLY WHERE THEY ARE SHOWN ON THE MAPS. REFER TO YOUR DEED OR ABSTRACT, STATE OF ILLINOIS, COUNTY OF DU PAGE.

I, TED G. STALEY, AN ILLINOIS REGISTERED LAND SURVEYOR, HEREBY CERTIFY THAT THE ABOVE DESCRIBED PARCELS WERE SURVEYED UNDER MY DIRECTION AND THAT I AM A PROFESSIONAL AND CORRECT REPRESENTATION THEREOF. ALL 3 WHEN LAND SURVEYOR IN FEET AND DECIMALS THEREOF, CORRECTED TO 60° FAHRENHEIT.



DATED THIS 23RD DAY OF MAY, 1994.

ILLINOIS REGISTERED LAND SURVEYOR NO. 2348

PRECISION BLUE INC., LOMBARD, IL

Grading		
Mortgage	5/18/94	5/20/94 B.P.
Foundation		
Vertical		
Type of Survey	Date	Bk.-Pg.
Common Address : <i>Heritage Square</i>		
Builder :		
Job No. : 94-859		Scale : 1"=40'
223 S. Cass Ave.		Westmont, Illinois 60559
		Phone 708/983-9960

Genesis Survey

AGENDA MEMO
MUNICIPAL SERVICES COMMITTEE
MEETING DATE: November 25, 2013

Issue Statement

Darien VFW Post 2838: Request to waive their Class M liquor license fee, \$1,000 annual fee.

Discussion

The City Council recently created a Class M liquor license to address the specific needs of the Darien VFW's proposed canteen, 7515 Cass Avenue. The ordinance creating the license includes an annual fee of \$1,000.00.

At a recent goal setting session held by the City Council, the Council discussed the future plans for the property at 7515 Cass Avenue, which included a proposed time frame for redevelopment within the next 4-6 months. Due to this shortened time frame, the Darien VFW has requested a waiver of the liquor license fee since they are not sure if they can recoup the costs of the liquor license within the redevelopment time frame.

The fee has not been paid at this time.

Their request is attached to this agenda memo, see the email dated November 14, 2013, from Matt Goodwin, Post Commander, Darien VFW Post 2838.

Staff Findings/Recommendation

Given the shortened time frame for redeveloping the property, staff does not object to the requested liquor license fee waiver.

Therefore, staff recommends the Committee make a recommendation to waive the Class M liquor license fee for the Darien VFW for one year.

Decision Mode

The Municipal Services Committee will consider this matter at its meeting on November 25, 2013.

Michael Griffith

From: Matt Goodwin <mattgoodwin@darienvfw2838.org>
Sent: Thursday, November 14, 2013 8:31 AM
To: Scott Coren; Bryon Vana
Cc: Michael Griffith; Dan Gombac; Marty Schaefer
Subject: VFW Post Future

Good Morning Gentlemen,

The developments from last night's discussion and direction on the Heritage Plaza were a significant shock to us; specifically the timeline for construction. Although we knew the City was seeking to develop the property or sell it to be developed, past conversations lead us to believe this process would not be in full swing until late summer next year. Now, with the building likely being demoed within the next 4-6 months, our future is in jeopardy. Because of lengthy processes for licensing and permitting, we have not been able to get our doors open as early as we would have liked. Our decision must now be whether or not that will happen, at all, in our current location. A key piece of that decision making process is where I'm hoping you can help us.

In order for us to open our doors, and hopefully recoup some of the money we have invested into this project, we will have to pay for the liquor license and continue with the special use permit process; as well as obtaining a state liquor license and county health department permit. The total cost for these processes will set us back almost \$2,000 and several more weeks. We would like to know if the City would consider a waiver of our liquor license fee as well as a refund of the zoning fee that we submitted already. This was not a request we were planning to make, but given the current situation we have chosen to ask. I understand this is a decision for the council to make and would usually go before various committees first, but considering the time constraints we are now under, it is my hope that some variations in the process could be exercised and these items go before the council on Monday's agenda. Further, with the special use permit requirement, after the zoning hearing and pending a 3-0 vote at the Municipal Services Committee, could we be allowed to *conditionally* open for business before the city council approves the permit? This would grant us an additional week of operations.

At this point in time, we have no way of knowing how successful we will be in our operations without any past sales data to formulate that opinion from. This hampers our decision making as to whether we would seek rental space elsewhere in the city, or within the new Heritage Plaza, or abandon the idea all together. The accelerated timeline was a major set back for us and, although we knew our lifespan in the current location was limited, we believed we would have a longer period of time to operate and position ourselves for moving into a different retail space within the city.

Despite our requests here and the current situation, we do greatly appreciate the opportunity the City has given us and I appreciate you taking the time to read and consider this email. As always, if you have any questions or comments, please do not hesitate to email or call me and I will be happy to address them.

"Strive for Excellence"

Sincerely,
Matt Goodwin
Post Commander

Darien Memorial Post 2838
Veterans of Foreign Wars
630-687-1908
www.darienvfw2838.org

AGENDA MEMO
MUNICIPAL SERVICES COMMITTEE
MEETING DATE: November 25, 2013

Issue Statement

PZC 2013-10: **Text Amendment to the Zoning Ordinance: Generators:**
Consideration of a text amendment to the Zoning Ordinance to permit generators within interior and corner side yards.

Applicable Regulations: Zoning Ordinance, Section 5A-5-7-3(C): Permitted Obstructions in Required Yards, In Required Rear Yards.

General Information

Petitioner: City of Darien
1702 Plainfield Road
Darien, IL 60561

Planning Overview/Discussion

The Zoning Ordinance regulates where generators are permitted to be located on residential properties. Currently, generators are not permitted within the required side yard setbacks, 10 feet from the side lot lines, generators may be located within the required rear yard setback so long as they do not encroach more than 5 feet. Since the majority of homes in Darien do not have side yards greater than 10 feet, generators are effectively restricted to the rear yard. Below is the Section of the Ordinance which applies, bolded:

5A-5-7-3: PERMITTED OBSTRUCTIONS IN REQUIRED YARDS:

The following shall not be considered to be obstructions when located in the required yards specified:

(A) In All Required Yards:

1. **Overhanging eaves and gutters, awnings, canopies, balconies, chimneys, bay windows, sills, and cornices projecting three feet (3') or less into the yard;**
2. **Steps and sidewalks which are necessary for access to a permitted building or for access to a lot from a street provided they are not located within an easement and are set back a minimum of five feet (5') from any side or rear lot line;**

3. Driveways as regulated in the applicable zoning district regulations and in Section 5A-11-3 of this Title.
 4. Flagpoles, fountains, sculptures, plant boxes, and other similar ornamental objects;
 5. Fences as regulated in Section 5A-5-8 of this Chapter and in the applicable zoning district regulations; and
 6. Open, accessory parking spaces and parking facilities as permitted under Chapter 11 of this Title, and in the applicable zoning district regulations.
- (B) In Required Front Yards: Open, unenclosed patios/terraces, which do not have a roof, awning, or canopy, and which are not over four feet (4') above the grade of the adjoining ground, projecting five feet (5') or less into the required yard.
- (C) **In Required Rear Yards:**
1. Private swimming pools in accordance with the provisions of Sections 5A-5-8 and 5A-5-9 of this Chapter and of other applicable ordinances of the City.
 2. Open, unenclosed patio/terraces and decks which do not have a roof, awning or canopy and which are not over four feet (4') above the grade of the adjoining ground may extend not more than ten feet (10') into the required yard.
 3. Accessory buildings, structures, and uses as permitted in Section 5A-5-9 of this Chapter;
 4. **Air-conditioning and generator units projecting five feet (5') or less into the required rear yard.**
 5. Arbors and trellises.
- (D) In Required Side Yards: Arbors and trellises. (Ord. 0-03-00, 4-3-2000)

Also, generators cannot exceed 79 decibels at the lot line. This sound restriction has generally been what regulates how far from a side lot line a generator must be located within a rear yard.

Recently, staff has asked to consider amending the code to permit generators within side yards. Staff looked at other municipalities to compare regulations.

Village of Woodridge:

Generators may be located in required interior side yards but must be at least 3 feet from side lot line, cannot be located within easements, generators are required to be screened.

Village of Burr Ridge:

Generators may be located in required interior side yards as long as it is within 5 feet of the exterior wall of the principal building, generators are required to be screened.

Village of Lemont:

Generators may be located in required interior side yards but must be at least 4 feet from lot line.

For regulating maximum noise levels, the communities above do not have specific standards for generators but use a table within the performance standards of their zoning ordinances that regulate noise from any source. The standards they use are comparable to those within the Darien Zoning Ordinance.

Furthermore, the 2012 International Mechanical Code, which the City has adopted, requires a 10-foot separation between a window (intake opening) and the exhaust from the generator. Staff consulted with Christopher B Burke Engineering (CBBEL), Mechanical Engineering Division, requesting feedback as it relates to generators. CBBEL concurs that the placement of generators would have a minimal impact to adjacent neighbors. See attached e-mail correspondence from CBBEL.

Therefore, staff offers the following:

Permit generators within an interior side or rear yard as long as they are located at least 5 feet from the side or rear lot line, maintain a minimum of 10 feet from any window or door opening and they are screened with landscaping or fence type structure.

The table listing maximum sound levels should be amended as follows:

5A-12-4-1: NOISE:

At no point on the property line on which the operation is located shall the sound intensity level of any individual operation or plant (other than the operation of motor vehicles or other transportation vehicles) exceed the decibel levels in the designated octave bands as hereinafter shown in the following table:

MAXIMUM PERMITTED SOUND LEVEL (DECIBELS)

<u>Octave Bank (Frequency) Cycles Per Sound</u>	<u>Industrial Or Commercial Adjoining Nonresidential District</u>	<u>Industrial Or, Commercial Or Residence Adjoining Residence Properties</u>
0 to 75	79	72
75 to 150	74	67
150 to 300	66	59

300 to 600	59	52
600 to 1,200	53	46
1,200 to 2,400	47	42
2,400 to 4,800	41	38
Above 4,800	39	38

Noise testing is to be accomplished at the property line of the noise emitting source, with an octave band analyzer operated by an independently employed person, trained, and skilled in the operation of this equipment.

Staff Findings/Recommendation

Staff recommends that generators may be placed within an interior side or rear yard so long as they are located at least 5 feet from the side or rear lot line, maintain a minimum of 10 feet from any window or door opening and they are screened with landscaping or fence type structure, and that the Table found in Section 5A-12-1: Noise, be amended as noted above.

Planning and Zoning Commission Review – November 20, 2013

The Planning and Zoning Commission considered this matter at its meeting on November 20, 2013. The following members were present: Beverly Meyer – Chairperson, Donald Hickok, Ronald Kiefer, John Lind, Louis Mallers, Raymond Mielkus, Kenneth Ritzert, Michael Griffith – Senior Planner and Elizabeth Lahey – Secretary.

Members absent: Pauline Oberland, Susan Vonder Heid.

Michael Griffith, Senior Planner, reviewed the agenda memo. Mr. Griffith stated that currently generators are restricted to the rear yards. He stated residents obtaining permits to install emergency back-up generators on their property is a fairly common activity.

Commissioner Hickok asked why change the code.

Mr. Griffith stated that residents have said it costs more to place the generator in the rear yard over the side yard since they have to extend utility lines to the rear hard to hook up the generator.

Commissioner Mallers noted that other communities allow generators within side yards.

Commissioner Hickok stated he would be fine if the generators were restricted to within 5 feet of the exterior wall of the home.

Felix Miscoti, Meadow Lane, stated that when we sought a permit to install a generator a while ago he was told it had to be in the rear yard, which required extending gas and electric lines from the side of his home to the back of his home which added thousands of dollars to the project cost.

Mike Minardi, stated it was his request to the City which prompted consideration of a code change. He stated they have spent time and money landscaping the back of their home, their air conditioner is located on the side of the home, and it was their contractor who said the logical place to set the generator was next to the air conditioner. He said in some cases air conditioners are louder than the newer generators and his portable gas generator is louder than the one he plans to install.

Commissioner Lind stated allowing residents to place a generator on the side provides options.

Without further discussion, Commissioner Hickok made a motion to recommend approval of the text amendment, with the following change, seconded by Commissioner Mallers:

Permit generators within an interior side or rear yard as long as they are located ~~at least 5 feet from the side or rear lot line~~ *within 5 feet of the exterior wall of the principal structure*, maintain a minimum of 10 feet from any window or door opening and they are screened with landscaping or fence type structure, and that the Table found in Section 5A-12-1: Noise, be amended as noted above.

**Upon a roll call vote, THE MOTION CARRIED by a vote of 7-0.
(Commissioners Oberland and Vonder Heide were absent.)**

Municipal Services Committee – November 25, 2013

Based on the Planning and Zoning Commission's recommendation, staff recommends the Committee make the following recommendation approving the following text amendment:

Permit generators within an interior side or rear yard as long as they are located ~~at least 5 feet from the side or rear lot line~~ *within 5 feet of the exterior wall of the principal structure*, maintain a minimum of 10 feet from any window or door opening and they are screened with landscaping or fence type structure, and that the Table found in Section 5A-12-1: Noise, be amended as noted above, page 3 of this memo.

If approved by the Committee, staff will format the text amendment into an ordinance for the City Council's consideration.

Decision Mode

The Planning/Zoning Commission considered this matter at its meeting on November 20, 2013. The Municipal Services Committee will consider this matter at its meeting on November 25, 2013.

Michael Griffith

From: Dan Gombac
Sent: Thursday, November 14, 2013 1:49 PM
To: Michael Griffith
Subject: FW: Update on variance discussion

Include the below e-mail as back up to the generator agenda memo.

Daniel Gombac
Director of Municipal Services
630-353-8106

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From: John Caruso [mailto:jcaruso@cbbel.com]
Sent: Thursday, November 14, 2013 10:36 AM
To: Dan Gombac
Subject: RE: Update on variance discussion

Yes, I concur .

John P. Caruso, PE
Head, Mechanical/Electrical Department
Christopher B. Burke Engineering, Ltd.
9575 W. Higgins Road, Suite 600 Rosemont, IL 60018
Phone: (847) 823-0500 Fax: (847) 939-5214
E-Mail: jcaruso@cbbel.com

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From: Dan Gombac [mailto:dgombac@darienil.gov]
Sent: Wednesday, November 13, 2013 2:13 PM
To: jcaruso@cbbel.com
Subject: RE: Update on variance discussion

John:

Upon review of your summary, would you concur that a generator placed in a side yard would have minimal or no-effect on an adjacent property owner, provided that the 10 foot exhaust separation is maintained?

Daniel Gombac
Director of Municipal Services
630-353-8106

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From: John Caruso [mailto:jcaruso@cbbel.com]
Sent: Friday, October 25, 2013 11:58 AM
To: Dan Gombac
Subject: RE: Update on variance discussion

Dan

Attached are two relevant excerpts from the International Mechanical Code dealing with intake openings and exhaust outlets.

Typically, a 10 ft separation is required between exhaust and intake openings. Intake opening being a residential window, and the exhaust being the exhaust from the genset.

As for the noise emanating from generators, they should be required to meet the Village noise ordinance.

However one could argue that certain lawn mowers may not meet the Village noise ordinance. A standby engine generator is exercised typically one hour per week, and then operates only during power outages.

The exhaust from typical natural gas engine generators is typically cleaner burning than the diesel counterpart engine or the gasoline engine producing less particulate matter and less combustion byproducts.

John P. Caruso, PE
Head, Mechanical/Electrical Department
Christopher B. Burke Engineering, Ltd.
9575 W. Higgins Road, Suite 600 Rosemont, IL 60018
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E-Mail: jcaruso@cbbel.com

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From: Dan Gombac [mailto:dgombac@darienil.gov]
Sent: Wednesday, October 23, 2013 4:02 PM
To: jcaruso@cbbel.com
Subject: FW: Update on variance discussion

Please feel free to echo off my comments

Daniel Gombac
Director of Municipal Services

630-353-8106

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From: Dan Gombac

Sent: Wednesday, October 23, 2013 12:04 PM

To: 'Michael Minardi'; Joe Sheldon

Cc: Kathy Minardi; Kathy Weaver (Kathy_Weaver@AJG.com); Bryon Vana; Mary Wintermute; Michael Griffith; Joe Marchese; Scott Coren

Subject: RE: Update on variance discussion

Hi Mike:

After my visit with you yesterday, I began researching the issue of generators being placed within a side yard last night. As you are aware generators are not allowed in sideyards per the City Zoning Regulations. The regulations for generators were implemented many years ago and were put in place due to sound levels as well as fumes. Upon review of generators today, particularly natural gas generators, they are clean burning and may be compared to a high efficiency furnace vent that discharges fumes to the outside within sideyards. The issue of sound levels of certain generators may be compared to an air conditioner.

The emergency generators manufactured today have made major technological advancements in comparison to earlier generators. The Staff has reached out to our engineer, Christopher Burke Engineering to review any potential issue regarding fumes and decibel levels in regards to generators being placed within sideyards. The argument may be further made that a gasoline generator produces more harmful fumes and greater sounds than a natural gas generator.

