

CITY OF FRANKLIN  
COMMON COUNCIL MEETING  
FRANKLIN CITY HALL COUNCIL CHAMBERS  
9229 W. LOOMIS ROAD, FRANKLIN, WISCONSIN  
AGENDA\*  
TUESDAY, NOVEMBER 1, 2011, 6:30 P.M.

- A. Call to Order and Roll Call
- B.
  - 1. Citizen Comment Period
  - 2. Announcements from Mayor Taylor of upcoming community events & news items:
    - a. Letter from Milwaukee County Executive Chris Abele regarding Veto of County Board File No. RES 11-551 on Proposed Ryan Creek Interceptor Referendum.
    - b. Letter from Milwaukee County Executive Chris Abele regarding the Milwaukee County Paramedic Program.
- C. Approval of Minutes
  - 1. Approval of regular meeting of October 18, 2011.
  - 2. Approval of special meeting of October 27, 2011.
- D. Hearings
- E. Organizational Business
- F. Letters and Petitions
- G. Reports and Recommendations
  - 1. Ordinance to Amend the Municipal Code to Incorporate Statutes Regulating Activities Relating to the Carrying of Weapons and Firearms which are Punishable by Statute with a Forfeiture.
  - 2. Villas Condominiums retaining walls.
  - 3. An Ordinance to Amend the Municipal Code to Provide for a Four Year Term of Office for the Position of Municipal Court Judge Pursuant To Wis. Stat. § 755.02.
  - 4. Resolution Authorizing Certain Officials to Execute an Agreement Between Veolia Es Emerald Park Landfill, LLC, the City of Muskego, City of Franklin, Town of Norway, Racine County and Waukesha County for the Expansion of Veolia Emerald Park Landfill.
  - 5. Committee of the Whole Recommendations
    - A. Eagle Scout Leadership Service Project presentation by Scot Skowronski and authorization to upgrade lumber to cedar for the construction of a gazebo in Ken Windl Park with funding from the Parks Department 2011 Capital Outlay Park Improvement Fund.
    - B. Concept review for a proposed Gordon Food Service Marketplace and future commercial development (at 6919 S. 27th Street) (Bill Casey, applicant).
    - C. Concept review for a proposed indoor controlled environment agriculture development (at 3617 W. Elm Road) (Scott Biller, applicant).
    - D. Concept review for a proposed mixed use development (at approximately 7000 W. Rawson Avenue) (The Hintze Group, applicant).
    - E. Common Council agenda setting.

6. Ryan Creek Interceptor Sewer Project Wisconsin Department of Natural Resources Water Quality Certification Permit request for contested case hearing. The Council may enter closed session pursuant to Wis. Stat. §19.85 (1) (e), to consider the terms and negotiation of the Wisconsin Department of Natural Resources Water Quality Certification Permit request for contested case hearing litigation pertaining to the extension of the Ryan Creek Interceptor Sewer project, for competitive and bargaining reasons, and pursuant to Wis. Stat. §19.85 (1) (g), to confer with legal counsel for the Common Council who is rendering advice concerning strategy to be adopted by the body with respect to the litigation, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.
7. Acquisition of easement rights and interests in property for the location, extension, installation and maintenance of public sanitary sewer facilities to provide sanitary sewer service to the southwest area of the City of Franklin by way of the Ryan Creek Interceptor sewer installation upon property in the area from the intersection of South 60th Street and West Ryan Road generally following the Ryan Creek to the intersection of West Ryan Road and South 112th Street, thence westerly along West Ryan Road to the west City limits, upon the following property identified by Acquisition Map Parcel No., Tax Key Number and address, respectively, as follows: 19, 894-9997-002 and 9623 South 92nd Street. The Council may enter closed session pursuant to Wis. Stat. §19.85 (1) (e), to consider the terms and negotiation of the public acquisition of easement(s) for public sanitary sewer service for the extension of the Ryan Creek Interceptor Sewer project, for competitive and bargaining reasons, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.

H. Licenses and Permits

1. Miscellaneous Licenses.

I. Bills

1. Vouchers and Payroll approval.

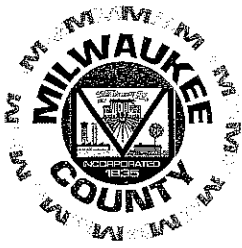
J. Adjournment

\*Supporting documentation and details of these agenda items are available at City hall during normal business hours.

[Note: Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information, contact the City Clerk's office at (414) 425-7500.]

REMINDERS:

November 3	Plan Commission	7:00 p.m.
November 15	Common Council	6:30 p.m.
November 24-25	City Hall Closed-Holidays	



OFFICE OF THE COUNTY EXECUTIVE

# Milwaukee County

CHRIS ABELE • COUNTY EXECUTIVE

B. 2. a.

DATE: October 24, 2011

TO: The Honorable Milwaukee County Board of Supervisors

FROM: Chris Abele, Milwaukee County Executive

**RE: Veto of County Board File No. RES 11-551 on Proposed Ryan Creek Interceptor Referendum**

I am vetoing County Board File No. RES-11-551 pursuant to the authority granted to me by Article IV, Section 23(a) of the Wisconsin Constitution and Section 59.17(6) of the Wisconsin Statutes.

The County Board adopted a resolution on Sept. 29, 2011, to hold an advisory referendum on the Milwaukee Metropolitan Sewerage District (MMSD) plan to pay the City of Franklin for costs related to building the Ryan Creek Interceptor Project.

The cities of Franklin and Muskego, Southeastern Wisconsin Regional Planning Commission, Wisconsin Department of Natural Resources and MMSD have approved this project. It will open up parts of Franklin and Muskego to development, creating the opportunity to add jobs and tax base to Milwaukee County and the region. MMSD has structured the payments for the project so that it can continue work on other important regional projects while building the interceptor. Design work for the project has been completed, bids have been received and the interceptor will be under construction by the time the proposed referendum would take place. The cost of the referendum is estimated at \$18,000.

Holding an advisory referendum would ignore the strong regional support and cooperation underlying this project, which will help open up parts of Milwaukee County and the region to development and new jobs. An April referendum would confuse residents, waste tax dollars and undermine regional cooperation, while having no effect on the project's construction.

A handwritten signature in black ink, appearing to read "Chris Abele".

Chris Abele, County Executive



OFFICE OF THE COUNTY EXECUTIVE  
*Milwaukee County*

CHRIS ABELE • COUNTY EXECUTIVE

B.2.b.