Upon further conversation with Mayor Weaver, the staff will begin reviewing the placement of generators within a sideyard. Upon our review the issue will require a public hearing-to be completed by 2nd week of Nov, followed by Committee review-Nov 25 and City Council action by Dec 2.

Mike G-Please conduct a survey of adjacent towns up to ten regarding placement of generators and when adopted.

Daniel Gombac

Director of Municipal Services

630-353-8106

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From: Michael Minardi [<mailto:michael.minardi@base22.com>]

Sent: Tuesday, October 22, 2013 10:31 PM

To: Joe Sheldon

Cc: Dan Gombac; Kathy Minardi

Subject: Update on variance discussion

Hi Joe,

I understand you are stopping by on Friday. I wanted to let you know that Dan Gombac (on copy) stopped by today and he runs Municipal Services for our City and he is just a great guy. He indicated it is unlikely we will get a variance for our generator on the side of the house.

Kathy was out when he came by and I don't think she is very excited by our other option, which would be near our tool shed in the back, but when you are here, maybe you can take a look. I am also concerned about how much digging would be required or how you would get under our pavers assuming you need to connect the generator to that box you have to put on the outside wall of the house.

You can take a look when you stop by.

Thanks Joe.

--

Sincerely,

Mike Minardi
CEO



email: mike@base22.com

phone: 1.630.768.8616

skype: michael.minardi1

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AGENDA MEMO
MUNICIPAL SERVICES COMMITTEE
MEETING DATE: November 25, 2013

Issue Statement

Section 3-3-23: Amending Section 3-3-23 of the City Code.

Overview/Discussion

Recently, when the City Council amended the City Code creating the Class M Liquor License, a subsequent section of the City Code was required to be amended related to adding a liquor license category. Below is the section that needs to be amended.

3-3-23: COPY OF ORDINANCE TO BE PROVIDED LICENSEES: A licensee to whom a class A, B, C, D, E, F, G, H, I, ~~and~~ K, *and M* license is issued hereunder shall annually be provided with a copy of this chapter, and shall sign a certificate stating that said copy has been provided and that the licensee agrees to comply with all provisions hereof as a condition of said license.

The above section of the City Code applies to licenses issued annually, it does not apply to a temporary license, Class J Liquor License, issued for specified dates. The Class L Liquor License was eliminated in 2012, Ordinance O-37-12.

Staff Findings/Recommendations

Staff recommends the Committee make a recommendation approving the proposed amendment.

Decision Mode

The Municipal Services Committee will consider this matter at its meeting on November 25, 2013.

AGENDA MEMO
MUNICIPAL SERVICES COMMITTEE
MEETING DATE: November 25, 2013

ISSUE STATEMENT

Video gaming signage: Consideration of an amendment to Section 3-3-25 of the City Code to prohibit signage related to video gaming.

PLANNING OVERVIEW/DISCUSSION

In March of 2013, the City Council adopted an ordinance permitting video gaming pursuant to the Illinois Video Gaming Act.

At a recent City Council goal setting session, there was discussion on whether or not to prohibit signage advertising video gaming operations. The City Council directed staff to propose an ordinance prohibiting said signage, including banners, signs in windows, wall signs and free-standing permanent signs.

Staff offers the following amendment to Section 3-3-25 of the City Code:

3-3-25: VIDEO GAMING ALLOWED; FEE:

(A) Video gaming is allowed in accordance with the Illinois video gaming act.

(B) An annual fee of twenty five dollars (\$25.00) is imposed for the operation of each video gaming terminal in the city of Darien. (Ord. 0-09-13, 3-4-2013)

(C) All signage which advertises or displays gaming language, images or messages is prohibited, regardless of sign type or whether it is of a temporary or permanent nature.

STAFF FINDINGS/RECOMMENDATION

Staff requests the Committee consider the following in respect to the Video Gaming Ordinance:

1. Prohibit all types of signs which advertise or display gaming language, images or messages, whether they are permanent signs or temporary signs; OR,
2. Allow certain types of signs to display gaming language, images, graphics or messages, such as but not limited to: temporary banners, pendants, sandwich boards, banners in windows, permanent wall signage, permanent free-standing signs.

DECISION MODE

The Municipal Services Committee will consider this matter at its meeting on November 25, 2013.

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AGENDA MEMO
MUNICIPAL SERVICES COMMITTEE
MEETING DATE: November 25, 2013

ISSUE STATEMENT

Electronic Message Board Signs: Discussion regarding a text amendment to the Sign Code and to amend the regulations concerning electronic message board signs.

Applicable Regulations: Sign Code, Section 4-3-7(A)(11): General Sign Regulations.
Sign Code, Section 4-3-7(B): Signs Specifically Prohibited.
Sign Code, Section 4-3-7(C)(4): Illumination of Signs.

PLANNING OVERVIEW/DISCUSSION

First, the following definitions are provided from the Sign Code:

Sign, Changeable Copy: A sign on which message copy can be changed through the use of attachable letters and numerals which are changed manually or automatically on a lampbank or through mechanical means, e.g., “electrical” or “electronic time and temperature units” and/or “message centers”.

Sign, Flashing: Any directly or indirectly illuminated sign which exhibits changing natural or artificial light or color effects by any means whatsoever. Time and temperature signs are excluded from the category of flashing signs.

The following are sections of the Sign Code which apply to electronic message board signs.

Per Section 4-3-7(A)(11):

Except as herein provided, when a sign is not specifically listed as permitted in any specific zoning district, such sign shall be expressly prohibited.

Per Section 4-3-7(B) of the Sign Code:

All signs not expressly permitted under this Sign Code are prohibited within the City.

The Sign Code permits manual changeable copy signs specifically, electronic changeable copy signs, or electronic message boards as they are commonly known as, are not specifically permitted.

Per Section 4-3-10(B)(3) of the Sign Code, concerning free-standing signs within the business zoning districts:

Not more than one ground sign per street frontage is permitted. *Manual changeable copy signs* not exceeding 40% of the sign area may be included on a ground sign, provided that all individual letters shall be uniform in height, style, and color, and provided the message is enclosed in a locking case. [Emphasis added]

Per Section 4-3-7(C)(4) of the Sign Code:

No sign shall have blinking, flashing or fluttering lights or other illuminating device which has a changing light intensity, brightness or color. Beacon lights are prohibited.

Staff surveyed several communities and offers the following:

Municipality

Sign Regulations

Village of Addison:

Electronic message center signs are permitted only in the business zoning districts and on property located on a major street, subject to conditions:

1. Permitted only when all other signs are in compliance.
2. The surface area of the message center counts toward overall surface area of the freestanding sign. Electronic message center signs are not permitted as a wall sign or part of a wall sign.
3. The sign shall message shall be held for at least 2 seconds, shall be limited to changeable messages and not chasing messages.
4. The electronic message center shall be equipped with automatic dimming devices, sun screens and no external illumination.
5. The changeable copy portion of the sign cannot exceed 40% of the total sign area.
6. Messages may dissolve or go blank and may either reappear in full display or solidify. No other special effects are allowed. Crawling messages are not allowed.
7. Graphics shall be allowed as fixed displays. Moving graphics are not allowed.
8. Background colors or displays shall be allowed to change only when the message changes.

Village of Downers Grove: Electronic changeable copy/message board signs are prohibited. LED and flashing signs are prohibited.

Village of Lombard: Sign, Changeable Copy (Automatic): A sign on which the copy changes automatically on an electronic message reader or through mechanical means.

Sign, Changeable Copy (Manual): A sign on which the copy is changed manually in the field; e.g., reader-boards with changeable letters. Flashing signs specifically prohibited.

Automatic Changeable Copy signs are allowable only in the commercial and business zoning districts on property with a minimum of 500 lineal front footage, subject to conditions:

1. The sign cannot change more frequently than 2-second intervals, shall be limited to changeable messages and not chasing messages.
2. Animation, flashing, scrolling or blinking characters are prohibited.
3. The message display cannot exceed 9 square feet.
4. The message reader board is to be equipped with photosensitive equipment which automatically adjusts the brightness and contrast of the sign in direct relation to the ambient outdoor illumination.

Village of Westmont: Electronic message boards are permitted, subject to conditions:

1. These types of signs are permitted in the commercial, business, office research and manufacturing zoning districts.
2. The electronic message display cannot exceed 40% of the signs total permitted sign face area.
3. The electronic message board must be accessory to the primary sign for the premises. The electronic message board sign must be mounted or located below the primary business/location identification area.
4. Flashing, animation, illusion of movement or similar displays are not permitted.
5. Alpha-numeric characters only are allowed, no graphics.
6. Messages must instantaneously change, no transitions.
7. Messages cannot change more than once every 30 seconds.
8. Text and numeral displays shall appear in one color per screen with a solid black background.

9. The sign must include dimmer controls which can be adjusted to meet village light emission standards, proof of such controls must be presented at the time of permit application.
-

Village of Woodridge: Flashing, blinking, pulsating or fluttering lights are prohibited. Beacon lights are not permitted.

Electronic message board signs are permitted as follows:

1. Nonresidential uses within residential zoning districts:
 - a. In lieu of the permitted ground sign, a single electronic message board, not exceeding 60 square feet, is permitted, subject to:
 - i. On a lot at least 6.5 acres with a minimum street frontage of 380 feet.
 - ii. Electronic message board shall be a monument type sign located at least 100 feet from a residential use, located along an arterial or collector street.
 - iii. Electronic message board cannot exceed 50% of the sign face area.
 - iv. The electronic message or image shall be displayed for at least 5 seconds.
 - b. Golf Course Signs: In lieu of the permitted ground sign, a single electronic message board may be permitted for golf courses, provided:
 - i. Electronic components are used solely for the purpose of advertising the goods, services, promotions and events of the golf course.
 - ii. The electronic component does not exceed 50% of the permitted sign face area.
 - iii. All applicable height and sign face area restrictions apply.
 - iv. The electronic message or image shall be displayed for at least 5 seconds.
2. All nonresidential zoning districts:
 - a. Golf Course Signs: In lieu of the permitted ground sign, a single electronic message board may be permitted for golf courses, provided:
 - i. Electronic components are used solely for the purpose of advertising the goods, services, promotions and events of the golf course.

- ii. The electronic component does not exceed 50% of the permitted sign face area.
 - iii. All applicable height and sign face area restrictions apply.
 - iv. The electronic message or image shall be displayed for at least 5 seconds.
 - b. Electronic message board signs may be incorporated into a shopping center sign, provided:
 - i. The sign is located at least 100 feet from adjacent residential uses.
 - ii. One electronic message board is permitted per shopping center.
 - iii. The electronic message board portion cannot exceed 50% of the permitted total sign face area.
 - iv. The electronic message board must be a monument type sign.
 - v. The electronic message or image shall be displayed for at least 5 seconds.
 - c. Movie Theater Building Signs: Movie theaters may be permitted to incorporate electronic message boards into a permitted ground sign, provided:
 - i. Electronic components are used solely for the purpose of advertising the goods, services, promotions and events of the theater.
 - ii. The electronic component cannot exceed 50% of the permitted sign face area.
 - iii. All applicable height and sign face area restrictions apply.
 - iv. The electronic message or image shall be displayed for at least 5 seconds.
-

STAFF FINDINGS/RECOMMENDATION

The Staff is requesting discussion and feedback regarding a text amendment to the Sign Code related to electronic message board signs.

DECISION MODE

The Municipal Services Committee will consider this matter at its meeting on November 25, 2013.

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AGENDA MEMO
Municipal Services Committee
November 25, 2013

Issue Statement

Approval of a resolution authorizing the Mayor to enter into an engineering agreement with Christopher B. Burke Engineering for pavement corings for the proposed 2014 Street Maintenance Program, in an amount not to exceed \$9,750.00.

Background/History

Attached, please find an engineering agreement with Christopher B. Burke Engineering for a pavement study consisting of 51 pavement corings for the tentatively proposed 2014 Street Maintenance Program. The following roads have been slated for the 2014 Street Maintenance Program:

PROPOSED 2014 ROAD PROGRAM					
Street Name	Rating	Subdivision	Limit	Most Recent Rehab	Road Length
Holly Ave	65	Marion Hills North	Brookbank Rd to Crest Rd	2002	1660
Brookbank Rd	63	Marion Hills North	69th St to Holly Ave	1999	1150
Sawyer Rd	65	Farmingdale Terr S	79 th St to Portsmouth Dr	1998	2700
Farmingdale Dr	65	Farmingdale Terr S	Glen Ln to Portsmouth Dr	2002	1840
Carrol Ln	65	Farmingdale Unit 5-9	Gigi Ln to Summit Rd	1998	200
Wirth Ln	65	Downers-Fairview	Gigi Ln to 71 st St	2000	1460
Gigi Ln	66	Downers-Fairview	Fairview Ave – 75 th St	2001	2300
Brittany Ct	65	Norman Court	Norman Dr to limit	1992	530
Coventry Ct	65	Norman Court	Norman Dr to limit	1992	640
Canterbury Ct	65	Norman Court	Brittany Ct to limit	1992	395
Brunswick Rd	65	Farmingdale Ridge	Manning Rd to Green Valley Rd	1999	765
Brompton Dr	65	Farmingdale Ridge	Dartmouth Ln to Green Valley	1999	585
Dartmouth Ln	65	Farmingdale Ridge	Brompton Dr to Brunswick Rd	1999	325
Carlton Rd	65	Farmingdale Ridge	Manning Rd to Green Valley Rd	1999	845
Aylesbury Ln	69	Farmingdale Ridge	Cambridge Rd to Wakefield Dr	2001	335
Cambridge Rd	65	Farmingdale Ridge	Aylesbury Ln to 75 th St	1998	1090

Street Name	Rating	Subdivision	Limit	Most Recent Rehab	Road Length
Dixon Ct	67	Farmingdale Village	Drover Ln to Limit	1998	425
Gilbert Ct	66	Farmingdale Village	Beller Dr to limit	2000	330
Meadow Ln	65	Farmingdale Village	Beller Dr to 87 th St	1999	1250
83 rd Ct	60	Brookridge	Lemont Rd to Book Ridge	Annex	260
Knottingham Cir	65	Devonshire	Plainfield Rd to Plainfield Rd	1999	1800
Bentley Ave	69	Hinsbrook	69 th St to 71 st St	2001	1360
Cherokee Dr	69	Hinsbrook	Seminole Dr to Darien Ln	2000	1300
LINEAL FEET					23545
MILES					4.5

The proposed Engineering Agreement includes the following scope of services:

Task 1 – Geotechnical Investigation: A Geotechnical Investigation will be performed by CBBEL’s sub consultant, Testing Services Corporation (TSC). The Geotechnical Investigation will include soil borings (51 cores) and pavement cores at a frequency to determine the existing structure of the pavement and condition of subgrade materials. Due to concern of the depth of existing pavement thickness staff recommends TSC completes the geotechnical report to verify the existing thickness of the bituminous pavement. This will allow staff and CBBEL to verify that the correct improvement is proposed for the roadways. This assumes no flagman are required to take the cores.

Total Engineering Cost for Task 1 - \$9,000.00

Task 2 – Evaluation of Geotechnical Report: CBBEL and City staff will evaluate the geotechnical report to determine the resurfacing treatment for each street and the final list of streets to be included in the 2014 Road Program.

Total Engineering Cost for Task 2 - \$750.00

Below, please find a summary cost for the abovementioned items:

Cost for Task 1-	\$9,000.00
Cost for Task 2-	<u>750.00</u>
Total Cost	\$9,750.00

Funding for the Engineering Services would be expended from the following line item of the FY 14 Budget:

Pavement Coring Agreement

November 25, 2013

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ACCOUNT NUMBER	ACCOUNT DESCRIPTION	FY 13/14 BUDGET	PROPOSED EXPENDITURE	PROPOSED BALANCE
25-35-4325	ROAD CORE SPECS/TESTING SERVICES	\$14,000.00	\$ 9,750.00	\$ 4,250.00

Staff Recommendation

Staff recommends approval of this Engineering Agreement through the attached resolution with Christopher B. Burke Engineering, Ltd. in an amount not to exceed \$9,750.00.

Alternate Consideration

Not approving the agreement.

Decision Mode

This item will be placed on the December 2, 2013 City Council agenda for formal consideration.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN ENGINEERING AGREEMENT WITH CHRISTOPHER B. BURKE ENGINEERING, LTD. FOR PAVEMENT CORINGS FOR THE PROPOSED 2014 STREET MAINTENANCE PROGRAM IN AN AMOUNT NOT TO EXCEED \$9,750.00

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, as follows:

SECTION 1: The City Council of the City of Darien hereby authorizes the Mayor to enter into an engineering agreement with Christopher B. Burke Engineering, Ltd., for pavement corings for the proposed 2014 Street Maintenance Program in an amount not to exceed \$9,750.00, a copy of which is attached hereto as "Exhibit A" and is by this reference expressly incorporated herein.

SECTION 2: This Resolution shall be in full force and effect from and after its passage and approval as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, this 2nd day of December, 2013.

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED BY THE MAYOR OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, this 2nd day of December, 2013.

KATHLEEN MOESLE WEAVER, MAYOR

ATTEST:

JOANNE E. RAGONA, CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY



CHRISTOPHER B. BURKE ENGINEERING, LTD.

9575 West Higgins Road Suite 600 Rosemont, Illinois 60018 TEL (847) 823-0500 FAX (847) 823-0520

November 6, 2013

City of Darien
City Hall
1702 Plainfield Road
Darien, Illinois 60561

Attention: Dan Gombac

Subject: Proposal for Professional Engineering Services
2014 Road Program

Dear Dan:

At your request, we are providing this proposal to provide professional engineering services related to the preparation of the bidding documents for the City's 2014 Road Program. Included below you will find our Understanding of the Assignment and Scope and Fee.

UNDERSTANDING OF THE ASSIGNMENT

Based on the information provided by the City, the preliminary list for the 2014 Road Program will consist of the following streets:

PROPOSED 2014 ROAD PROGRAM		
STREET	ROAD LENGTH	CORES
Holly Avenue	1660	3
Brookbank Road	1150	2
Sawyer Road	2700	5
Farmingdale Drive	1840	4
Carrol Lane	200	1
Wirth Lane	1460	3
Gigi Lane	2300	5
Brittany Court	530	1
Coventry Court	640	1
Canterbury Court	395	1
Brunswick Road	765	2

Brompton Drive	585	1
Dartmouth Lane	325	1
Carlton Road	845	2
Aylesbury Lane	335	1
Cambridge Road	1090	2
Dixon Court	425	1
Gilbert Court	330	1
Meadow Lane	1250	3
83rd Court (Lemont-Limit)	260	1
Knottingham Circle	1800	4
Bentley Avenue	1360	3
Cherokee Drive	1300	3
	23,545	51
MILES	4.5	

SCOPE AND FEE

Task 1 – Geotechnical Investigation: A Geotechnical Investigation will be performed by CBBEL's subconsultant, Testing Services Corporation (TSC). The Geotechnical Investigation will include soil borings (approximately 51 cores) and pavement cores at a frequency to determine the existing structure of the pavement and condition of subgrade materials. Due to concern of the depth of existing pavement thickness we would recommend TSC completing the geotechnical report to verify the existing thickness of the bituminous pavement. This will allow us to verify that the correct improvement is proposed for the roadways. This assumes no flagman are required to take the cores.

Task 2 – Evaluation of Geotechnical Report: CBBEL and City Staff will evaluate the geotechnical report to determine the resurfacing treatment for each street and the final list of streets to be included in the 2014 Road Program based on the City's budget.

CBBEL will perform a Field Reconnaissance of the streets and preparation of the bid booklet under a separate proposal.

CBBEL estimates the following fees for each of the tasks described above:

Task 1	Geotechnical Investigation	\$9,000
Task 2	Evaluation of Geotechnical Report	<u>\$ 750</u>
	TOTAL	\$9,750

We will bill you at the hourly rates specified on the attached Schedule of Charges and establish our contract in accordance with the attached General Terms and Conditions. Direct costs for blueprints, photocopying, mailing, overnight delivery, messenger services and report compilation are not included in the Fee Estimate. These General Terms and Conditions are expressly incorporated into and are an integral part of this contract for professional services. It should be emphasized that any requested

meetings or additional services that are not included in the preceding Fee Estimate will be billed at the attached hourly rates.

Please sign and return one copy of this agreement as an indication of acceptance and notice to proceed. Please feel free to contact us anytime.

Sincerely,



Christopher B. Burke, PhD, PE, D.WRE, Dist.M.ASCE
President

Encl. Schedule of Charges
General Terms and Conditions

THIS PROPOSAL, SCHEDULE OF CHARGES AND GENERAL TERMS AND CONDITIONS ACCEPTED FOR CITY OF DARIEN:

BY: _____
TITLE: _____
DATE: _____

CHRISTOPHER B. BURKE ENGINEERING, LTD.
STANDARD CHARGES FOR PROFESSIONAL SERVICES
JANUARY, 2013

<u>Personnel</u>	<u>Charges*</u> <u>(\$/Hr)</u>
Principal	240
Engineer VI	210
Engineer V	173
Engineer IV	138
Engineer III	125
Engineer I/II	102
Survey V	178
Survey IV	134
Survey III	130
Survey II	100
Survey I	78
Resource Planner V	112
Resource Planner IV	108
Resource Planner III	100
Resource Planner I/II	88
Engineering Technician V	150
Engineering Technician IV	137
Engineering Technician III	112
Engineering Technician I/II	97
CAD Manager	138
Assistant CAD Manager	126
CAD II	125
CAD I	98
GIS Specialist III	120
GIS Specialist I/II	67
Landscape Architect	138
Environmental Resource Specialist V	160
Environmental Resource Specialist IV	134
Environmental Resource Specialist III	114
Environmental Resource Specialist I/II	94
Environmental Resource Technician	90
Administrative	88
Engineering Intern	53
Survey Intern	53
Information Technician III	100
Information Technician I/II	67

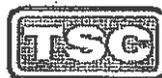
Direct Costs

Outside Copies, Blueprints, Messenger, Delivery Services, Mileage Cost + 12%

*Charges include overhead and profit

Christopher B. Burke Engineering, Ltd. reserves the right to increase these rates and costs by 5% after December 31, 2013.

Local Office
November 6, 2013



TESTING SERVICE CORPORATION

Corporate Office:

360 S. Main Place, Carol Stream, IL 60188-2404
630.462.2600 • Fax 630.653.2988

Local Office:

457 E. Gunderson Drive, Carol Stream, IL 60188-2492
630.653.3920 • Fax 630.653.2726

Mr. John LaPaglia
Christopher B. Burke Engineering, Ltd.
9575 West Higgins Road, Suite 600
Rosemont, Illinois 60018

RE: P.N. 51,906
Pavement Cores
City of Darien 2014 Road Program
Darien, IL

Dear Mr. LaPaglia

Testing Service Corporation (TSC) is pleased to submit this proposal to take pavement cores for the above referenced project. The broad objectives of our work will be to determine pavement composition and thickness.

Our understanding of the existing conditions and the proposed scope of services are as follows;

- The project consists of performing a total of fifty-one (51) pavement cores on twenty-three (23) streets within the city limits of Darien, Illinois. It is assumed that the streets are mainly residential and that traffic control will be limited to safety cones.
- Utility clearance for the core will be obtained by contacting J.U.L.I.E. (Joint Utility Locating Information for Excavators). Private utilities that may exist will be the responsibility of the property owner or their agents.
- The pavement core will be examined by a materials technician in the laboratory, who will accurately measure and describe the various pavement courses. Other tests deemed necessary by our Project Engineer may also be performed.
- Upon completion of field and laboratory work, you will receive a Pavement Core Summary report. It will give complete pavement and base course thicknesses as well as laboratory test data.

Fees and Scope:

In accordance with the Cost Estimate attached, TSC is proposing a not-to-exceed budget amount of **Nine Thousand Dollars (\$9,000.00)** to provide the coring program outlined above. Our proposal is based on the understanding that: the core locations are accessible to a conventional truck-mounted drill, and that the work can be performed during standard business hours. Our fee is further subject to this proposal being accepted by you on or before December 31, 2013.

The fees, hourly rates and other charges for field services furnished under this proposal are based on TSC's current contract with the International Union of Operating Engineers, Local 150. Since your project is funded in part or in total by state or local government funding sources, it will also be subject to IPWA requirements.

Closure:

The geotechnical services being performed are subject to TSC's attached General Conditions (as modified for CBBEL). Unless stated otherwise, TSC's fees include all state and federal taxes that may be required. However, they do not include any license, permit or bond fees that local governments may impose. The local fees, if any, would be added to our invoice. Unless we receive written instructions to the contrary, invoices will be sent to:

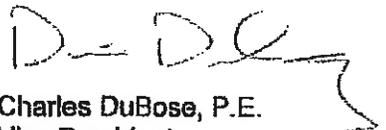
Mr. John LaPaglia
Christopher B. Burke Engineering, Ltd.
9575 West Higgins Road, Suite 600
Rosemont, Illinois 60018
Tel: (847) 823-0500
Email: jlapaglia@cbbel.com

If this proposal meets with your approval, please indicate your acceptance by signing one copy and returning it to our Carol Stream, Illinois office. When completing the attached project data form, kindly indicate who is to receive copies of TSC's report and other project data.

Your consideration of our proposal is appreciated. We look forward to being of service to you on this project.

Respectfully submitted,

TESTING SERVICE CORPORATION


Charles DuBose, P.E.
Vice President

By:


Darin Delaney
Project Geologist

DPD:tlv

Enc: Cost Estimate
General Conditions (Modified)
Project Data Sheet

Approved and accepted for _____ by:

(NAME)

(TITLE)

(DATE)

COST ESTIMATE
P.N. 51,906
Pavement Cores
City of Darien 2014 Road Program
Darien, IL

ITEM	UNITS	QTY	RATE	COST	
STAKING AND UTILITY CLEARANCE					
1.1	Mark Core Locations and Arrange for Clearance of Underground Utilities	Hour	7.0	120.00	\$ 840.00
OBTAIN PAVEMENT CORES Includes coring with 4 inch diameter barrel, retrieving all pavement materials to maximum depth of 18 inches and taking auger samples of base course/subbase materials					
2.1	Core Van and One-Man Crew (Regular Time Portal to Portal)	Hour	40.0	150.00	\$ 6,000.00
2.2	Core Van and One-Man Crew (Overtime)	Hour	0.0	175.00	\$ 0.00
2.3	Patch Holes with Cold Patch Asphalt of Non-Shrink Grout	Each	51	10.00	\$ 510.00
2.4	Materials Technician to Measure and Describe Core Sample in Laboratory	Each	51	15.00	\$ 765.00
TRAFFIC CONTROL					
3.1	TSC Pickup and Arrowboard	Day	0	140.00	\$ 0.00
ENGINEERING SERVICES					
5.1	Prepare Pavement Core Summary Report	Lump Sum	1	750.00	\$ 750.00
5.2	Geotechnical Engineer to Perform Special Calculations	Hour	0.0	120.00	\$ 0.00
5.3	Senior Engineer to Consult or Attend Project Meetings	Hour	0.0	150.00	\$ 0.00
ESTIMATED TOTAL:				\$ 8,865.00	
RECOMMENDED BUDGET:				\$ 9,000.00	

CHRISTOPHER B. BURKE ENGINEERING, LTD.
GENERAL TERMS AND CONDITIONS

1. Relationship Between Engineer and Client: Christopher B. Burke Engineering, Ltd. (Engineer) shall serve as Client's professional engineer consultant in those phases of the Project to which this Agreement applies. This relationship is that of a buyer and seller of professional services and as such the Engineer is an independent contractor in the performance of this Agreement and it is understood that the parties have not entered into any joint venture or partnership with the other. The Engineer shall not be considered to be the agent of the Client. Nothing contained in this Agreement shall create a contractual relationship with a cause of action in favor of a third party against either the Client or Engineer.

Furthermore, causes of action between the parties to this Agreement pertaining to acts of failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of substantial completion.

2. Responsibility of the Engineer: Engineer will strive to perform services under this Agreement in accordance with generally accepted and currently recognized engineering practices and principles, and in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, or otherwise.

Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any Agreement between the Client and any other party concerning the Project, the Engineer shall not have control or be in charge of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction, or the safety, safety precautions or programs of the Client, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall the Engineer be responsible for the acts or omissions of the Client, or for the failure of the Client, any architect, engineer, consultant, contractor or subcontractor to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project. Any provision which purports to amend this provision shall be without effect unless it contains a reference that the content of this condition is expressly amended for the purposes described in such amendment and is signed by the Engineer.

3. Changes: Client reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments, and Engineer and Client shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes, if commercially possible.
4. Suspension of Services: Client may, at any time, by written order to Engineer (Suspension of Services Order) require Engineer to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, Engineer shall immediately comply with its terms and take all reasonable steps to minimize the costs associated with the services affected by such order. Client, however, shall pay all costs incurred by the suspension, including all costs necessary to maintain continuity and for the resumptions

of the services upon expiration of the Suspension of Services Order. Engineer will not be obligated to provide the same personnel employed prior to suspension, when the services are resumed, in the event that the period of suspension is greater than thirty (30) days.

5. Termination: This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by Engineer either before or after the termination date shall be reimbursed by Client.
6. Documents Delivered to Client: Drawings, specifications, reports, and any other Project Documents prepared by Engineer in connection with any or all of the services furnished hereunder shall be delivered to the Client for the use of the Client. Engineer shall have the right to retain originals of all Project Documents and drawings for its files. Furthermore, it is understood and agreed that the Project Documents such as, but not limited to reports, calculations, drawings, and specifications prepared for the Project, whether in hard copy or machine readable form, are instruments of professional service intended for one-time use in the construction of this Project. These Project Documents are and shall remain the property of the Engineer. The Client may retain copies, including copies stored on magnetic tape or disk, for information and reference in connection with the occupancy and use of the Project.

When and if record drawings are to be provided by the Engineer, Client understands that information used in the preparation of record drawings is provided by others and Engineer is not responsible for accuracy, completeness, nor sufficiency of such information. Client also understands that the level of detail illustrated by record drawings will generally be the same as the level of detail illustrated by the design drawing used for project construction. If additional detail is requested by the Client to be included on the record drawings, then the Client understands and agrees that the Engineer will be due additional compensation for additional services.

It is also understood and agreed that because of the possibility that information and data delivered in machine readable form may be altered, whether inadvertently or otherwise, the Engineer reserves the right to retain the original tapes/disks and to remove from copies provided to the Client all identification reflecting the involvement of the Engineer in their preparation. The Engineer also reserves the right to retain hard copy originals of all Project Documentation delivered to the Client in machine readable form, which originals shall be referred to and shall govern in the event of any inconsistency between the two.

The Client understands that the automated conversion of information and data from the system and format used by the Engineer to an alternate system or format cannot be accomplished without the introduction of inexactitudes, anomalies, and errors. In the event Project Documentation provided to the Client in machine readable form is so converted, the Client agrees to assume all risks associated therewith and, to the fullest

extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising therefrom or in connection therewith.

The Client recognizes that changes or modifications to the Engineer's instruments of professional service introduced by anyone other than the Engineer may result in adverse consequences which the Engineer can neither predict nor control. Therefore, and in consideration of the Engineer's agreement to deliver its instruments of professional service in machine readable form, the Client agrees, to the fullest extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising out of or in any way connected with the modification, misinterpretation, misuse, or reuse by others of the machine readable information and data provided by the Engineer under this Agreement. The foregoing indemnification applies, without limitation, to any use of the Project Documentation on other projects, for additions to this Project, or for completion of this Project by others, excepting only such use as may be authorized, in writing, by the Engineer.

7. **Reuse of Documents:** All Project Documents including but not limited to reports, opinions of probable costs, drawings and specifications furnished by Engineer pursuant to this Agreement are intended for use on the Project only. They cannot be used by Client or others on extensions of the Project or any other project. Any reuse, without specific written verification or adaptation by Engineer, shall be at Client's sole risk, and Client shall indemnify and hold harmless Engineer from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom.

The Engineer shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Engineer's promotional and professional materials. The Engineer's materials shall not include the Client's confidential and proprietary information if the Client has previously advised the Engineer in writing of the specific information considered by the Client to be confidential and proprietary.

8. **Standard of Practice:** The Engineer will strive to conduct services under this agreement in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions as of the date of this Agreement.
9. **Compliance With Laws:** The Engineer will strive to exercise usual and customary professional care in his/her efforts to comply with those laws, codes, ordinance and regulations which are in effect as of the date of this Agreement.

With specific respect to prescribed requirements of the Americans with Disabilities Act of 1990 or certified state or local accessibility regulations (ADA), Client understands ADA is a civil rights legislation and that interpretation of ADA is a legal issue and not a design issue and, accordingly, retention of legal counsel (by Client) for purposes of interpretation is advisable. As such and with respect to ADA, Client agrees to waive any action against Engineer, and to indemnify and defend Engineer against any claim arising from Engineer's alleged failure to meet ADA requirements prescribed.

Further to the law and code compliance, the Client understands that the Engineer will strive to provide designs in accordance with the prevailing Standards of Practice as previously set forth, but that the Engineer does not warrant that any reviewing agency having jurisdiction will not for its own purposes comment, request changes and/or additions to such designs. In the event such design requests are made by a reviewing agency, but which do not exist in the form of a written regulation, ordinance or other similar document as published by the reviewing agency, then such design changes (at substantial variance from the intended design developed by the Engineer), if effected and incorporated into the project documents by the Engineer, shall be considered as Supplementary Task(s) to the Engineer's Scope of Service and compensated for accordingly:

10. Indemnification: Engineer shall indemnify and hold harmless Client up to the amount of this contract fee (for services) from loss or expense, including reasonable attorney's fees for claims for personal injury (including death) or property damage to the extent caused by the sole negligent act, error or omission of Engineer.

Client shall indemnify and hold harmless Engineer under this Agreement, from loss or expense, including reasonable attorney's fees, for claims for personal injuries (including death) or property damage arising out of the sole negligent act, error omission of Client.

In the event of joint or concurrent negligence of Engineer and Client, each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligence (including that of third parties), which caused the personal injury or property damage.