MILWAUKEE COUNTY  
CITY OF FRANKLIN  
2011 OCT 12 PM 12:52

October 7, 2011

Chief Michael Jankowski  
Hales Corners Fire Department  
10000 W. Forest Home Ave.  
Hales Corners, WI 53130

Dear Chief Jankowski:

Thank you for your recent letter regarding the Milwaukee County Paramedic Program. Like you, I understand the importance of this program, and strongly support the cooperative nature by which these quality services have been provided by municipal Fire Departments throughout Milwaukee County. That is why my 2012 budget calls for spending \$4.6 million in support of municipal paramedic programs, a slight increase from 2011.

As part of my budget, I proposed eliminating a separate \$3 million subsidy to municipal fire departments. It's a decision I did not take lightly. With over \$28 million in state cuts and a growing structural deficit, we faced a \$55 million deficit heading into 2012. While my budget does discontinue the subsidy, I am pleased that in this challenging budget environment, the separate \$4.6 million in support for the paramedic program remains fully funded for 2012.

The history of funding for the EMS services in Milwaukee County has been constantly evolving, as most business models do. As you know, Milwaukee County used to receive millions of dollars each year from billing EMS users for this service, and we paid the subsidy to municipalities as a result. But in 2007, the ability to collect these millions of dollars in revenue was transferred to the municipalities. The goal at that time was to end the subsidy. Unfortunately, the County is no longer in the position to provide the subsidy to the municipalities as it has in the past.

I am committed to maintaining the award-winning and nationally-recognized partnership with the municipalities to assure that a uniform delivery system is in place that enhances the partnership between the County and the municipal providers to maximize the use of resources while simultaneously limiting expenses.

With the \$4.6 million in my proposed budget, Milwaukee County will continue to provide local EMS services with these many critical services and functions:

Reimbursements To Local EMS For Incidental Costs Associated With Transport:

- \$500,000 is budgeted for this purpose

Medical Communications:

- Real-time, 24/7 communications with an emergency department physician for consultation
- Communications with hospitals receiving ems patients
- Real-time notification of hospital open/closed status
- Communication coordination between EMS providers and hospitals during disasters

10/26/2011 slw Copy to Ald, Atty, Fin. Off., Dir. of Adm., Chief

Medical Director Oversight:

- On-line (24/7 real time physician consultation), as well as off-line physician consultation
- Physician oversight of EMS system
- State-mandated medical control for EMS provider licenses

Medical Supplies:

- Provision of medical supplies at a greatly reduced rate through Froedtert Health System as well as access to medical supplies in an emergency, allowing vehicles to remain in service 24/7
- Uniform medical supply which allows for sharing between municipalities
- Access to physician prescribed and federally controlled narcotic medications
- Delivery of routine medical supply orders to fire stations

Administrative Services:

- Hold the State approved County-wide EMS operational plan
- Provide framework for the County-wide EMS system, training to fulfill those requirements and quality assurance to ensure maintenance of the nationally-recognized system modeling recently suggested by Institutes of Medicine report, National Highway Traffic Administration (NHTSA), and an EMS bill pending in U.S. congress
- Submit and manage State required EMS medical policies

Quality Assurance:

- Manage competency benchmarks for EMS providers and ensure competencies are met by paramedics
- Develop local and national "best practices" as well as monitor compliance by Fire Department paramedics and EMTs
- Collaborate with EMS education department and municipal fire departments to correct deficiencies identified through the QA process
- Develop, implement and manage the EMS system standards of medical care and practical skills

Health Information Management (Medical Records):

- Assistance for municipal Fire Departments to comply with state and federal health information mandates
- Provide guidance and direction to municipal Fire Departments regarding Health Insurance Portability Accountability Act (HIPAA)
- Assist municipal public policy decision-makers by mining extensive databases for individual municipal Fire Department data as well as regional system data
- System design and implementation of Drug Enforcement Agency (DEA) controlled medications (narcotic) monitoring system
- Management of complex patient care database

Removing the EMS subsidy to municipalities is part of our effort to maintain vital services and the long-term sustainability of the County. Recognizing the value of the services you provide for the individuals in your community, the County will continue to spend \$4.6 million next year to provide vital services to local EMS efforts. I look forward to further dialogue on this issue and discussion of how we can facilitate stream-lining of services and cost-savings.

Sincerely,



Chris Abele  
County Executive

Cc: Milwaukee County Board  
Milwaukee County Intergovernmental Cooperation Council (ICC)

<p style="text-align: center;"><b>APPROVAL</b></p> <p style="text-align: center;"><i>Slw</i></p>	<p style="text-align: center;"><b>REQUEST FOR COUNCIL ACTION</b></p>	<p style="text-align: center;"><b>MEETING DATE</b></p> <p style="text-align: center;">November 1, 2011</p>
<p style="text-align: center;"><b>REPORTS AND RECOMMENDATIONS</b></p>	<p style="text-align: center;">An Ordinance to Amend the Municipal Code to Incorporate Statutes Regulating Activities Relating to the Carrying of Weapons and Firearms which are Punishable by Statute with a Forfeiture</p>	<p style="text-align: center;"><b>ITEM NUMBER</b></p> <p style="text-align: center;"><i>G.1.</i></p>

The Council at its last regular meeting discussed a draft ordinance addressing both the regulating of those activities relating to the carrying of weapons and firearms which are punishable by statute with a forfeiture, as well as a prohibition as to carrying weapons in public buildings. The discussion by the Council resulted in a direction to staff to return a redraft of the proposed ordinance without the provisions prohibiting the carrying of weapons in a public building. The attached draft ordinance is provided in response to that direction.

**COUNCIL ACTION REQUESTED**

A motion to adopt An Ordinance to Amend the Municipal Code to Incorporate Statutes Regulating Activities Relating to the Carrying of Weapons and Firearms which are Punishable by Statute with a Forfeiture.