Engineer shall not be liable for special, incidental or consequential damages, including, but not limited to loss of profits, revenue, use of capital, claims of customers, cost of purchased or replacement power, or for any other loss of any nature, whether based on contract, tort, negligence, strict liability or otherwise, by reasons of the services rendered under this Agreement.

11. Opinions of Probable Cost: Since Engineer has no control over the cost of labor, materials or equipment, or over the Contractor(s) method of determining process, or over competitive bidding or market conditions, his/her opinions of probable Project Construction Cost provided for herein are to be made on the basis of his/her experience and qualifications and represent his/her judgement as a design professional familiar with the construction industry, but Engineer cannot and does not guarantee that proposal, bids or the Construction Cost will not vary from opinions of probable construction cost prepared by him/her. If prior to the Bidding or Negotiating Phase, Client wishes greater accuracy as to the Construction Cost, the Client shall employ an independent cost estimator Consultant for the purpose of obtaining a second construction cost opinion independent from Engineer.
12. Governing Law & Dispute Resolutions: This Agreement shall be governed by and construed in accordance with Articles previously set forth by (Item 9 of) this Agreement, together with the laws of the State of Illinois.

Any claim, dispute or other matter in question arising out of or related to this Agreement, which can not be mutually resolved by the parties of this Agreement, shall be subject to mediation as a condition precedent to arbitration (if arbitration is agreed upon by the parties of this Agreement) or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Engineer's services, the Engineer may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

The Client and Engineer shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Requests for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

13. Successors and Assigns: The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns: provided, however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.
14. Waiver of Contract Breach: The waiver of one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof, shall be limited to the particular instance, shall not operate or be deemed to waive any future breaches of this Agreement and shall not be construed to be a waiver of any provision, except for the particular instance.
15. Entire Understanding of Agreement: This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and the Engineer hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of the Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.
16. Amendment: This Agreement shall not be subject to amendment unless another instrument is duly executed by duly authorized representatives of each of the parties and entitled "Amendment of Agreement".

17. **Severability of Invalid Provisions:** If any provision of the Agreement shall be held to contravene or to be invalid under the laws of any particular state, county or jurisdiction where used, such contravention shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provisions held to be invalid in the particular state, country or jurisdiction and the rights or obligations of the parties hereto shall be construed and enforced accordingly.
18. **Force Majeure:** Neither Client nor Engineer shall be liable for any fault or delay caused by any contingency beyond their control including but not limited to acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
19. **Subcontracts:** Engineer may subcontract portions of the work, but each subcontractor must be approved by Client in writing.
20. **Access and Permits:** Client shall arrange for Engineer to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project. Client shall pay costs (including Engineer's employee salaries, overhead and fee) incident to any effort by Engineer toward assisting Client in such access, permits or approvals, if Engineer perform such services.
21. **Designation of Authorized Representative:** Each party (to this Agreement) shall designate one or more persons to act with authority in its behalf in respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the other party.
22. **Notices:** Any notice or designation required to be given to either party hereto shall be in writing, and unless receipt of such notice is expressly required by the terms hereof shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereafter furnish to the other party by written notice as herein provided.
23. **Limit of Liability:** The Client and the Engineer have discussed the risks, rewards, and benefits of the project and the Engineer's total fee for services. In recognition of the relative risks and benefits of the Project to both the Client and the Engineer, the risks have been allocated such that the Client agrees that to the fullest extent permitted by law, the Engineer's total aggregate liability to the Client for any and all injuries, claims, costs, losses, expenses, damages of any nature whatsoever or claim expenses arising out of this Agreement from any cause or causes, including attorney's fees and costs, and expert witness fees and costs, shall not exceed the total Engineer's fee for professional engineering services rendered on this project as made part of this Agreement. Such causes included but are not limited to the Engineer's negligence, errors, omissions, strict liability or breach of contract. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

24. **Client's Responsibilities:** The Client agrees to provide full information regarding requirements for and about the Project, including a program which shall set forth the Client's objectives, schedule, constraints, criteria, special equipment, systems and site requirements.

The Client agrees to furnish and pay for all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services which the Client may require to verify the Contractor's Application for Payment or to ascertain how or for what purpose the Contractor has used the money paid by or on behalf of the Client.

The Client agrees to require the Contractor, to the fullest extent permitted by law, to indemnify, hold harmless, and defend the Engineer, its consultants, and the employees and agents of any of them from and against any and all claims, suits, demands, liabilities, losses, damages, and costs ("Losses"), including but not limited to costs of defense, arising in whole or in part out of the negligence of the Contractor, its subcontractors, the officers, employees, agents, and subcontractors of any of them, or anyone for whose acts any of them may be liable, regardless of whether or not such Losses are caused in part by a party indemnified hereunder. Specifically excluded from the foregoing are Losses arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications, and the giving of or failure to give directions by the Engineer, its consultants, and the agents and employees of any of them, provided such giving or failure to give is the primary cause of Loss. The Client also agrees to require the Contractor to provide to the Engineer the required certificate of insurance.

The Client further agrees to require the Contractor to name the Engineer, its agents and consultants as additional insureds on the Contractor's policy or policies of comprehensive or commercial general liability insurance. Such insurance shall include products and completed operations and contractual liability coverages, shall be primary and noncontributing with any insurance maintained by the Engineer or its agents and consultants, and shall provide that the Engineer be given thirty days, unqualified written notice prior to any cancellation thereof.

In the event the foregoing requirements, or any of them, are not established by the Client and met by the Contractor, the Client agrees to indemnify and hold harmless the Engineer, its employees, agents, and consultants from and against any and all Losses which would have been indemnified and insured against by the Contractor, but were not.

When Contract Documents prepared under the Scope of Services of this contract require insurance(s) to be provided, obtained and/or otherwise maintained by the Contractor, the Client agrees to be wholly responsible for setting forth any and all such insurance requirements. Furthermore, any document provided for Client review by the Engineer under this Contract related to such insurance(s) shall be considered as sample insurance requirements and not the recommendation of the Engineer. Client agrees to have their own risk management department review any and all insurance requirements for adequacy and to determine specific types of insurance(s) required for the project. Client further agrees that decisions concerning types and amounts of insurance are

specific to the project and shall be the product of the Client. As such, any and all insurance requirements made part of Contract Documents prepared by the Engineer are not to be considered the Engineer's recommendation, and the Client shall make the final decision regarding insurance requirements.

25. Information Provided by Others: The Engineer shall indicate to the Client the information needed for rendering of the services of this Agreement. The Client shall provide to the Engineer such information as is available to the Client and the Client's consultants and contractors, and the Engineer shall be entitled to rely upon the accuracy and completeness thereof. The Client recognizes that it is impossible for the Engineer to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors or omissions which may have occurred in assembling the information the Client is providing. Accordingly, the Client agrees, to the fullest extent permitted by law, to indemnify and hold the Engineer and the Engineer's subconsultants harmless from any claim, liability or cost (including reasonable attorneys' fees and cost of defense) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the Client to the Engineer.

26. Payment: Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within thirty (30) days of its receipt. The client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law, whichever is the lesser) until paid. Client further agrees to pay Engineer's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney's fees, as well as costs attributed to suspension of services accordingly and as follows:

Collection Costs. In the event legal action is necessary to enforce the payment provisions of this Agreement, the Engineer shall be entitled to collect from the Client any judgement or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by the Engineer in connection therewith and, in addition, the reasonable value of the Engineer's time and expenses spent in connection with such collection action, computed at the Engineer's prevailing fee schedule and expense policies.

Suspension of Services. If the Client fails to make payments when due or otherwise is in breach of this Agreement, the Engineer may suspend performance of services upon five (5) calendar days' notice to the Client. The Engineer shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Client will reimburse Engineer for all associated costs as previously set forth in (Item 4 of) this Agreement.

27. When construction observation tasks are part of the service to be performed by the Engineer under this Agreement, the Client will include the following clause in the construction contract documents and Client agrees not to modify or delete it:

Kotecki Waiver. Contractor (and any subcontractor into whose subcontract this clause is incorporated) agrees to assume the entire liability for all personal injury claims suffered by its own employees, including without limitation claims under the Illinois Structural Work Act, asserted by persons allegedly injured on the Project; waives any limitation of liability defense based upon the Worker's Compensation Act, court interpretations of said Act or otherwise; and to the fullest extent permitted by law, agrees to indemnify and hold harmless and defend Owner and Engineer and their agents, employees and consultants (the "Indemnitees") from and against all such loss, expense, damage or injury, including reasonable attorneys' fees, that the Indemnitees may sustain as a result of such claims, except to the extent that Illinois law prohibits indemnity for the Indemnitees' own negligence. The Owner and Engineer are designated and recognized as explicit third party beneficiaries of the Kotecki Waiver within the general contract and all subcontracts entered into in furtherance of the general contract.

28. **Job Site Safety/Supervision & Construction Observation:** The Engineer shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences of procedures, or for safety precautions and programs in connection with the Work since they are solely the Contractor's rights and responsibilities. The Client agrees that the Contractor shall supervise and direct the work efficiently with his/her best skill and attention; and that the Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction and safety at the job site. The Client agrees and warrants that this intent shall be carried out in the Client's contract with the Contractor. The Client further agrees that the Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work; and that the Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the subject site and all other persons who may be affected thereby. The Engineer shall have no authority to stop the work of the Contractor or the work of any subcontractor on the project.

When construction observation services are included in the Scope of Services, the Engineer shall visit the site at intervals appropriate to the stage of the Contractor's operation, or as otherwise agreed to by the Client and the Engineer to: 1) become generally familiar with and to keep the Client informed about the progress and quality of the Work; 2) to strive to bring to the Client's attention defects and deficiencies in the Work and; 3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. If the Client desires more extensive project observation, the Client shall request that such services be provided by the Engineer as Additional and Supplemental Construction Observation Services in accordance with the terms of this Agreement.

The Engineer shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. The Engineer does not guarantee the performance of the

Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

When municipal review services are included in the Scope of Services, the Engineer (acting on behalf of the municipality), when acting in good faith in the discharge of its duties, shall not thereby render itself liable personally and is, to the maximum extent permitted by law, relieved from all liability for any damage that may accrue to persons or property by reason of any act or omission in the discharge of its duties. Any suit brought against the Engineer which involve the acts or omissions performed by it in the enforcement of any provisions of the Client's rules, regulation and/or ordinance shall be defended by the Client until final termination of the proceedings. The Engineer shall be entitled to all defenses and municipal immunities that are, or would be, available to the Client.

29. Insurance and Indemnification: The Engineer and the Client understand and agree that the Client will contractually require the Contractor to defend and indemnify the Engineer and/or any subconsultants from any claims arising from the Work. The Engineer and the Client further understand and agree that the Client will contractually require the Contractor to procure commercial general liability insurance naming the Engineer as an additional named insured with respect to the work. The Contractor shall provide to the Client certificates of insurance evidencing that the contractually required insurance coverage has been procured. However, the Contractor's failure to provide the Client with the requisite certificates of insurance shall not constitute a waiver of this provision by the Engineer.

The Client and Engineer waive all rights against each other and against the Contractor and consultants, agents and employees of each of them for damages to the extent covered by property insurance during construction. The Client and Engineer each shall require similar waivers from the Contractor, consultants, agents and persons or entities awarded separate contracts administered under the Client's own forces.

30. Hazardous Materials/Pollutants: Unless otherwise provided by this Agreement, the Engineer and Engineer's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials/pollutants in any form at the Project site, including but not limited to mold/mildew, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic/hazardous/pollutant type substances.

Furthermore, Client understands that the presence of mold/mildew and the like are results of prolonged or repeated exposure to moisture and the lack of corrective action. Client also understands that corrective action is a operation, maintenance and repair activity for which the Engineer is not responsible.

AGENDA MEMO
Municipal Services Committee
November 25, 2013

Issue Statement

Approval of a resolution to enter into an engineering agreement with Christopher B. Burke Engineering, Ltd. for the 2014 Street Maintenance Program in an amount not to exceed \$25,730.00.

Background/History

Attached, please find an engineering agreement with Christopher B. Burke Engineering, Ltd. for the 2014 Street Maintenance Program. The following roads have been slated for the 2014 Street Maintenance Program:

PROPOSED 2014 ROAD PROGRAM					
Street Name	Rating	Subdivision	Limit	Most Recent Rehab	Road Length
Holly Ave	65	Marion Hills North	Brookbank Rd to Crest Rd	2002	1660
Brookbank Rd	63	Marion Hills North	69th St to Holly Ave	1999	1150
Sawyer Rd	65	Farmingdale Terr S	79 th St to Portsmouth Dr	1998	2700
Farmingdale Dr	65	Farmingdale Terr S	Glen Ln to Portsmouth Dr	2002	1840
Carrol Ln	65	Farmingdale Unit 5-9	Gigi Ln to Summit Rd	1998	200
Wirth Ln	65	Downers-Fairview	Gigi Ln to 71 st St	2000	1460
Gigi Ln	66	Downers-Fairview	Fairview Ave - 75 th St	2001	2300
Brittany Ct	65	Norman Court	Norman Dr to limit	1992	530
Coventry Ct	65	Norman Court	Norman Dr to limit	1992	640
Canterbury Ct	65	Norman Court	Brittany Ct to limit	1992	395
Brunswick Rd	65	Farmingdale Ridge	Manning Rd to Green Valley Rd	1999	765
Brompton Dr	65	Farmingdale Ridge	Dartmouth Ln to Green Valley	1999	585
Dartmouth Ln	65	Farmingdale Ridge	Brompton Dr to Brunswick Rd	1999	325
Carlton Rd	65	Farmingdale Ridge	Manning Rd to Green Valley Rd	1999	845
Aylesbury Ln	69	Farmingdale Ridge	Cambridge Rd to Wakefield Dr	2001	335
Cambridge Rd	65	Farmingdale Ridge	Aylesbury Ln to 75 th St	1998	1090
Dixon Ct	67	Farmingdale Village	Drover Ln to Limit	1998	425

Street Name	Rating	Subdivision	Limit	Most Recent Rehab	Road Length
Gilbert Ct	66	Farmingdale Village	Beller Dr to limit	2000	330
Meadow Ln	65	Farmingdale Village	Beller Dr to 87 th St	1999	1250
83 rd Ct	60	Brookridge	Lemont Rd to Book Ridge	Annex	260
Knottingham Cir	65	Devonshire	Plainfield Rd to Plainfield Rd	1999	1800
Bentley Ave	69	Hinsbrook	69 th St to 71 st St	2001	1360
Cherokee Dr	69	Hinsbrook	Seminole Dr to Darien Ln	2000	1300
LINEAL FEET					23545
MILES					4.5

The proposed Engineering Agreement includes the following scope of services:

Task 1 – Field Reconnaissance: CBBEL staff will perform a Field Reconnaissance of the streets to be resurfaced with Public Works. The purpose of the Field Reconnaissance will be to determine the limits and estimate the quantity of full depth bituminous pavement patching, and drainage structure to be adjusted. The results of the Field Reconnaissance will be reviewed with the Department of Public Works and compared to previous estimates to determine their impact on the estimated construction cost.

Total Engineering Cost for Task 1 - \$2,768.00

Task 2 – Preparation of Bid Booklet: CBBEL will prepare a bid booklet in IDOT format for the proposed improvements for a local letting (local funds only). The documents will generally consist of typical sections, special provisions, pay items, working days and estimated bid quantities. Quantities will be estimated based on site visits and City staff input from the existing cores and the field reconnaissance. CBBEL will prepare a base bid and alternate bids to help give the City the most flexibility to use the available funds for the project.

Total Engineering Cost for Task 2 - \$11,620.00

Task 3 – Coordination Meetings-CBBEL has assumed that two coordination meetings will be required with the City regarding the projects.

Total Engineering Cost for Task 3 - \$1,038.00

Task 4 – Bidding Assistance: CBBEL will advertise for bidding, distribute plans and specifications to all bidders, and hold a bid opening. CBBEL will review and tabulate all of the bids and make a recommendation of award.

Total Engineering Cost for Task 4 - \$1,304.00

Task 5 - Sampling Analysis - Quality Assurance Quality Control - The following task is associated with Quality Assurance and Quality Control through the services of an outside independent agency, Testing Services Corporation. Testing Services Corporation will perform as per the requirements the services for assuring Quality Control and Quality Assurance. These services include but are not limited to road surface compaction requirements, and materials specifications as required. Field reports will be made available to the Public Works Superintendent and a formal copy will be forwarded to Christopher B. Burke Engineering, Ltd.

Total Engineering Cost for Task 5 - \$6,000.00

Below, please find a summary cost for the abovementioned items:

Cost for Task 1-	\$ 2,768.00
Cost for Task 2-	\$11,620.00
Cost for Task 3-	\$ 1,038.00
Cost for Task 4-	\$ 1,304.00
Cost for Task 5-	\$ 6,000.00
Direct Costs	<u>\$ 3,000.00</u>
Total cost	\$25,730.00

Funding for Engineering Services would be expended from the following line item of the FY14 Budget:

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	FY 13/14 BUDGET	PROPOSED EXPENDITURE	PROPOSED BALANCE
25-35-4325	CONSULTING PROFESSIONAL-ENG BID SPECS	\$ 31,500.00	\$ 25,730.00	\$ 5,770.00

Staff Recommendation

Staff recommends approval of this Engineering Agreement through the attached resolution with Christopher B. Burke Engineering, Ltd. in an amount not to exceed \$25,730.00.

The Bid Specifications will not be released until the Funds for the proposed program are approved by the City Council. If the program is reduced the engineering cost as proposed for some of the tasks will also be reduced.

Tentative Schedule

Description/Task	Completion Date
Prepare Bid Specifications	December 2013
Bid Due Date	January 2014
Committee Agenda Contract Review/Approval	January/February 2014
Council Agenda Contract Review/Approval	February/March 2014
Execute Contract	March 2014
Start Layout	April 2014
Start Construction	Mid-May 2014
Completion	July 2014

2014 Street Maintenance Program

November 25, 2013

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Alternate Consideration

Not approving the agreement.

Decision Mode

This item will be placed on the December 2, 2013 City Council agenda for formal consideration.

RESOLUTION NO. _____

A RESOLUTION TO ENTER INTO AN ENGINEERING AGREEMENT WITH CHRISTOPHER B. BURKEN ENGINEERING, LTD. FOR THE 2014 STREET MAINTENANCE PROGRAM IN AN AMOUNT NOT TO EXCEED \$25,730.00

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, as follows:

SECTION 1: The City Council of the City of Darien hereby authorizes the Mayor to enter into an Engineering Agreement with Christopher B. Burke Engineering, Ltd. for the 2014 Street Maintenance Program in an amount not to exceed \$25,730.00, a copy of which is attached hereto as "Exhibit A" and is by this reference expressly incorporated herein.

SECTION 2: This Resolution shall be in full force and effect from and after its passage and approval as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, this 2nd day of December, 2013.

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED BY THE MAYOR OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, this 2nd day of December, 2013.

KATHLEEN MOESLE WEAVER, MAYOR

ATTEST:

JOANNE E. RAGONA, CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY



CHRISTOPHER B. BURKE ENGINEERING, LTD.

9675 West Higgins Road Suite 800 Rosemont, Illinois 60018 TEL (847) 823-0500 FAX (847) 823-0520

November 12, 2013

City of Darien
City Hall
1702 Plainfield Road
Darien, Illinois 60561

Attention: Dan Gombac

Subject: Proposal for Professional Engineering Services
2014 Road Program

Dear Dan:

At your request, we are providing this proposal to provide professional engineering services related to the preparation of the bidding documents for the City's 2014 Road Program. Included below you will find our Understanding of the Assignment and Scope and Fee.

UNDERSTANDING OF THE ASSIGNMENT

Based on the information provided by the City, the 2014 Road Program will consist of resurfacing for the following streets:

STREET	ROAD LENGTH
Holly Avenue	1660
Brookbank Road	1150
Sawyer Road	2700
Farmingdale Drive	1840
Carrol Lane	200
Wirth Lane	1460
Gigi Lane	2300
Brittany Court	530
Coventry Court	640
Canterbury Court	395
Brunswick Road	765
Brompton Drive	585
Dartmouth Lane	325

Carlton Road	845
Aylesbury Lane	335
Cambridge Road	1090
Dixon Court	425
Gilbert Court	330
Meadow Lane	1250
83rd Court (Lemont-Limit)	260
Knottingham Circle	1800
Bentley Avenue	1360
Cherokee Drive	1300
	23,545
MILES	4.5

Pavement resurfacing will include the grinding 2 ¼ inches of the existing hot-mix pavement, patching poor areas, the installation of 1 ½ inches of hot-mix surface course, ¾ inches of leveling binder, and structure adjustments or grinding 4 inches of the existing hot-mix pavement, patching poor areas, the installation of 1 ½ inches of hot-mix surface course, 2 ½ inches of hot-mix binder course depending on the results of the cores being performed by Testing Service Corporation (TSC) under a separate proposal.

The total length of streets to be resurfaced for the project is approximately 23,545 feet (4.5 miles).

SCOPE AND FEE

TASK 1 – FIELD RECONNAISSANCE: CBBEL Staff will perform a Field Reconnaissance of the streets to be resurfaced with Public Works. The purpose of the Field Reconnaissance will be to determine the limits and estimate the quantity of full depth bituminous pavement patching, and drainage structure to be adjusted. The results of the Field Reconnaissance will be reviewed with the Department of Public Works and compared to previous estimates to determine their impact on the estimated construction cost.

Engineer V \$173/hr x 16 hrs = \$2,768

TASK 2 – PREPARATION OF BID BOOKLET: CBBEL will prepare a bid booklet in IDOT format for the proposed improvements for a local letting (local funds only). The documents will generally consist of typical sections, special provisions, pay items, working days and estimated bid quantities. Quantities will be estimated based on site visits and City Staff Input from the existing cores and the field reconnaissance. CBBEL will prepare a base bid and alternate bids to help give the City the most flexibility to use the available fund for the project.

Engineer V \$173/hr x 20 hrs	= \$3,460
Engineer I/II \$102/hr x 80 hrs	= <u>\$8,160</u>
	Total \$11,620

TASK 3 -- COORDINATION MEETINGS: CBBEL has assumed that two coordination meetings will be required with the City regarding the projects.

Engineer V \$173/hr x 2 meetings x 3 hrs = \$1,038

Total \$1,038

TASK 4 -- BIDDING ASSISTANCE: CBBEL will advertise for bidding, distribute plans and specifications to all bidders, and hold a bid opening. CBBEL will review and tabulate all of the bids and make a recommendation of award.

Engineer V \$173/hr x 4 hrs = \$ 692

Engineer I/II \$ 102/hr x 6 hrs = \$ 612

Total \$1,304

TASK 5 -- SAMPLING ANALYSIS -- QUALITY ASSURANCE QUALITY CONTROL: Sampling Analysis-Quality Assurance Quality Control-The following task is associated with Quality Assurance and Quality Control through the services of an outside independent agency Testing Services Corporation. The Testing Services Corporation will perform as per the requirements the services for assuring Quality Control and Quality Assurance. These services include but are not limited to road surface compaction requirements, and materials specifications as required. Field reports will be made available to the Public Works Superintendent and a formal copy will be forwarded to Christopher B. Burke Engineering.

CBBEL estimates the following fees for each of the tasks described above:

Task 1	Field Reconnaissance	\$ 2,768
Task 2	Preparation of Bid Booklet	\$11,620
Task 3	Coordination Meetings	\$ 1,038
Task 4	Bidding Assistance	\$ 1,304
Task 5	Sampling Analysis -- Quality Assurance/Quality Control	\$ 6,000
	Direct Costs	\$ 3,000
	NOT TO EXCEED	\$25,730

We will bill you at the hourly rates specified on the attached Schedule of Charges and establish our contract in accordance with the attached General Terms and Conditions. Direct costs for blueprints, photocopying, mailing, overnight delivery, messenger services and report compilation are included in the Fee Estimate. These General Terms and Conditions are expressly incorporated into and are an integral part of this contract for professional services. It should be emphasized that any requested meetings or additional services that are not included in the preceding Fee Estimate will be billed at the attached hourly rates.

Please sign and return one copy of this agreement as an indication of acceptance and notice to proceed. Please feel free to contact us anytime.

Sincerely,



Christopher B. Burke, PhD, PE, D.WRE, Dist.M.ASCE
President

Encl. Schedule of Charges
General Terms and Conditions

**THIS PROPOSAL, SCHEDULE OF CHARGES AND GENERAL TERMS AND CONDITIONS ACCEPTED
FOR CITY OF DARIEN.**

BY: _____
TITLE: _____
DATE: _____

CHRISTOPHER B. BURKE ENGINEERING, LTD.
STANDARD CHARGES FOR PROFESSIONAL SERVICES
JANUARY, 2013

<u>Personnel</u>	<u>Charges*</u> <u>(\$/Hr)</u>
Principal	240
Engineer VI	210
Engineer V	173
Engineer IV	138
Engineer III	125
Engineer I/II	102
Survey V	178
Survey IV	134
Survey III	130
Survey II	100
Survey I	78
Resource Planner V	112
Resource Planner IV	108
Resource Planner III	100
Resource Planner I/II	88
Engineering Technician V	150
Engineering Technician IV	137
Engineering Technician III	112
Engineering Technician I/II	97
CAD Manager	138
Assistant CAD Manager	126
CAD II	125
CAD I	98
GIS Specialist III	120
GIS Specialist I/II	67
Landscape Architect	138
Environmental Resource Specialist V	160
Environmental Resource Specialist IV	134
Environmental Resource Specialist III	114
Environmental Resource Specialist I/II	94
Environmental Resource Technician	90
Administrative	88
Engineering Intern	53
Survey Intern	53
Information Technician III	100
Information Technician I/II	67

Direct Costs

Outside Copies, Blueprints, Messenger, Delivery Services, Mileage Cost + 12%

*Charges include overhead and profit

Christopher B. Burke Engineering, Ltd. reserves the right to increase these rates and costs by 5% after December 31, 2013.

CHRISTOPHER B. BURKE ENGINEERING, LTD.
GENERAL TERMS AND CONDITIONS

1. Relationship Between Engineer and Client: Christopher B. Burke Engineering, Ltd. (Engineer) shall serve as Client's professional engineer consultant in those phases of the Project to which this Agreement applies. This relationship is that of a buyer and seller of professional services and as such the Engineer is an independent contractor in the performance of this Agreement and it is understood that the parties have not entered into any joint venture or partnership with the other. The Engineer shall not be considered to be the agent of the Client. Nothing contained in this Agreement shall create a contractual relationship with a cause of action in favor of a third party against either the Client or Engineer.

Furthermore, causes of action between the parties to this Agreement pertaining to acts of failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of substantial completion.

2. Responsibility of the Engineer: Engineer will strive to perform services under this Agreement in accordance with generally accepted and currently recognized engineering practices and principles, and in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, or otherwise.

Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any Agreement between the Client and any other party concerning the Project, the Engineer shall not have control or be in charge of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction, or the safety, safety precautions or programs of the Client, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall the Engineer be responsible for the acts or omissions of the Client, or for the failure of the Client, any architect, engineer, consultant, contractor or subcontractor to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project. Any provision which purports to amend this provision shall be without effect unless it contains a reference that the content of this condition is expressly amended for the purposes described in such amendment and is signed by the Engineer.

3. Changes: Client reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments, and Engineer and Client shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes, if commercially possible.
4. Suspension of Services: Client may, at any time, by written order to Engineer (Suspension of Services Order) require Engineer to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, Engineer shall immediately comply with its terms and take all reasonable steps to minimize the costs associated with the services affected by such order. Client, however, shall pay all costs incurred by the suspension, including all costs necessary to maintain continuity and for the

resumptions of the services upon expiration of the Suspension of Services Order. Engineer will not be obligated to provide the same personnel employed prior to suspension, when the services are resumed, in the event that the period of suspension is greater than thirty (30) days.

5. Termination: This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by Engineer either before or after the termination date shall be reimbursed by Client.
6. Documents Delivered to Client: Drawings, specifications, reports, and any other Project Documents prepared by Engineer in connection with any or all of the services furnished hereunder shall be delivered to the Client for the use of the Client. Engineer shall have the right to retain originals of all Project Documents and drawings for its files. Furthermore, it is understood and agreed that the Project Documents such as, but not limited to reports, calculations, drawings, and specifications prepared for the Project, whether in hard copy or machine readable form, are instruments of professional service intended for one-time use in the construction of this Project. These Project Documents are and shall remain the property of the Engineer. The Client may retain copies, including copies stored on magnetic tape or disk, for information and reference in connection with the occupancy and use of the Project.

When and if record drawings are to be provided by the Engineer, Client understands that information used in the preparation of record drawings is provided by others and Engineer is not responsible for accuracy, completeness, nor sufficiency of such information. Client also understands that the level of detail illustrated by record drawings will generally be the same as the level of detail illustrated by the design drawing used for project construction. If additional detail is requested by the Client to be included on the record drawings, then the Client understands and agrees that the Engineer will be due additional compensation for additional services.

It is also understood and agreed that because of the possibility that information and data delivered in machine readable form may be altered, whether inadvertently or otherwise, the Engineer reserves the right to retain the original tapes/disks and to remove from copies provided to the Client all identification reflecting the involvement of the Engineer in their preparation. The Engineer also reserves the right to retain hard copy originals of all Project Documentation delivered to the Client in machine readable form, which originals shall be referred to and shall govern in the event of any inconsistency between the two.

The Client understands that the automated conversion of information and data from the system and format used by the Engineer to an alternate system or format cannot be accomplished without the introduction of inexactitudes, anomalies, and errors. In the event Project Documentation provided to the Client in machine readable form is so converted, the Client agrees to assume all risks associated therewith and, to the fullest

extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising therefrom or in connection therewith.

The Client recognizes that changes or modifications to the Engineer's instruments of professional service introduced by anyone other than the Engineer may result in adverse consequences which the Engineer can neither predict nor control. Therefore, and in consideration of the Engineer's agreement to deliver its instruments of professional service in machine readable form, the Client agrees, to the fullest extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising out of or in any way connected with the modification, misinterpretation, misuse, or reuse by others of the machine readable information and data provided by the Engineer under this Agreement. The foregoing indemnification applies, without limitation, to any use of the Project Documentation on other projects, for additions to this Project, or for completion of this Project by others, excepting only such use as may be authorized, in writing, by the Engineer.

7. Reuse of Documents: All Project Documents including but not limited to reports, opinions of probable costs, drawings and specifications furnished by Engineer pursuant to this Agreement are intended for use on the Project only. They cannot be used by Client or others on extensions of the Project or any other project. Any reuse, without specific written verification or adaptation by Engineer, shall be at Client's sole risk, and Client shall indemnify and hold harmless Engineer from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom.

The Engineer shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Engineer's promotional and professional materials. The Engineer's materials shall not include the Client's confidential and proprietary information if the Client has previously advised the Engineer in writing of the specific information considered by the Client to be confidential and proprietary.

8. Standard of Practice: The Engineer will strive to conduct services under this agreement in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions as of the date of this Agreement.
9. Compliance With Laws: The Engineer will strive to exercise usual and customary professional care in his/her efforts to comply with those laws, codes, ordinance and regulations which are in effect as of the date of this Agreement.

With specific respect to prescribed requirements of the Americans with Disabilities Act of 1990 or certified state or local accessibility regulations (ADA), Client understands ADA is a civil rights legislation and that interpretation of ADA is a legal issue and not a design issue and, accordingly, retention of legal counsel (by Client) for purposes of interpretation is advisable. As such and with respect to ADA, Client agrees to waive any action against Engineer, and to indemnify and defend Engineer against any claim arising from Engineer's alleged failure to meet ADA requirements prescribed.

Further to the law and code compliance, the Client understands that the Engineer will strive to provide designs in accordance with the prevailing Standards of Practice as previously set forth, but that the Engineer does not warrant that any reviewing agency having jurisdiction will not for its own purposes comment, request changes and/or additions to such designs. In the event such design requests are made by a reviewing agency, but which do not exist in the form of a written regulation, ordinance or other similar document as published by the reviewing agency, then such design changes (at substantial variance from the intended design developed by the Engineer), if effected and incorporated into the project documents by the Engineer, shall be considered as Supplementary Task(s) to the Engineer's Scope of Service and compensated for accordingly.

10. Indemnification: Engineer shall indemnify and hold harmless Client up to the amount of this contract fee (for services) from loss or expense, including reasonable attorney's fees for claims for personal injury (including death) or property damage to the extent caused by the sole negligent act, error or omission of Engineer.

Client shall indemnify and hold harmless Engineer under this Agreement, from loss or expense, including reasonable attorney's fees, for claims for personal injuries (including death) or property damage arising out of the sole negligent act, error omission of Client.

In the event of joint or concurrent negligence of Engineer and Client, each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligence (including that of third parties), which caused the personal injury or property damage.

Engineer shall not be liable for special, incidental or consequential damages, including, but not limited to loss of profits, revenue, use of capital, claims of customers, cost of purchased or replacement power, or for any other loss of any nature, whether based on contract, tort, negligence, strict liability or otherwise, by reasons of the services rendered under this Agreement.

11. Opinions of Probable Cost: Since Engineer has no control over the cost of labor, materials or equipment, or over the Contractor(s) method of determining process, or over competitive bidding or market conditions, his/her opinions of probable Project Construction Cost provided for herein are to be made on the basis of his/her experience and qualifications and represent his/her judgement as a design professional familiar with the construction industry, but Engineer cannot and does not guarantee that proposal, bids or the Construction Cost will not vary from opinions of probable construction cost prepared by him/her. If prior to the Bidding or Negotiating Phase, Client wishes greater accuracy as to the Construction Cost, the Client shall employ an independent cost estimator Consultant for the purpose of obtaining a second construction cost opinion independent from Engineer.
12. Governing Law & Dispute Resolutions: This Agreement shall be governed by and construed in accordance with Articles previously set forth by (Item 9 of) this Agreement, together with the laws of the **State of Illinois**.