## ORDINANCE NO. 2011-\_\_\_\_\_

AN ORDINANCE TO AMEND THE MUNICIPAL CODE TO INCORPORATE  
STATUTES REGULATING ACTIVITIES RELATING TO THE CARRYING OF  
WEAPONS AND FIREARMS WHICH ARE PUNISHABLE BY STATUTE WITH A  
FORFEITURE

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WHEREAS, on July 8, 2011, the Governor of the State of Wisconsin signed into law 2011 Wisconsin Act 35 relating to the carrying of concealed weapons within the State of Wisconsin (the "Concealed Carry Act"); and

WHEREAS, the Concealed Carry Act goes into state-wide effect on November 1, 2011; and

WHEREAS, Wis. Stat. § 66.0409(2) authorizes the City to enact ordinances restricting and/or regulating the use, keeping, possession, bearing, transportation, licensing and permitting of a firearm; and

WHEREAS, the Milwaukee County Law Enforcement Executives Association has recommended that all Milwaukee County municipalities enact ordinances regulating those activities relating to the carrying of weapons and firearms which are punishable by statute with a forfeiture.

NOW, THEREFORE, the Mayor and Common Council of the City of Franklin, Wisconsin, do ordain as follows:

Section 1: § 183-77.A of the Municipal Code of the City of Franklin, Wisconsin, is hereby repealed and recreated to read as follows:

A. Adoption of State Statutes

1. Except as otherwise specifically provided in this chapter, the following statutory provisions, exclusive of any regulations for which the statutory penalty is a fine or term of imprisonment, are hereby adopted and by reference made a part of this chapter as if fully set forth herein:

- a. Wis. Stat. § 167.31 relating to transporting of bows and firearms
- b. Wis. Stat. § 175.60 relating to the carrying and display of concealed carry licenses and certain prohibited activities

- c. Wis. Stat. § 941.23(3) relating to the carrying and display of identification by out-of-state or former law enforcement members
- d. Wis. Stat. § 943.13 relating to certain trespassing actions while carrying or possessing a weapon or firearm
- e. Wis. Stat. § 948.605(2) relating to the carrying or possessing of a firearm within 1,000 feet of school grounds.

Section 2: The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

Section 3: All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

Section 4: This ordinance shall take effect and be in force from and after its passage and publication.

Introduced at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by Alderman \_\_\_\_\_.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

APPROVED:

\_\_\_\_\_  
Thomas M. Taylor, Mayor

ATTEST:

\_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSENT \_\_\_\_\_

<b>APPROVAL</b>  <i>Slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b>  November 1, 2011
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<b>REPORTS AND RECOMMENDATIONS</b>	Villas Condominiums retaining walls	<b>ITEM NUMBER</b>  <i>G.2.</i>
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This report was prepared by the City Attorney based upon prior consultations with the Engineering Department, Department of City Development and Department of Administration, and communications and meetings and the review of documents with staff, Villas of Franklin Association representatives, bank representatives, bank attorneys, bankruptcy and creditors' attorneys, City insurer staff, elected officials and the Common Council, dating back to April, 2009.

This matter is before the Council following its review of a letter from Jim Reichl, President of The Villas Condominiums, Inc. (The Villas of Franklin Association) regarding Villas of Franklin retaining walls, which was agenda item F.2. at the Common Council meeting on September 6, 2011 (copy of the letter is attached). The Council directed staff to investigate claims and documents regarding The Villas Condominiums retaining walls and return to the Common Council no later than 60 days.

The entirety of the development issues involved the Villas and related developer property foreclosure actions, which were commenced in early 2009, and also an accompanying developer bankruptcy. Contacts to the City from property owners and Association representatives began in at least April of that year. Attached is a copy of a list of "Major issues" dated May 1, 2009 from the Villas of Franklin which was then provided to the District Alderman who had attended an Association meeting. Staff commenced work forthwith with all of the aforementioned parties. Furtherance of development completion issues occurred following the obtaining of understandings with the lenders and communications thereof to Association representatives, initially with a Council action to authorize staff to let for bid the work of a final lift of asphalt on the west 13,350 feet of West Villa Drive, the asphalt topping be placed on South 35th Street from West Drexel Avenue to approximately 100 feet south of West Villa Drive, and an alternate bid for the work of the final lift of asphalt on South Susanna Court, at its meeting on June 16, 2009. Meetings also occurred at least into Fall, 2009, with Association representatives. Furtherance of other development completion issues continued between staff and lenders well into 2010.

The retaining walls issue, as noted in the May 1, 2009 list from the Association, has been there since at least that time. Photos of the retaining walls were provided to staff dated May, 2009. Attached is a copy of a Department of City Development report dated May 19, 2009 noting the retaining walls in its last stated item. On July 20, 2009, the City received and sent to the City insurer a letter dated July 16, 2009, from a law firm representing The Villas Condominium, Inc. and the Condominium Owner's Association (copy attached). The letter mentions a position that "the City of Franklin take responsibility for its failure to inspect improvements".

A meeting was requested by the Association representatives and was had with the Mayor, Alderman Taylor and staff on April 22, 2011. The presentation at the meeting was as to the retaining walls. Staff reaction throughout the meeting was along the lines of this issue being among those matters reviewed almost then two years ago. The City Engineer repeatedly stated that the City does not inspect retaining walls on private property. The City Attorney mentioned that there is a statute of limitations upon a claim of negligent inspection of 1 year. There is one document in all of the file(s) for this development which in any way shows or references a retaining wall on private property, and it is a grading plan which was approved by the Engineering Department. The Engineering Department advises that it did not review the depiction of the retaining walls or any of the notes on the document referring thereto because it does not regulate retaining walls on private property. The grading plan was reviewed and approved only with regard to the grades set forth thereon. Both the Engineering Department and the Department of City Development, which administers landscaping plans, advise that landscaping plans

content does not include retaining walls. The landscaping plans for this development do not depict retaining walls. The City Engineer has corresponded to the Association that the retaining walls on private property were not an improvement secured by a letter of credit under the development agreement.

There is one reference in the Municipal Code and one reference in the Unified Development Ordinance to a retaining wall, and both pertain to a retaining wall where it might be beneficial in the preservation of existing trees - not relevant to this matter. The Association has cited section 6.9 of the City "Design Standards & Construction Specifications", which the City Engineer states would only apply to a work of public improvement. A term of the standard City development agreement which is recorded for all developments, including this one, and under which a letter of credit is required, provides in part that it is not intended that the terms or provisions of the agreement are to be enforceable by or provide any benefit to any person or entity other than the City or the developer. The agreement terms (form) remain as the "model" subdivision development agreement for municipalities in the Southeastern Wisconsin Regional Planning Commission's Planning Guide number 1 (2nd Edition). The subject development agreement does not list "retaining walls" as a secured or required improvement.

Wis. Stat. § 893.80(1)(a) and (b) provide:

"(a) Within 120 days after the happening of the event giving rise to the claim, written notice of the circumstances of the claim signed by the party, agent or attorney is served on the volunteer fire company, political corporation, governmental subdivision or agency and on the officer, official, agent or employee under s. 801.11. Failure to give the requisite notice shall not bar action on the claim if the fire company, corporation, subdivision or agency had actual notice of the claim and the claimant shows to the satisfaction of the court that the delay or failure to give the requisite notice has not been prejudicial to the defendant fire company, corporation, subdivision or agency or to the defendant officer, official, agent or employee; and

(b) A claim containing the address of the claimant and an itemized statement of the relief sought is presented to the appropriate clerk or person who performs the duties of a clerk or secretary for the defendant fire company, corporation, subdivision or agency and the claim is disallowed."

No claim has been filed with the City.

Wis. Stat. § 893.80(1p) provides: "No action may be brought or maintained with regard to a claim to recover damages against any political corporation, governmental subdivision or agency thereof for the negligent inspection of any property, premises, place of employment or construction site for the violation of any statute, rule, ordinance or health and safety code unless the alleged negligent act or omission occurred after November 30, 1976. In any such action, the time period under sub. (1)(a) shall be one year after discovery of the negligent act or omission or the date on which, in the exercise of reasonable diligence the negligent act or omission should have been discovered."

The Wisconsin Statutes Annotated Comments under § 893.80 and "1987 Act 377" provide in part:

"4. *Liability for negligent inspections*

In *Coffey v. City of Milwaukee*, 74 Wis.2d 526, 247 N.W.2d 132 (1976), the Wisconsin supreme court first indicated that a municipality could be held liable to injured parties for negligent inspections conducted by municipal employees.

This bill establishes a statute of limitations for tort actions against certain governmental bodies for negligent

inspections by providing that such actions must be commenced within one year after the date the negligence was discovered or, in the exercise of reasonable diligence, should have been discovered.

The supreme court, in *Coffey*, did not specifically rule that potential municipal liability resulting from negligent inspections would apply only to inspections undertaken after the date of the *Coffey* decision. Therefore, the bill also provides that governmental bodies will not be liable for damages if the negligent inspection occurred on or before November 30, 1976 (the date of the *Coffey* decision).

As noted previously, under current law, the amount recoverable by any person for damages in a tort action against a municipality (other than motor vehicle accident cases) may not exceed \$50,000. This bill provides that only one cause of action for property damage may be maintained by 2 or more joint tenants of a single-family dwelling that suffers damage as a result of a negligent municipal inspection."

The City's insurer has advised that its file had been "closed" after receiving nothing further from the Association in 2009, and that it was not in a position to respond or assist in any manner, as a claimant has a "duty" to file a claim under the law and that no claim has been filed.

The 'claim' here is one of negligence on the part of the City. The City has never inspected retaining walls on private property (at least not since 1969). City staff have denied any responsibility to inspect the retaining walls. In general, under the law, enforcement is discretionary. Under that precept, it is asserted that a statement of description regarding retaining walls contained in a standards and specs booklet does not trigger a ministerial duty to inspect. Discretionary governmental acts or non-acts are granted immunity from claims.

### **COUNCIL ACTION REQUESTED**

As the Common Council may determine appropriate.

F. 2. 9/6/11

**Sandi Wesolowski**

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**From:** tom2563@att.net  
**Sent:** Friday, August 12, 2011 11:37 AM  
**To:** Jim Reichl  
**Cc:** Sandi Wesolowski; Jack Bennett; Jesse Wesolowski; Alderman Steve F. Taylor; Mark Luberda  
**Subject:** Re: Villas of Franklin...CC Agenda

Mr. Reichl,

I appreciate you getting back to me so promptly. I had just spoken to the City Clerk to see if she or others at City Hall had received a letter from you so that I could have placed on this letter on the next Common Council agenda. I will send her a copy of this reply for her information as well as to those other interested parties.

As I stated in my message to you I will place a letter from you and/or your organization on the next Common Council and then it will be up to the Council to determine whether or not they wish to take action, refer the matter to the staff for recommendations or take such other action that the Council may elect. You are free to speak to this matter at the Citizen Comment Period and then ask the Council to take such action as you choose.

The members of the Council will receive a copy of your future letter in their Council packet on the Friday prior to the Common Council meeting, so they will have the opportunity to contact the staff or others prior to the meeting. I should note that the staff of the City may also have information available for the Council on the issues contained in your future letter as well as the City's involvement in attempting to resolve outstanding issues that your association had encountered in the past..

If you should have questions or concerns regarding the information contained in my reply please contact me as soon as possible.

Sincerely,

Thomas M. Taylor  
Mayor of the City of Franklin

**From:** Jim Reichl <jim@reichl.com>  
**To:** tom2563@att.net  
**Sent:** Friday, August 12, 2011 10:41 AM  
**Subject:** RE: Villas of Franklin...CC Agenda

Mayor Taylor,

Due to scheduling conflicts, I will not be able to get the information you need by 10:00AM today. I will be sure you receive it early next week. I would then assume our association could be heard at the Common Council meeting on September 6<sup>th</sup>.

Thank you.

Jim Reichl

**From:** tom2563@att.net [mailto:tom2563@att.net]  
**Sent:** Wednesday, August 10, 2011 10:22 PM

**To:** 'Jim Reichl'; 'Alderman Steve F. Taylor'  
**Cc:** mjziino@wi.rr.com; Suebwine@aol.com; 'Jesse Wesolowski'; 'Jack Bennett'  
**Subject:** RE: Villas of Franklin...CC Agenda

Mr. Reichl,

Please provide me with a letter specifically detailing your issues and concerns and the relief that your members are seeking and I will consider placing it on a future Common Council agenda under letters and petitions.

The members of the Common Council may or may not take action on your letter as they so choose. Our staff will also weigh-in on this issue and may present arguments to the Council should the Council so elect to hear from their department heads.

Please provide me with the letter that I am requesting from you as soon as possible but no later than Friday of this week by 10:00 a.m. if you wish to potentially have me place your letter on the next Common Council agenda. If we receive your letter after that date, it will then be potentially considered to be placed on the following Common Council agenda or future Common Council agendas.