Any claim, dispute or other matter in question arising out of or related to this Agreement, which can not be mutually resolved by the parties of this Agreement, shall be subject to mediation as a condition precedent to arbitration (if arbitration is agreed upon by the parties of this Agreement) or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Engineer's services, the Engineer may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

The Client and Engineer shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Requests for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

13. Successors and Assigns: The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns: provided, however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.
14. Waiver of Contract Breach: The waiver of one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof, shall be limited to the particular instance, shall not operate or be deemed to waive any future breaches of this Agreement and shall not be construed to be a waiver of any provision, except for the particular instance.
15. Entire Understanding of Agreement: This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and the Engineer hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of the Agreement shall be null, void & without effect to the extent they conflict with the terms of this Agreement.
16. Amendment: This Agreement shall not be subject to amendment unless another instrument is duly executed by duly authorized representatives of each of the parties and entitled "Amendment of Agreement".

17. Severability of Invalid Provisions: If any provision of the Agreement shall be held to contravene or to be invalid under the laws of any particular state, county or jurisdiction where used, such contravention shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provisions held to be invalid in the particular state, country or jurisdiction and the rights or obligations of the parties hereto shall be construed and enforced accordingly.
18. Force Majeure: Neither Client nor Engineer shall be liable for any fault or delay caused by any contingency beyond their control including but not limited to acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
19. Subcontracts: Engineer may subcontract portions of the work, but each subcontractor must be approved by Client in writing.
20. Access and Permits: Client shall arrange for Engineer to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project. Client shall pay costs (including Engineer's employee salaries, overhead and fee) incident to any effort by Engineer toward assisting Client in such access, permits or approvals, if Engineer perform such services.
21. Designation of Authorized Representative: Each party (to this Agreement) shall designate one or more persons to act with authority in its behalf in respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the other party.
22. Notices: Any notice or designation required to be given to either party hereto shall be in writing, and unless receipt of such notice is expressly required by the terms hereof shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereafter furnish to the other party by written notice as herein provided.
23. Limit of Liability: The Client and the Engineer have discussed the risks, rewards, and benefits of the project and the Engineer's total fee for services. In recognition of the relative risks and benefits of the Project to both the Client and the Engineer, the risks have been allocated such that the Client agrees that to the fullest extent permitted by law, the Engineer's total aggregate liability to the Client for any and all injuries, claims, costs, losses, expenses, damages of any nature whatsoever or claim expenses arising out of this Agreement from any cause or causes, including attorney's fees and costs, and expert witness fees and costs, shall not exceed the total Engineer's fee for professional engineering services rendered on this project as made part of this Agreement. Such causes included but are not limited to the Engineer's negligence, errors, omissions, strict liability or breach of contract. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

24. Client's Responsibilities: The Client agrees to provide full information regarding requirements for and about the Project, including a program which shall set forth the Client's objectives, schedule, constraints, criteria, special equipment, systems and site requirements.

The Client agrees to furnish and pay for all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services which the Client may require to verify the Contractor's Application for Payment or to ascertain how or for what purpose the Contractor has used the money paid by or on behalf of the Client.

The Client agrees to require the Contractor, to the fullest extent permitted by law, to indemnify, hold harmless, and defend the Engineer, its consultants, and the employees and agents of any of them from and against any and all claims, suits, demands, liabilities, losses, damages, and costs ("Losses"), including but not limited to costs of defense, arising in whole or in part out of the negligence of the Contractor, its subcontractors, the officers, employees, agents, and subcontractors of any of them, or anyone for whose acts any of them may be liable, regardless of whether or not such Losses are caused in part by a party indemnified hereunder. Specifically excluded from the foregoing are Losses arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications, and the giving of or failure to give directions by the Engineer, its consultants, and the agents and employees of any of them, provided such giving or failure to give is the primary cause of Loss. The Client also agrees to require the Contractor to provide to the Engineer the required certificate of insurance.

The Client further agrees to require the Contractor to name the Engineer, its agents and consultants as additional insureds on the Contractor's policy or policies of comprehensive or commercial general liability insurance. Such insurance shall include products and completed operations and contractual liability coverages, shall be primary and noncontributing with any insurance maintained by the Engineer or its agents and consultants, and shall provide that the Engineer be given thirty days, unqualified written notice prior to any cancellation thereof.

In the event the foregoing requirements, or any of them, are not established by the Client and met by the Contractor, the Client agrees to indemnify and hold harmless the Engineer, its employees, agents, and consultants from and against any and all Losses which would have been indemnified and insured against by the Contractor, but were not.

When Contract Documents prepared under the Scope of Services of this contract require insurance(s) to be provided, obtained and/or otherwise maintained by the Contractor, the Client agrees to be wholly responsible for setting forth any and all such insurance requirements. Furthermore, any document provided for Client review by the Engineer under this Contract related to such insurance(s) shall be considered as sample insurance requirements and not the recommendation of the Engineer. Client agrees to have their own risk management department review any and all insurance requirements for adequacy and to determine specific types of insurance(s) required for the project. Client further agrees that decisions concerning types and amounts of insurance are

specific to the project and shall be the product of the Client. As such, any and all insurance requirements made part of Contract Documents prepared by the Engineer are not to be considered the Engineer's recommendation, and the Client shall make the final decision regarding insurance requirements.

25. Information Provided by Others: The Engineer shall indicate to the Client the information needed for rendering of the services of this Agreement. The Client shall provide to the Engineer such information as is available to the Client and the Client's consultants and contractors, and the Engineer shall be entitled to rely upon the accuracy and completeness thereof. The Client recognizes that it is impossible for the Engineer to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors or omissions which may have occurred in assembling the information the Client is providing. Accordingly, the Client agrees, to the fullest extent permitted by law, to indemnify and hold the Engineer and the Engineer's subconsultants harmless from any claim, liability or cost (including reasonable attorneys' fees and cost of defense) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the Client to the Engineer.

26. Payment: Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within thirty (30) days of its receipt. The client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law, whichever is the lesser) until paid. Client further agrees to pay Engineer's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney's fees, as well as costs attributed to suspension of services accordingly and as follows:

Collection Costs. In the event legal action is necessary to enforce the payment provisions of this Agreement, the Engineer shall be entitled to collect from the Client any judgement or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by the Engineer in connection therewith and, in addition, the reasonable value of the Engineer's time and expenses spent in connection with such collection action, computed at the Engineer's prevailing fee schedule and expense policies.

Suspension of Services. If the Client fails to make payments when due or otherwise is in breach of this Agreement, the Engineer may suspend performance of services upon five (5) calendar days' notice to the Client. The Engineer shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Client will reimburse Engineer for all associated costs as previously set forth in (Item 4 of) this Agreement.

27. When construction observation tasks are part of the service to be performed by the Engineer under this Agreement, the Client will include the following clause in the construction contract documents and Client agrees not to modify or delete it:

Kotecki Waiver. Contractor (and any subcontractor into whose subcontract this clause is incorporated) agrees to assume the entire liability for all personal injury claims suffered by its own employees, including without limitation claims under the Illinois Structural Work Act, asserted by persons allegedly injured on the Project; waives any limitation of liability defense based upon the Worker's Compensation Act, court interpretations of said Act or otherwise; and to the fullest extent permitted by law, agrees to indemnify and hold harmless and defend Owner and Engineer and their agents, employees and consultants (the "Indemnitees") from and against all such loss, expense, damage or injury, including reasonable attorneys' fees, that the Indemnitees may sustain as a result of such claims, except to the extent that Illinois law prohibits indemnity for the Indemnitees' own negligence. The Owner and Engineer are designated and recognized as explicit third party beneficiaries of the Kotecki Waiver within the general contract and all subcontracts entered into in furtherance of the general contract.

28. Job Site Safety/Supervision & Construction Observation: The Engineer shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences of procedures, or for safety precautions and programs in connection with the Work since they are solely the Contractor's rights and responsibilities. The Client agrees that the Contractor shall supervise and direct the work efficiently with his/her best skill and attention; and that the Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction and safety at the job site. The Client agrees and warrants that this intent shall be carried out in the Client's contract with the Contractor. The Client further agrees that the Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work; and that the Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the subject site and all other persons who may be affected thereby. The Engineer shall have no authority to stop the work of the Contractor or the work of any subcontractor on the project.

When construction observation services are included in the Scope of Services, the Engineer shall visit the site at intervals appropriate to the stage of the Contractor's operation, or as otherwise agreed to by the Client and the Engineer to: 1) become generally familiar with and to keep the Client informed about the progress and quality of the Work; 2) to strive to bring to the Client's attention defects and deficiencies in the Work and; 3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. If the Client desires more extensive project observation, the Client shall request that such services be provided by the Engineer as Additional and Supplemental Construction Observation Services in accordance with the terms of this Agreement.

The Engineer shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. The Engineer does not guarantee the performance of the

Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

When municipal review services are included in the Scope of Services, the Engineer (acting on behalf of the municipality), when acting in good faith in the discharge of its duties, shall not thereby render itself liable personally and is, to the maximum extent permitted by law, relieved from all liability for any damage that may accrue to persons or property by reason of any act or omission in the discharge of its duties. Any suit brought against the Engineer which involve the acts or omissions performed by it in the enforcement of any provisions of the Client's rules, regulation and/or ordinance shall be defended by the Client until final termination of the proceedings. The Engineer shall be entitled to all defenses and municipal immunities that are, or would be, available to the Client.

29. Insurance and Indemnification: The Engineer and the Client understand and agree that the Client will contractually require the Contractor to defend and indemnify the Engineer and/or any subconsultants from any claims arising from the Work. The Engineer and the Client further understand and agree that the Client will contractually require the Contractor to procure commercial general liability insurance naming the Engineer as an additional named insured with respect to the work. The Contractor shall provide to the Client certificates of insurance evidencing that the contractually required insurance coverage has been procured. However, the Contractor's failure to provide the Client with the requisite certificates of insurance shall not constitute a waiver of this provision by the Engineer.

The Client and Engineer waive all rights against each other and against the Contractor and consultants, agents and employees of each of them for damages to the extent covered by property insurance during construction. The Client and Engineer each shall require similar waivers from the Contractor, consultants, agents and persons or entities awarded separate contracts administered under the Client's own forces.

30. Hazardous Materials/Pollutants: Unless otherwise provided by this Agreement, the Engineer and Engineer's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials/pollutants in any form at the Project site, including but not limited to mold/mildew, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic/hazardous/pollutant type substances.

Furthermore, Client understands that the presence of mold/mildew and the like are results of prolonged or repeated exposure to moisture and the lack of corrective action. Client also understands that corrective action is a operation, maintenance and repair activity for which the Engineer is not responsible.

AGENDA MEMO
Municipal Services Committee
November 25, 2013

Issue Statement

Approval of a resolution to permit limited accessory structures and limited recreational activities on certain City of Darien owned property, located immediately east of the Darien Towne Center- PIN No: 09-29-400-020, Lot 3 of the Darien Town Centre PUD, and referred to as an Undisturbed/Buffer Area.

Background/History

Recently, Imtiaz Uddin, 7536 Wilton Road, has requested permission to utilize a limited portion of the City property located immediately west of his rear yard property and east of the Darien Towne Center. Mr. Uddin would like to utilize the property to construct a shed. See attached e-mail labeled as Attachment A and corresponding aerial map labeled as Attachment B. Lot 3 was conveyed to the City by the Darien Towne Center on May 18, 1995 as part of an annexation agreement through Ordinance No.'s O-16-93, O-17-93 and O-18-93. Attached and labeled as Attachment C is Section 11 of the Annexation Agreement regarding the conveyance of Lot 3 and Lot 4. Attachment D is a copy of the executed deed.

The area is a buffer zone between the residences that front Wilton Road and the Darien Towne Center. Staff has completed a site visit to the buffer zone and confirms there are opportunities for residents to utilize the property for sheds, play sets, gazebos and certain other recreational uses as deemed appropriate by the City Administrator, with no adverse impact. While Mr. Uddin is the only resident requesting the use of the City's property, staff is recommending that the use be extended to all 8 properties adjacent to Lot 3 and as depicted through Attachment B. In addition, staff is suggesting that the use be allowed through a Letter of Understanding with the following conditions.

1. The maximum size of any structure shall 12 feet by 12 feet and no taller than 15-feet from the existing grade.
2. No live trees shall be disturbed or removed to accommodate the structure or activity.
3. Dead trees may be removed by the owners at their expense, upon concurrence with the City Arborist.
4. The property owners shall add the City, its officers, agents and employees, as additional insured on their homeowners' insurance policies, which shall include a \$1 million umbrella liability policy, with respect to any claims for damage or injury arising from the improvement and use of the Buffer Area and sign a hold harmless/indemnity agreement in favor of the City.
5. All structures shall be set back from the property line adjacent to the Buffer Area a minimum of 5 feet and shall not encroach more than 20 feet from the easterly property line of Lot 3.

6. The property owners shall provide a detailed sketch regarding the placement of the structure or activity.
7. The property owners shall field identify and mark the property corners of their property
8. The City reserves the right to have the structures removed or activity suspended at the City's discretion and the owners' expense.
9. The property owner shall acknowledge through a signature and date the conditions as stated.
10. The structures shall be maintained free from rust, and rot, and shall be structurally sound at all times

The following properties would be allowed to utilize the City property:

2020 Harper Road
7528 Wilton Road
7532 Wilton Road
7536 Wilton Road
7540 Wilton Road
7544 Wilton Road
7548 Wilton Road
7552 Wilton Road

Staff Recommendation

Staff recommends approval of this resolution with the conditions as stated above.

Alternate Consideration

Not approving the resolution

Decision Mode

This item will be placed on the December 2, 2013 City Council agenda for formal consideration.

Dan Gombac

From: imtiaz uddin <najze@hotmail.com>
Sent: Thursday, November 14, 2013 10:00 AM
To: Dan Gombac; Dan Gombac
Cc: Kathy Weaver; Kathy Weaver; forward for smcvicor
Subject: 7536 Wilton Road - Isolation/Buffer Area

Dear Mr. Gombac,

Thank you for stopping by at our home Tuesday evening to review my request for the city permission to place a shed in the isolation/buffer area behind our back yard. We appreciate your coming to our place on a rather cold day and for your understanding and suggestions. As I mentioned placing the shed in our back yard in front of the 20 feet Drainage and Utilities Easement will make my friendly and helpful neighbors unhappy because it will spoil the continuity and view of their back yards. This can be avoided by placing the shed in the area I showed you.

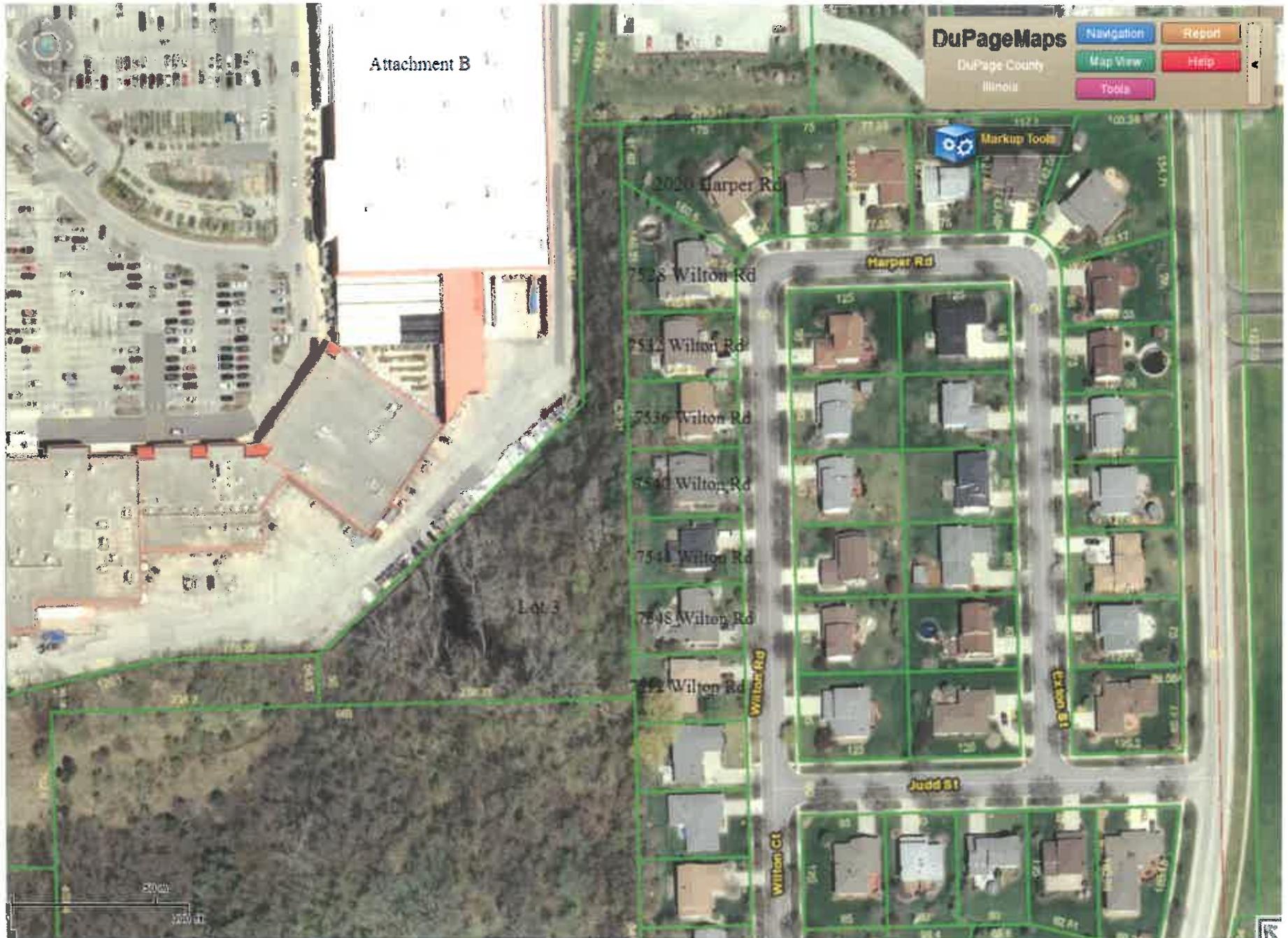
I also mentioned that establishing the buffer space & the fence and planting of new pine trees, were agreed by all three - affected home owners, Darien City and Home Depot - to remedy the serious concern and unhappiness of the home owners on the west side of Wilton Road following the Darien City decision in early 1990s to allow Home Depot to build a big store just behind our homes. This compromise was achieved through great effort by the affected home owners and with the understanding and valuable support of the then Mayor, Carman. (I should say that, for my home, about 60% of the agreed minimum 50 feet isolation space/land was built by Home Depot by putting additional soil/earth and a retaining wall as our was the worst case of having only 18-20 feet of isolation space/ land beyond our backyard.)