Please provide in this letter the signatures of those parties that have been elected by your association members to speak on their behalf and the motion or motions that were made and passed by a majority of your association members regarding the issues you wish to bring to the attention of the Common Council. This motion or motions will clearly show that you or others have been empowered to speak on behalf of your members and that they have provided you with the authority to speak on their behalf and that they have authorized you to enter into potential settlements or discussions, should the members of the Common Council wish to entertain such discussions or settlements. As the mayor I have unfortunately had the experience of having individuals speak on issues and requesting relief only to find out later that these individuals had no authority whatsoever to enter into agreements, discussions or settlements on behalf of association members. This was a tremendous waste of time and money and did nothing but create conflict between the city and the residents and therefore I insist that individuals show that they indeed have been empowered to speak and resolve issues as authorized by their members. I view these types of discussions as I would when sitting down to negotiate a collective bargaining agreement between labor and management.

I have had discussions with the staff of the city concerning your last message to me and as of this date they and I are not in agreement with your position or your arguments. I however will consider placing a letter from you as stated above on a future Common Council agenda so that the alderman may or may not take action regarding your members' concerns.

If you should have any questions or concerns regarding the information contained in this reply, please contact me at your earliest convenience. You and others do have the ability of speaking on issues at the Citizen Comment Period of the Common Council meeting. Should a majority of the Council choose to allow you and others to speak regarding your issues contained in your letter to me they may also choose to suspend the regular order of business to allow you to speak on the issues you have raised in your letter to me.

The Common Council has many options available to them but they could also chose to have the staff of the city address the issues you raise and report back to them with the staff's findings and recommendations? It has been my experience that the Council normally wants to hear back from the staff and to view their recommendations but this is entirely up to the Council members. At any point it will require a majority vote of the Council to pass a measure and then the mayor normally has the ability to veto such action should he elect to do so. Should the mayor elect to veto such action it would require a two thirds vote of the Council to override the mayor's veto.

I apologize to you for not getting back to you sooner but your last message required me to consult with the City Attorney, the Director of Administration, the City Engineer and the alderman for the area before I could respond.

I know that in the past the membership of your association had expressed appreciation of the work that was performed for them by the staff of the city and by the alderman of the area and hopefully reasonable people will be able to continue the very positive relationship that has been put in place between the association and the city?

I look forward to continuing to work with the Association and its elected representatives.

Sincerely,

Thomas M. Taylor

Mayor of the City of Franklin

**From:** Jim Reichl [mailto:jim@reichl.com]  
**Sent:** Friday, August 05, 2011 1:08 PM  
**To:** tom2563@att.net ; 'Alderman Steve F. Taylor'  
**Cc:** mjziino@wi.rr.com; Suebwine@aol.com  
**Subject:** Villas of Franklin...CC Agenda

Dear Mayor Taylor and Alderman Taylor,

The Villas of Franklin Association is interested in being heard by the Franklin Common Council. This would be a focused hearing regarding the nonconforming retaining walls that were installed next to our buildings.

Both the Planning and Engineering Departments did not confirm construction per the Approved Grading Drawings, the City of Franklin Unified Development Ordinance, Part 8, Division 15-8.0100, Section 15-8.0101, 15-8.0102, 15-8.0203(J), and others. The Franklin Design Standards and Construction Specifications also were not followed. Specifically, Section 6.9 Retaining Walls. The Engineering Department has been unable to produce the approved preconstruction retaining wall plan stamped and signed by a professional engineer. The engineering department has also not produced the record "as built" drawings for the retaining walls as required in section 15-8.0203(J) of the UDO. Three sets of these drawings are required as a condition of final acceptance of the improvements to release the financial surety letter of credit which assures completion per the previously stated documents. Fences were required per the grading drawings at the top of these retaining walls. None were installed.

Neither the Planning Department nor the Engineering Department has done a site survey assuring that the retaining walls are safe and conform to the documents. The common Council needs to direct the departments to complete their work so the walls do conform to the documents. The Villas Association taxpayers entrusted the City of Franklin and these departments to follow their own pre-established ordinances and specifications to provide us with a safe place to live. This has not happened.

We would like to be heard earlier in the evening's agenda if at all possible. Please advise.  
Thank you.

Jim Reichl  
President  
Villas Condominiums Inc

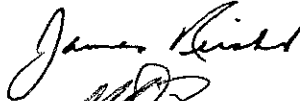
**The Villas of Franklin Association  
PO Box 320426  
Franklin WI 53132**

August 15, 2011

Mayor Taylor,

The following individuals have been duly elected or appointed as board members to represent Villas Condominiums Inc. (Villas of Franklin) in all business matters.

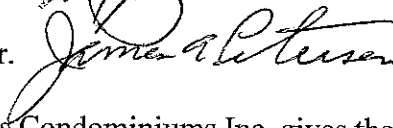
James Reichl President



Mario Ziino Vice President

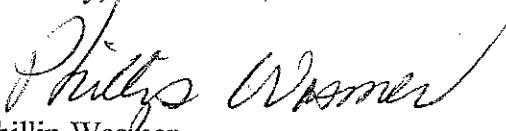


James Petersen Director.



The bylaws of the Villas Condominiums Inc. gives the board of directors the authority to act on behalf of the membership.

Sincerely,



Phillip Wasmer  
Treasurer

8/17/11 - copy given to Sandi Wesolowski

2011 AUG 17 AM 9:13  
VILLAS OF FRANKLIN

***Villas Condominiums Inc.***

***PO Box 320426  
Franklin, WI 53132***

Hand Delivered  
August 17, 2011

Thomas M. Taylor  
Mayor of the City of Franklin

Re: Villas of Franklin Retaining Walls

Dear Mayor Taylor,

Thank you for your consideration to include our association on an upcoming agenda of the Common Council. To date we have had a hard time understanding why the retaining walls that are in very close proximity to our buildings continue to fail every year. We have learned from numerous landscape and grading professionals that the boulder walls that were installed are not meant for elevation changes higher than three to four feet maximum. The freeze – thaw cycles that we go through each winter will not allow this type of wall to retain ground as high as eleven to twelve feet as has been installed around our ranch style side by side villas. How could this have happened?

We have researched the construction documents for the Villas and found that the retaining walls are shown on the project grading drawings that were approved by the City of Franklin Engineering Department. On these grading drawings, there is a legend noting the location of the new retaining walls. There is also a note on the drawings directing that "All retaining walls with a height of 3 feet or multiple walls with a total grade difference of 3 feet shall have a fence installed along the top of the single wall or along the top of the upper wall".