I understand from my Alderman, Ms. McIvor, that the city is considering my request favourably but the process may take a month or two to develop a general policy. I am grateful to you all for this creative thinking and cooperation. Needless to say that these buffer areas can be reached only through the property of the respective home owners.

Now in mid November the weather is changing quickly - time is of the essence for any out door work. It would be great help to us if the city could grant us a conditional anticipatory permit so that we are not constrained and hampered by bad weather next month. We would give a written undertaking that if the eventual decision of the city is contrary to our expectations, we would remove the shed from the buffer area. We would be very grateful for this further cooperation and favor. Thank you

Regards.

**M. I. Uddin
(630) 873-1230**



footage of buildings and location of monument signage of the Outlots shall be as shown on the Development Plan.

B. Nothing herein shall be construed as Final Site Plan approval of any of the improvements to be located on Outlots 1 and 3. The development of each such Outlot shall be subject to Plan Commission and City Council Final Site Plan review in accordance with Section 5A-3-2.3 of the City Code. The height of any Outlot building, excluding cupolas and decorative entrance features, shall not exceed twenty-five (25') feet and shall consist of only one story above grade.

SECTION 11: CONVEYANCE OF UNDISTURBED AREAS TO CITY; EASEMENTS; FENCE MAINTENANCE; UNDISTURBED BUFFER.

A. Conveyance. Within thirty (30) days after the City issues its Certificate of Occupancy for the 109,000 ± square foot use on the eastern portion of the Commercial Property ("HomeBase"), and upon completion of the required berming in the area behind the "Circuit City" building, Developer (or such entity as designated by Developer holding title to the property described hereinbelow) shall convey by warranty deed to the City merchantable title to Lots 3 and 4 as shown on the Preliminary Subdivision Plat and identified on the Site Plan as the "Undisturbed Area" and the "Buffer Area," said areas located generally along the eastern boundary, southeastern corner and a portion of the southern boundary of the Subject Property. The recited consideration for said conveyance shall be \$10.00 and other good and valuable consideration. In addition, at the time of said conveyance,

6 NOVEMBER 0-16-93

SENT BY:

9-7-94 ; 11:34 ;SCHAIN FIRE-ALARM 3126615373:# 3/10

UNOFFICIAL COPY

EXHIBIT "A"

LEGAL DESCRIPTION

LOTS 3 AND 4 IN DARIEN TOWNE CENTRE, BEING A SUBDIVISION OF PART OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, RECORDED AUGUST 17, 1993, AS DOCUMENT NO. R93-183593, IN DUPAGE COUNTY, ILLINOIS

D:\LEGAL\DMZ\DMZ.ACC

R95-061172

RESOLUTION NO. _____

A RESOLUTION TO PERMIT LIMITED ACCESSORY STRUCTURES AND LIMITED RECREATIONAL ACTIVITIES ON CERTAIN CITY OF DARIEN-OWNED PROPERTY, LOCATED IMMEDIATELY EAST OF THE DARIEN TOWNE CENTER-PIN NO 09-29-400-020, LOT 3 OF THE DARIEN TOWNE CENTER PUD AND REFERRED TO AS AN UNDISTURBED/BUFFER AREA

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, as follows:

SECTION 1: Subject to permitting, the City Council of the City of Darien hereby permits the owners of the following properties to construct limited accessory structures such as sheds, swing-sets, play equipment, gazebos, and similar recreational equipment as approved by the City Administrator within City owned property-Pin No. 09-29-400-020, Lot 3 of the Darien Town Center PUD, immediately adjacent to the owners property, and referred to as the “Buffer Area”:

2020 Harper Road
7528 Wilton Road
7532 Wilton Road
7536 Wilton Road
7540 Wilton Road
7544 Wilton Road
7548 Wilton Road
7552 Wilton Road

SECTION 2: Any property owners seeking to improve the Buffer Area for the allowable uses shall be subject to these additional restrictions:

1. The maximum size of any structure shall 12 feet by 12 feet and no taller than 15-feet from the existing grade.
2. No live trees shall be disturbed or removed to accommodate the structure or activity.
3. Dead trees may be removed by the owners at their expense, upon concurrence of the City Arborist.
4. The property owners shall add the City, its officers, agents and employees, as additional insured on their homeowners’ insurance policies, which shall include a \$1 million umbrella liability policy, with respect to any claims for damage or injury arising from the improvement and use of the Buffer Area and sign a hold harmless/indemnity agreement in favor of the City.
5. All structures shall be set back **from the property line adjacent to the Buffer Area** a minimum of 5 feet and shall not encroach more than 20 feet from the easterly property line of Lot 3.

6. The property owners shall provide a detailed sketch regarding the placement of the structure or activity.
7. The property owners shall field identify and mark the property corners of their property
8. The City reserves the right to have the structures removed or activity suspended at the City's discretion and the owners' expense.
9. The property owner shall acknowledge through a signature and date the conditions as stated.
10. The structures shall be maintained free from rust, and rot, and shall be structurally sound at all times

SECTION 3: This Resolution shall be in full force and effect from and after its passage and approval as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, this 2nd day of December, 2013.

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED BY THE MAYOR OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, this 2nd day of December, 2013.

KATHLEEN MOESLE WEAVER, MAYOR

ATTEST:

JOANNE E. RAGONA, CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

**MINUTES
CITY OF DARIEN
MUNICIPAL SERVICES COMMITTEE
October 28, 2013**

PRESENT: Alderman Tina Beilke, Alderman Joerg Seifert, Dan Gombac – Director

ABSENT: Joseph Marchese – Chairperson, Michael Griffith – Senior Planner, Elizabeth Lahey - Secretary

ESTABLISH QUORUM

Acting Chairperson Seifert called the meeting to order at 6:30 p.m. at the City Hall – City Council Chambers, Darien, Illinois and declared a quorum present,

NEW BUSINESS

- A. Stella’s, Marketplace at Darien, 2415 75th Street, Unit C2 – Petitioner requests a special use to permit a drinking and eating establishment within the B-2 Community Shopping Center District.**

Mr. Dan Gombac, Director reported that the petitioner proposes to open a drinking and eating establishment with a café/bar within the Marketplace at Darien shopping center. He reported that the petitioner provided a generic layout of the establishment.

Mr. Gombac reported that the proposed use includes video gaming and that the license application will be processed through the state. He reported that the petitioner is seeking approval for zoning, liquor license and business license. Upon approval the petitioner would seek a gaming license with the state.

Mr. Gombac reported that the petitioners were available and prepared with a presentation if the Committee required additional information. He reported that the PZC approved this at their October 16th meeting.

Alderman Beilke stated that video gaming is still up for discussion. Mr. Gombac informed the Committee that currently video gaming is allowed in Darien and that the item will be discussed at the upcoming goal setting session.

The petitioners, Mr. Gary Leff, CEO/Founder, Laredo Hospitality and Charity Johns, VP of Operations, Laredo Hospitality were present. Mr. Leff questioned if Darien was reconsidering video gaming.

Acting Chairperson Seifert stated that video gaming is allowed currently but that some of the Aldermen had concerns regarding video gaming and the effect it would have on the community and crime associated with it. He stated that there was a survey done from neighboring communities and that video gaming has been noted as a topic for a future goal setting session.

Acting Chairperson Seifert questioned how many establishments the petitioners were opening.

Mr. Leff stated that there are three locations that have been approved and will open within the next two weeks. He stated that there are over 20 locations scheduled to open over the next 10-12 months.

There was no one in the audience wishing to present public comment.

Alderman Beilke made a motion, and it was seconded by Alderman Seifert to approve the request associated with PZC 2013-07 as presented.

Upon voice vote, THE MOTION CARRIED unanimously 2-0.

Mr. Gombac reported that this would be forwarded to the City Council for approval.

B. Discussion – Amending the Liquor Control Regulations, Section 3-3 of the City Code, increase the number of Class K liquor licenses from 4 to 5.

Mr. Dan Gombac, Director reported that there are no current liquor licenses for this establishment. He reported that this is for the approval of the eating and drinking establishment.

Alderman Beilke and Acting Chairperson Seifert had an inquiry regarding the report for existing liquor licenses. Mr. Gombac reported that he would get back to the Committee with an update.

There was no one in the audience wishing to present public comment.

Alderman Beilke made a motion, and it was seconded by Alderman Seifert to approve the proposed amendment as presented.

Upon voice vote, THE MOTION CARRIED unanimously 2-0.

C. Ordinance – Approval of an amendment to the Darien Stormwater and Flood Plain Management Ordinance, Section 6B-1 of the City Code.

Mr. Dan Gombac, Director reported that earlier this year DuPage County adopted updates to the Countywide Stormwater Management and Floodplain Ordinance and that the City is required to adopt the changes. He reported that with the updates the ordinance includes a section referred to as “fees in lieu of”, and would allow the City to receive funds when an entity could not meet the storm water detention requirements within the City of Darien. The funds would be required to be utilized as best management practices under the Storm Water Ordinance. Recently, due to the proposed 75th Street Reconstruction Project, the County was unable to provide storage requirements and therefore will be providing the City a remittance for the value of the deficiency. In the past, these types of remittances have gone back to the County.

There was no one in the audience wishing to present public comment.

Alderman Beilke made a motion, and it was seconded by Alderman Seifert to approve an amendment to the Darien Stormwater and Flood Plain Management Ordinance, Section 6B-1 of the City Code.

Upon voice vote, THE MOTION CARRIED unanimously 2-0.

D. Ordinance – Prohibiting the use of groundwater as a potable water supply by the installation or use of potable water supply wells or by any other method.

Mr. Dan Gombac, Director reported that the proposed agenda item is regarding the No further Remediation letters for the sites at Plainfield Rd and Cass Ave. This ordinance will amend a previous ordinance for the BP Amoco site as requested by the EPA. In addition, the ordinance would include the dry cleaners, previously located in the Heritage Plaza. Mr. Gombac informed the Committee that there may be two separate ordinances required and staff was waiting for confirmation from the EPA regarding the language. He further stated that this is urgent because there is a new set of regulations coming out and if the ordinances are not passed we would be required to begin the remediation efforts all over again.

Alderman Beilke questioned why it took so long to get an answer from the EPA.

Mr. Gombac reported that the EPA is not quick about their responses and they have a criteria of 60 to 120 days to respond.

Alderman Beilke made a motion, and it was seconded by Alderman Seifert to approve an ordinance prohibiting the use of groundwater as a potable water supply by the installation or use of potable water supply wells or by any other method.

Upon voice vote, the MOTION CARRIED UNANIMOUSLY 2-0.

E. Resolution – Accepting a proposal from All Star Maintenance, Inc. to provide snow plowing and deicing services for the parking lot and walkways at the Darien Heritage Center and the sidewalk plowing and deicing services at the Municipal Complex as per the unit prices.

Mr. Dan Gombac, Director reported that there are two different phases of the parking lots for snow plowing and deicing services. The services are for deicing the City complex walkways and the City will provide snow plowing and deicing services for the parking lot. The vendor would be responsible for the all snow plowing services at the Heritage Plaza. Staff had requested competitive quotes and only received two responses. The lowest quote was received from All Star Maintenance.

Alderman Beilke asked Mr. Gombac to provide the expenses from last year.

There was no one in the audience wishing to present public comment.

Alderman Beilke made a motion, and it was seconded by Alderman Seifert to approve a RESOLUTION ACCEPTING A PROPOSAL FROM ALL STAR MAINTENANCE, INC.

TO PROVIDE PLOWING AND DEICING SERVICES FOR THE PARKING LOT AND WALKWAYS AT THE DARIEN HERITAGE CENTER AND THE SIDEWALK PLOWING AND DEICING SERVICES AT THE MUNICIPAL COMPLEX AS PER THE UNIT PRICES.

Upon voice vote, the MOTION CARRIED UNANIMOUSLY 2-0.

- F. Resolution – Authorizing the City to accept a proposal from Christopher B. Burke Engineering, Ltd. in an amount not to exceed \$20,500.00 for the surveying and engineering redesign of the open ditch and storm water conveyance system for Iris Road.**

Mr. Dan Gombac, Director reported that earlier this year there were several residents impacted by the heavy rain events that caused storm water seepage and flooding into residential structures on Iris Road. He stated that staff also determined that flooding was caused by a sanitary backup in one residence.

Mr. Gombac reported that the current underground storm sewer was constructed in the early 1960s and has been added on by residents over the years. He reported that staff has also determined that the storm sewer infrastructures consist of various sized pipes and the pipes and structures hold water continuously. The ditches do not convey storm water properly.

Mr. Gombac reported that the proposed engineering study authorizes Christopher B. Burke Engineering to proceed with the surveying of the properties adjacent to Iris Road including the storm sewer system and the open ditches.

There was no one in the audience wishing to present public comment.

Alderman Seifert made a motion, and it was seconded by Alderman Beilke to approve A RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT A PROPOSAL FROM CHRISTOPHER B. BURKE ENGINEERING, LTD. IN AN AMOUNT NOT TO EXCEED \$20,500.00 FOR THE SURVEYING AND ENGINEERING REDESIGN OF THE OPEN DITCH AND STORM WATER CONVEYANCE SYSTEM FOR IRIS ROAD.

Upon voice vote, THE MOTION CARRIED 2-0.

- G. Minutes - Approval of the September 30, 2013 – Municipal Services Committee Meeting Minutes.**

Alderman Beilke made a motion, and it was seconded by Alderman Seifert to approve the September 30, 2013 Municipal Services Committee Meeting Minutes.

Upon voice vote, THE MOTION CARRIED 2-0.

DIRECTOR'S REPORT

a. Budget Comparison to Actual Expenditures

Mr. Dan Gombac, Director provided an update for the department regarding the budget comparison to actual expenditures. He reported that next month he will provide an agenda memo formalizing the actual to budget expenditures.

NEXT SCHEDULED MEETING

Acting Chairperson Seifert announced that the next regularly scheduled meeting is scheduled for Monday, November 25, 2013 at 6:30 p.m.

ADJOURNMENT

With no further business before the Committee, Alderman Beilke made a motion and it was seconded by Alderman Seifert to adjourn. Upon voice vote, THE MOTION CARRIED unanimously and the meeting adjourned at 7:50 p.m.

RESPECTFULLY SUBMITTED:

Joseph Marchese
Chairman

Tina Beilke
Alderman

Joerg Seifert
Alderman

AGENDA MEMO
Municipal Services Committee
November 25, 2013

ISSUE STATEMENT

A discussion regarding to date budget comparisons to actual expenditures.

BACKGROUND/HISTORY

The Municipal Services Committee requested a mid-year review regarding actual expenditures in comparison to the FYE13-14 Budget. Attached and labeled as pages 3-4 is a summary of capital project expenditures and larger budget items. The spreadsheets have been formatted with labeled columns and rows for easy reference. The columns are labeled as follows:

- A. Item or Project-Identifies the designated Project or Program
- B. Account Number-Identifies the designated account for the project. Please note several projects/programs share the same account numbers. (e.g. Drainage Improvements)
- C. Amount Budgeted-Represents the City Council approved expenditure allocation as of May 1, 2013.
- D. City Council Approved Funds-Represents the approved Committee and City Council expenditure for the project or program and is based on the results of a competitive bid/quote through an Agenda Memo.
- E. Actual Expenditure-Represents the final cost of a project. Please note there are several accounts where total expenses will not be finalized until April 30, 2014, e.g. Street Light Maintenance, Rock Salt (pending winter conditions), 2014 Road Maintenance Core Engineering Agreement.
- F. Difference Between Actual Expenditure (Column E) and City Council Approved (Column D)-This item reflects, in dollars, the difference between the final expenditure and City Council approved expenditure.
- G. Difference Between Actual Expenditure (Column E) and City Council Approved (Column D)-This item reflects, as a percentage, the difference between the final expenditure and City Council approved expenditure.
- H. Difference Between Amount Budgeted (C) and Actual Expenditure (E) Funds Available-This item represents the funds available.
- I. Difference Between Amount Budgeted (C) and Actual Expenditure (E) Funds Available-This item represents the percentage available.
- J. Comments-Presents Staffs Comments

The Municipal Services Department oversees an expenditure budget of approximately \$8.5 to \$10 Million dollars annually. Please note that staff begins project estimates six to eight months prior to the fiscal year, and maintains a conservative approach towards estimating for budgets. City staff envisions that many of our bid/quote estimates for FYE 15 will have a 2-5% increase due to the current economic conditions. Staff is also suggesting that the bid process for the 2014 Road Maintenance Program and Concrete Program continue to be bid in the first quarter of 2014. This year City staff was able to identify cost saving opportunities on various projects and equipment. Many of the department's projects are unit based and unforeseen field conditions could occur therefore dictating changes in quantities and material that affect the bottom line.

STAFF RECOMMENDATION

Staff will continue to review estimating practices and aggressively seek economies of scale for products and services. Additional feedback and discussion to be presented by the Committee.

ALTERNATE DECISION

Item is for discussion only and/or as recommended by the Committee.

DECISION MODE

None

1	A	B	C	D	E	F	G	H	I	J	K
2	Item or Project	Account No.	Amount Budgeted	City Council Approved Funds	Actual Expenditure	Difference Between Actual Expenditure (E) and City Council Approved (D) Presented as Funds	Difference Between Actual Expenditure (E) and City Council Approved (D) Presented as a Percentage	Difference Between Amount Budgeted (C) and Actual Expenditure (E) Funds Available	Difference Between Amount Budgeted (C) and Actual Expenditure (E) Percentage	Contingency-Not Used	Comments
3	Barricades - Fourth of July	01-30-4257	\$ 1,000.00	\$ 1,000.00	\$ 600.00	\$ 400.00	40.00%	N/A	N/A	N/A	COST SAVINGS REALIZED DUE TO COMPETITIVE QUOTES
4	Barricades - Daricn Fest	01-30-4257	\$ 1,000.00	\$ 1,000.00	\$ 900.00	\$ 100.00	10.00%	N/A	N/A	N/A	COST SAVINGS REALIZED DUE TO COMPETITIVE QUOTES
5	Total		\$ 2,000.00	\$ 2,000.00	\$ 1,500.00	\$ 500.00	25.00%	\$ 500.00	25.00%	N/A	
6											
7	Tree and Stump Removal	01-30-4375	\$ 127,702.00	\$ 127,702.00	\$ 127,702.00	\$ -	0.00%	\$ -	0.00%	N/A	STAFF ANTICIPATES THAT ALL FUNDS WILL BE EXPENDED DUE TO THE EMERALD ASH BORER
8	Emerald Ash Program	01-30-4375	\$ 190,000.00	\$ 190,000.00	\$ 110,034.66	\$ 79,965.34	42.09%	\$ 79,965.34	42.09%	N/A	STAFF ANTICIPATES THAT ALL FUNDS WILL BE EXPENDED DUE TO THE EMERALD ASH BORER. See Attachment 2
9	Emerald Ash Program-Removal	03-60-4325	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ -	0.00%	\$ -	0.00%	N/A	STAFF ANTICIPATES THAT ALL FUNDS WILL BE EXPENDED DUE TO THE EMERALD ASH BORER
10	Emerald Ash Program-Additional Removals	03-60-4325	\$ -	\$ 77,352.75	\$ 77,352.75	\$ -	-100.00%	\$ (77,352.75)	100.00%		
11											
12	Tub Grinder	01-30-4243	\$ 5,500.00	\$ 5,500.00	\$ 7,200.00	\$ (1,700.00)	-30.91%	\$ (1,700.00)	-30.91%	N/A	Expenses-Revenue (3,180)
13											
14	Sidewalk Program	25-35-4380	\$ 56,800.00	\$ 56,800.00	\$ 54,895.75	\$ 1,904.25	3.35%	\$ 1,904.25	3.35%	N/A	
15	Curb and Gutter Program	25-35-4383	\$ 351,075.00	\$ 348,075.00	\$ 342,554.25	\$ 5,520.75	1.59%	\$ 8,520.75	2.43%	N/A	Quantities reduced due to layout in conjunction with the road program
16	Elm Street Sidewalk	25-35-4380	\$ 15,000.00	\$ 15,000.00	\$ 14,962.50	\$ 37.50	0.25%	\$ 37.50	0.25%	N/A	
17	Total		\$ 422,875.00	\$ 419,875.00	\$ 412,412.50	\$ 7,462.50	1.78%	\$ 10,462.50	2.47%	N/A	
18											
19	Crack Seal/Fill Program	25-35-4382	\$ 101,250.00	\$ 101,250.00	\$ 101,250.00	\$ -	0.00%	\$ -	0.00%	N/A	XX Roads were not completed Staff under budgeted the amount of work by approx
20	City Hall Parking Lot-Sealcoating	01-30-4223	\$ 10,000.00	\$ 7,365.40	\$ 5,899.98	\$ 1,465.42	19.90%	\$ 4,100.02	41.00%		
21											
22	Office Chairs	01-30-4225	\$ 2,000.00	\$ 2,000.00	\$ 1,916.75	\$ 83.25	4.16%	\$ 83.25	4.16%	N/A	NO COMMENTS
23											
24	Drainage Impv Project - 79th St & Farmingdale Dr	25-35-4376	\$ 107,000.00	\$ 106,525.00	\$ 106,525.00	\$ 525.00	0.49%	\$ 1,000.00	0.93%	N/A	
25	Drainage Impv Project - Richard Road	25-35-4376	\$ 20,500.00	\$ 20,500.00	\$ 19,336.00	\$ 1,164.00	5.68%	\$ 1,164.00	5.68%	N/A	
26	Drainage Impv Project - Roger Road	25-35-4376	\$ 184,300.00	\$ 146,500.00	\$ 142,156.00	\$ 4,344.00	2.97%	\$ 42,144.00	22.87%	CONTINGENCY NOT USED	SCOPE OF WORK REDUCED DUE TO FIELD CONDITIONS
27	Drainage Impv Project - Eleanor Pl 69th to Holly	25-35-4376	\$ 193,000.00	\$ 193,000.00	\$ 131,050.00	\$ 61,950.00	32.10%	\$ 61,950.00	32.10%	CONTINGENCY NOT USED	SCOPE OF WORK REDUCED DUE TO FIELD CONDITIONS-LOCAL VENDOR IDENTIFIED TO TAKE ALL THE TOP SOIL
28	Drainage Impv Project - Brookbank Pl 69th to Holly	25-35-4376	\$ 303,200.00	\$ 303,200.00	\$ 338,867.00	\$ (35,667.00)	-11.76%	\$ (35,667.00)	-11.76%		ADDITIONAL INFRASTRUCTURE WAS FIELD IDENTIFIED AND REQUIRED REPLACEMENT IMMEDIATELY THE WORK REQUIRED WAS ON 69TH STREET TO THE CREEK FROM BROOKBANK
29	Drainage Project Total	25-35-4376	\$ 808,000.00	\$ 769,725.00	\$ 737,409.00	\$ 32,316.00	4.20%	\$ 70,591.00	8.74%		
30											
31	Road Program-Capital Impv	25-35-4855	\$ 1,314,000.00	\$ 1,288,552.74	\$ 1,260,171.10	\$ 28,381.64	2.20%	\$ 53,828.90	4.10%		BROOKBANK WAS REMOVED FROM PROJECT DUE TO DITCH PROGRAM
32	Base Repair	25-35-4855	\$ 60,000.00	\$ 60,000.00	\$ 60,000.00	\$ -	0.00%	\$ -	0.00%		
33	Park District Plainfield Rd	25-35-4856	\$ 78,443.98	\$ 78,443.98	\$ 78,443.98	\$ -	0.00%	\$ -	0.00%		ADDITIONAL COSTS REINBURSED BY PARK DISTRICT
34	Public Works Parking Lot-Water Plant 3	02-50-4223	\$ 35,000.00	\$ 24,273.81	\$ 25,932.81	\$ (1,659.00)	-6.83%	\$ 9,067.19	25.91%		ADDITIONAL BASE STABILIZATION REQUIRED
35	Total Road Program		\$ 1,487,443.98	\$ 1,451,270.53	\$ 1,424,547.89	\$ 26,722.64	1.84%	\$ 62,896.09	4.23%		\$8,248.30 for water main break repairs (not included in total)
36											
37	Pavement Corings (2013 Pavement Program)	25-35-4325	\$ 14,000.00	\$ 13,750.00	\$ 10,319.00	\$ 3,431.00	24.95%	\$ 3,681.00	26.29%	N/A	NO COMMENTS
38	Contract and Bid Specifications-December-January	25-35-4325	\$ 31,500.00	\$ 30,426.00	\$ 26,740.00	\$ 3,686.00	12.11%	\$ 4,760.00	15.11%	N/A	NO COMMENTS
39	Total 2013 Road Engineering		\$ 45,500.00	\$ 44,176.00	\$ 37,059.00	\$ 7,117.00	16.11%	\$ 8,441.00	18.55%	N/A	NO COMMENTS
40											
41	Fertilization Program - 75th St Turf Areas	01-30-4350	\$ 15,064.00	\$ 12,533.66	\$ 12,533.66	\$ -	0.00%	\$ 2,530.34	16.80%		REDUCED COST DUE TO 75TH CONSTRUCTION
42	Fertilization Program - 75th St Trees	01-30-4350	\$ -	\$ -	\$ -	N/A	N/A	N/A	N/A	N/A	NO COMMENTS
43	Maintenance - Water Plants	02-50-4223	\$ 2,151.43	\$ 2,151.43	\$ 2,151.43	\$ -	0.00%	\$ -	0.00%	N/A	NO COMMENTS
44	Maintenance - City Hall-FERTILIZATION ONLY	01-10-4227	\$ 358.57	\$ 358.57	\$ 358.57	\$ -	0.00%	\$ -	0.00%	N/A	NO COMMENTS
45	Total Fertilization Program		\$ 17,574.00	\$ 15,043.66	\$ 15,043.66	\$ -	0.00%	\$ 2,530.34	14.40%	N/A	NO COMMENTS
46											
47	MV2 Mower and Boom Flail Mower	01-30-4815	\$ 135,000.00	\$ 112,200.00	\$ 112,200.00	\$ -	0.00%	\$ 22,800.00	16.89%	N/A	NO COMMENTS
48											

\$ 1,432,852.21

1	A	B	C	D	E	F	G	H	I	J	K
2	Item or Project	Account No.	Amount Budgeted	City Council Approved Funds	Actual Expenditure	Difference Between Actual Expenditure (E) and City Council Approved (D) Presented as Funds	Difference Between Actual Expenditure (E) and City Council Approved (D) Presented as a Percentage	Difference Between Amount Budgeted (C) and Actual Expenditure (E) Funds Available	Difference Between Amount Budgeted (C) and Actual Expenditure (E) Percentage	Contingency-Not Used	Comments
49	Fire Hydrant Painting Phase 1	01-30-4815	\$ 41,000.00	\$ 35,250.00	\$ 35,250.00	\$ -	0.00%	\$ 5,750.00	14.02%	N/A	NO COMMENTS
50											
51	SCADA System Radio Read Com	02-50-4815	\$ 35,000.00	\$ 19,660.00	\$ 19,660.00	\$ -	0.00%	\$ 15,340.00	43.83%	N/A	NEW VENDOR IDENTIFIED WITH SIGNIFICANT COST SAVING OPPORTUNITY
52											
53	Water Main Engineering Plainfield Road	12-50-4815	\$ 10,000.00	\$ 8,020.00	\$ 8,020.00	\$ -	0.00%	\$ 1,980.00	19.80%	N/A	FINAL COST TO BE DETERMINED UPON ENGINEER REVIEW
54											
55	Cathodic Protection - 67th & Wilmette	02-50-4815	\$ 22,500.00	\$ 22,500.00	\$ 22,500.00	\$ -	0.00%	\$ -	0.00%	N/A	FINAL COST TO BE DETERMINED UPON COMPLETION
56											
57	Fencing Project-Fence Portion	01-30-4223	\$ 52,000.00	\$ 37,820.00	\$ 38,270.00	\$ (450.00)	-1.19%	\$ 13,730.00	26.40%	N/A	FINAL COST TO BE DETERMINED UPON COMPLETION
58	Fencing Project-Landscaping	01-30-4223	\$ 5,000.00	\$ 5,000.00	\$ 4,500.00	\$ 500.00	10.00%	\$ 500.00	10.00%	N/A	FINAL COST TO BE DETERMINED UPON COMPLETION
59											
60	Water Leak Devices	02-50-4815	\$ 9,500.00	\$ 9,100.00	\$ 9,100.00	\$ -	0.00%	\$ 400.00	4.21%	N/A	COMPONENT COSTS INCREASED FROM 2011 ESTIMATE
61											
62	Lighting PW-Grass	01-30-4815	\$ 30,000.00	\$ 30,000.00	\$ 31,500.00	\$ (1,500.00)	-5.00%	\$ (1,500.00)	-5.00%	N/A	ADDITIONAL LIGHT REQUIRED TO COMPLETE THE DAY AREA
63	Lighting PW-Grain Reimb	01-30-4815	\$ (30,000.00)	\$ (30,000.00)	\$ -	\$ (30,000.00)	100.00%	\$ (30,000.00)	100.00%	N/A	STAFF IS PROCEEDING TO HOLD CONSULTANT RESPONSIBLE
64											
65	Water Main Insertion Valves - 4 locations	12-51-4818	\$ 70,000.00	\$ 70,000.00	\$ 70,000.00	\$ -	0.00%	\$ -	0.00%	N/A	IN HOUSE
66											
67	Rear Yard Drainage Project\$16,000										
68	1109 - 1117 69th Street 1102-1118 Hinsbrook	01-30-4374		\$ 6,621.65	\$ 6,621.65	\$ -				N/A	NO COMMENTS
69	Resident Reimbursement			\$ (1,621.68)	\$ (1,621.68)	\$ -					
70	Project Cost 1109-1117 69th St 1102-1118 Hinsbrook			\$ 4,999.97	\$ 4,999.97	\$ -					
71											
72	1006 - 1030 69th Street	01-30-4374		\$ 8,402.25	\$ 8,402.25	\$ -				N/A	NO COMMENTS
73	Resident Reimbursement			\$ (3,402.25)	\$ (3,402.25)	\$ -					
74	Project Cost 1006 - 1030 69th Street			\$ 5,000.00	\$ 5,000.00	\$ -					
75											
76	Hickory Ln - Cherokee Dr	01-30-4374		\$ 3,799.40	\$ 3,799.40	\$ -				N/A	NO COMMENTS
77	Resident Reimbursement			\$ (1,000.00)	\$ (1,000.00)	\$ -					
78	Project Cost Hickory Ln - Cherokee Dr			\$ 2,799.40	\$ 2,799.40	\$ -					
79											
80	Exner-Clemens	01-30-4374		\$ 5,790.98	\$ 5,790.98	\$ -				N/A	NO COMMENTS
81	Resident Reimbursement			\$ (1,000.00)	\$ (1,000.00)	\$ -					
82	Project Cost - Exner - Clemens			\$ 4,790.98	\$ 4,790.98	\$ -					
83											
84	Grand Total Rear Yard Drainage Projects	01-30-4374	\$ 16,000.00	\$ 17,590.35	\$ 17,590.35	\$ -	0.00%	\$ (1,590.35)	-9.94%	N/A	
85											
86	Street Light Maintenance & Energy	01-30-4359	\$ 82,400.00	\$ 82,400.00	\$ 82,400.00	\$ -	0.00%	\$ -	0.00%	N/A	
87	Street Light Installation	01-30-4359	\$ 14,000.00	\$ 14,000.00	\$ -	\$ 14,000.00	100.00%	\$ 14,000.00	100.00%	N/A	NO REQUESTS FORWARDED
88	Total		\$ 96,400.00	\$ 96,400.00	\$ 82,400.00	\$ 14,000.00	14.52%	\$ 14,000.00			
89											
90	Road Salt	03-60-4249	\$ 170,000.00	\$ 169,785.00	\$ 169,785.00	\$ -	0.00%	\$ 215.00	0.13%	N/A	NEGOTIATED PRICING EXTENSION - CONTRACT
91	Darien Park District - Reimbursable	REIMBURSED	\$ 16,807.00	\$ 16,807.00	\$ 16,807.00	\$ -	0.00%	\$ -	0.00%	N/A	CO-OP
92	District 66	REIMBURSED	\$ 548.80	\$ 548.80	\$ 548.80	\$ -	0.00%	\$ -	0.00%	N/A	CO-OP
93	Total		\$ 187,355.80	\$ 187,140.80	\$ 187,140.80	\$ -	0.00%	\$ 215.00	0.11%		
94	Total Projects Summary		\$ 3,949,600.78	\$ 3,883,941.49	\$ 3,747,459.34	\$ 136,482.15	\$ (0.03)	\$ 202,141.44	5.12%	N/A	