The new construction condominium improvements for the grading and retaining walls must be installed per the City of Franklin Unified Development Ordinance, Part 8, Improvements and Construction. Under Section 15-8.0102 General Standards, "The required improvements set forth in this Ordinance shall be installed in accordance with the City Engineer's "Design Standards and Construction Specifications". Within those design standards is section 6.9 Retaining Walls. It reads..."For all retaining walls, a plan shall be submitted to the City Engineer for approval. The plan shall be stamped and signed by a professional engineer."

Further research within the UDO shows Section 15-8.0203 Plans and Specifications. Item J Record "As Built" Plans....." prior to final acceptance of said improvements, the Condominium Developer shall make or cause to be made three (3) complete sets of record "as-built" plans.... The presentation of the record "as-built" plans shall be a condition of final acceptance of the improvements and release of the financial surety assuring their completion". These as built plans must reference not just changes in grades. They need to show the location of all of the retaining walls "as-built" so the City Engineer is in a position of accepting the work.

Based upon the above cited documents and directives, it is evident that the City Engineer has not accepted the retaining walls. As such, our association also has not accepted the retaining walls for the following reasons:

1. None of the walls have a fence.
2. We have not been able to obtain from Engineering a copy of the pre-construction plan for the retaining walls that were stamped and signed by a professional engineer.
3. We have not been able to obtain a copy of the "as-built" plans from the Engineering Department that pertain to retaining walls. These plans, if done correctly, would show many more retaining walls installed than what the grading drawing shows.

We request that the City Engineer survey the existing retaining walls constructed through out the development, produce the stamped pre-construction drawings for the retaining walls and produce the as-built plans so he is in a position to assure conformance to the documents. Then and only then, would he be in a position to release the letter of credit per the City ordinance(s).

Please let us know when we will be heard before the Common Council. We request that the Council direct the City Engineer to assure that all of the retaining walls constructed in close proximity to our buildings conform to the documents as required. These walls are not safe.

Sincerely,  
James Reichl, President

  
Villas Condominiums, Inc

*Villas Condominiums Inc.  
P.O. Box 320426  
Franklin, WI 53132*

COPY

Hand Delivered  
July 8, 2011

City of Franklin Planning Department  
Joe Dietl, AICP  
Planning Manager  
9229 W. Loomis Road  
Franklin, WI 53132

City of Franklin Engineering Department  
John Bennett, PE.  
City Engineer  
9229 W. Loomis Road  
Franklin, WI 53132

Re: Grading / Retaining Walls at Franklin Oaks (aka Villas of Franklin)

Dear Mr. Dietl and Mr. Bennett,

The Villas Condominium Association is interested in your departments final "as built" review and inspection documents of the approved grading drawings, as they relate to retaining walls. The copy of the drawings that we have, indicated that grading drawings sheets 1, 8 and 9 of 9 total sheets would apply.

These sheets include the legend showing retaining walls, the retaining wall locations and the note at the bottom of sheet 1 indicating that "all retaining walls with a height of 3 feet or multiple walls with a total grade difference of 3 feet shall have a fence installed along the top of the single wall or along the top of the upper wall."

We are also interested in reviewing a copy of all documents indicating final inspection of these walls and the conformance to the *Development Agreement for Franklin Oaks* (dated May 2005), the *Unified Development Ordinance* and the referenced *Standards & Specifications for Development*.

We have seen the Standards & Specifications for Development and note on page 53, section 6.9 Retaining Walls, which requires "**for all retaining walls, a plan shall be submitted to the City Engineer for approval**".... We request a copy of this final approval issued prior to construction. We also note within the Design Standards and Construction Specifications as revised, further clarification requiring **retaining walls proposed as part of development plans are to be approved by a licensed professional engineer.**

**The reason for our query is due to the continued year after year failure of the retaining walls.** This was originally pointed out to Orrin Sunwalt, City Planner, upon his site inspection for compliance of Landscaping back in May of 2009. This wall failure has also been confirmed by the Mayor during his own site visit.

COPY

2.

We also note that within the Developers Agreement for Franklin Oaks, ***Grading*** (including Erosion Control) ***is a line item cost that is included under the letter of credit financial surety to ensure performance of obligations and guarantees by the developer / surety.*** The City shall only allow reductions in the amount of the financial surety in proportion to the amounts of the obligations as they are fulfilled. ***The completed work must be inspected and approved to conform to the City of Franklin UDO and Standards & Specifications for Development.***

We continue to note within the UDO that the Developer had to submit **3 sets of Record As-Built Drawings as a condition of final acceptance of the improvements before the release of the financial surety letter of credit.** Do these as built drawings exist for the grading / retaining walls and were they accepted by the City of Franklin?

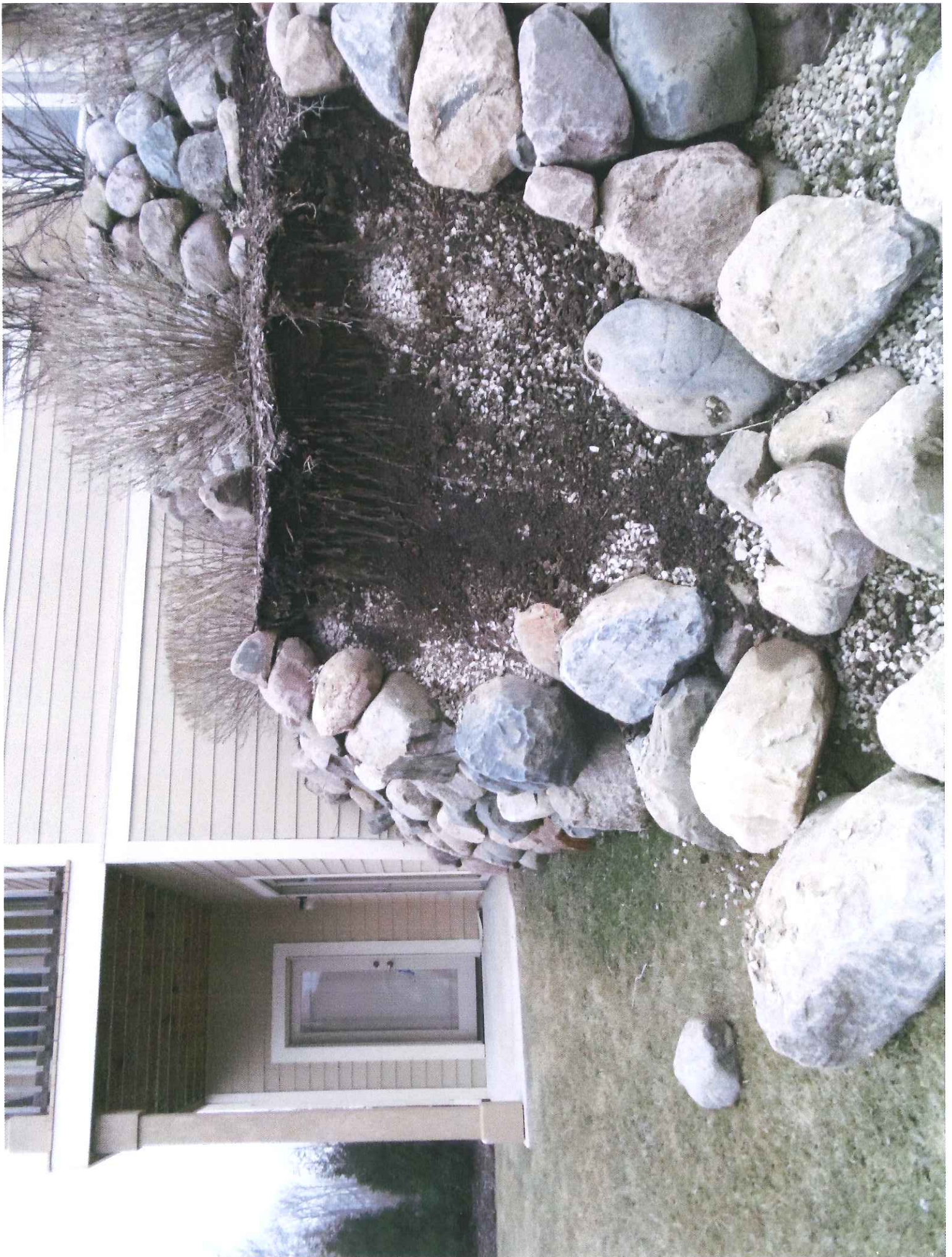
We request that a City site inspection for compliance of the retaining walls be completed as required. Currently, the non-compliant walls are located at the following addresses:

7983 Patricia Court  
7981 Patricia Court  
7979 Patricia Court  
7977 Patricia Court  
7984 Patricia Court  
7986 Patricia Court  
7970 Susanna Court  
7972 Susanna Court  
7994 Susanna Court  
7996 Susanna Court

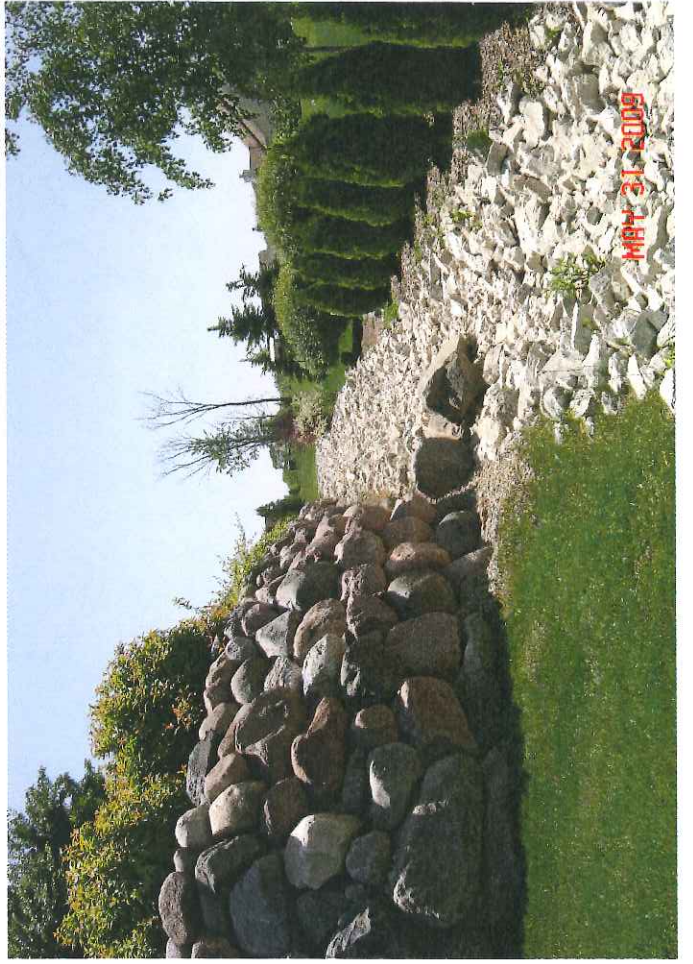
We look forward to your response to all of our concerns related to these retaining walls. I can be reached via cell phone or e-mail.

Sincerely,

Villas Condominiums Inc.  
James Reichl, President  
414-510-9680  
jim@reichl.com







**Villas of Franklin**  
**Major Issues**  
**May 1, 2009**

Second lift of asphalt, curb and gutter repair on Villa Drive.

- Villa Drive took a beating last year when it was used as a detour during reconstruction of Drexel avenue.

Second lift of asphalt, curb and gutter repair on Susanna Ct

Second lift of asphalt on driveways of constructed units.

Curb trees and other trees per the landscape plan for constructed units

- only building 1 (former model) has trees per the plan
- all other units do not have trees per the plan and do not meet the city's minimum requirement of trees per unit
- approximately ½ of curb trees planned have been planted on Villa Dr.

Rock retaining walls collapsing on 3 properties

- One wall is two tiers and totals over 12 feet high
  - o Borders private property on 35<sup>th</sup> street
  - o Was repaired by the contractor who installed the wall last year
- Contractor has been contacted twice in the last two weeks
  - o No response from contractor to date
- Wall should be inspected by city engineer

Landscape drainage problems behind building 4 on Patricia ct

- water pools in back yard
- builder notified of problem many times
- unlikely that the grading is to city plan

Removal of 4 pre-existing dead trees behind building 4 on Patricia ct

- On homeowners lot but on landscape easement
- April 2009 - city engineering said city would remove them at city cost
- Trees on property prior to construction of berm

There are more landscaping issues. As far as we know, the city has not inspected the exteriors of the buildings. We were told those inspection would take place this spring.

Silt fences on Villa Drive containing dirt pile are down and need to be replaced.

Request street lights on the intersections of Villa and Patricia and Villa and Susanna

Speed control on Villa Drive

- 8 block long winding road
- traffic has increased since use as a detour in 2008
- a lot of traffic speeding at 40+ mph

**Villas of Franklin**  
**Major Issues**  
**May 1, 2009**

Increased police patrol of Villa Drive – primarily area east of Susanna ct

- building materials, air conditioner and other trash being dumped
- Many empty liquor bottles and condoms
- Area being used as a lover's lane

Clean up area of former construction trailer site on Villa Drive

- trailer anchors (6 inches or so) in asphalt are a hazard
- container stored on site
- silt fence down
- construction materials strewn about behind container
-



---

**MEMORANDUM:**

**FROM: City Development**

DATE: May 19, 2009

TO: Jack Bennett

FROM: The Department of City Development

SUBJECT: Villas of Franklin Landscaping

---

Department of City Development Staff conducted site inspections at the Villas of Franklin condominium development on May 12, 2009 and May 19, 2009. Condition No. 5 of Resolution No. 2002-5380 states that, "The site shall be developed in substantial compliance with the development plans dated April 18, 2002, including the Site Plan, Villa Drive Wetland Crossing Plan, Photometric Plan, Phasing Plan, Tree Removal Plan, dated April 23, 2002, Existing Tree Summary, Tree Removal Summary, Topography Slope Analysis, dated April 23, 2002, Landscape Plan, Architectural Elevation Plans and Floor Plans, except as revised by this Special Use, with full-sized copies on file in the office of the Planning Department, and with dumpster enclosure locations for the apartment buildings as approved by City Staff. Therefore, Staff based it's inspections on the Landscape Plan dated April 17, 2002, which was approved by the Common Council on May 21, 2002.

Overall, a total of 97 shade trees, 47 evergreens, and 42 ornamental trees were not planted in accordance with the approved Landscape Plan. However, Staff did give credit for trees planted in different locations than shown on the approved landscape plan. A total of 2 shade trees, 10 evergreens, and 22 ornamental trees were identified, that were planted in different locations than shown on the approved Landscape Plan. Therefore, a total of 95 shade trees, 37 evergreens, and 20 ornamental trees are still missing.

Only the model condo building (building 1) was landscaped in accordance with the approved plan. During the site inspections a pattern emerged. Rather than the approved plantings, most of the condo units had six arborvitae and four shrubs planted in the rear of the building. In the front of the condo units, primarily ornamental trees were planted. Staff did not focus its attention on shrubs and perennials, as these plantings seemed to be in substantial compliance with the approved landscape plan, and were not a concern of the property owners association. Also, Staff did not inventory any trees associated with buildings not yet constructed. Details of Staff's findings can be seen on the attached copy of the approved Landscape Plan.

Furthermore, Staff was made aware of the stone retaining walls on the property that are failing. Many of the walls are bulging and several have had stones pop out of place. This is an issue of great concern to the property owner's association.



ATTORNEYS AT LAW

July 16, 2009

2009 JUL 20 AM 9:05  
ACCEPTED FOR MAILING

FORWARDED BY EMAIL  
[mluberda@franklinwi.gov](mailto:mluberda@franklinwi.gov)  
AND MAILED

Mr. Mark W. Luberda  
City of Franklin  
Director of Administration  
9229 West Loomis Road  
Franklin, WI 53132

All Members of the  
City of Franklin Common Council

RE: The Villas Condominiums

Dear Sirs/Madam:

This law firm represents The Villas Condominium, Inc. and the Condominium Owner's Association which governs the common areas within The Villas Condominium. The purpose of this letter is to request that the Common Council use its best efforts to utilize the remaining Letter of Credit to benefit the Villas Condominium common areas. As you are aware, Villa Partners, LLC, the developer of this condominium ("Developer"), is the Defendant in a foreclosure action commenced by North Shore Bank. As you are also aware, the City of Franklin failed to properly inspect the public improvements as they were installed by the Developer, which has resulted in a major shortfall in the amount of the remaining Letter of Credit. The Condominium Owner's Association is requesting that the City of Franklin utilize the remaining funds under the Letter of Credit to complete the improvements within the condominium development, and utilize general funds of the City to complete the improvements to South 35<sup>th</sup> Street and Villa Drive.

The Development Agreement for Franklin Oaks (Phase II-First Addendum to The Villas' Condominium) dated May 17, 2005 sets forth the obligations of both the Developer as well as the City of Franklin with regard to this condominium. Section 5 of the Development Agreement required the Developer to file with the City a Letter of Credit in the initial amount of \$1,490,580. Exhibit D to the Development Agreement sets forth the estimated cost of the improvements, which

111 East Wisconsin Ave  
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Milwaukee WI 53202  
414.276.3400  
FAX 414.276.9278  
mail@lhlawfirm.com

- PETER C. HAENSEL
- FRANK W. BASTIAN\*
- JANET M. HOEHNEN\*
- MICHAEL J. BENNETT\*
- WILLARD G. NEARY
- KATHLEEN R. DAHLGREN
- CYNTHIA M. MACK
- MICHAEL D. ORGEMAN
- CECILIA M. MCCORMACK
- JOSEPH A. ABRUZZO
- REGGIE L. WEGNER\*

\*Also Certified Public Accountants

Accounting Services  
DAWN KIEL-NORD, CPA

## LICHTSINN &amp; HAENSEL S.C.

include \$208,500 for paving and \$185,000 for condo landscaping. Section 15 of the Development Agreement requires the City of Franklin to complete a final inspection of all improvements and issue a written approval of all improvements before the Developer is released from its obligations. Section 5 further states that the Letter of Credit provided by the Developer shall not be reduced without the written approval of the City Engineer as the improvements are paid for and approved by the City. Finally, Section 6 of the Development Agreement states that "billings for the Improvements Costs shall take place as the various segments and sections of the Improvements are completed and certified by the City Engineer."

Obviously, the City of Franklin failed to perform its duties and obligations under the Development Agreement which has resulted in substantial damages to the Villas Condominium owners and the Association. Had proper inspections been done, the outstanding Letter of Credit would have been sufficient to complete the paving and landscaping required under the Agreement. In addition, ten percent (10%) of the original Letter of Credit should still be available to guarantee the improvements for a period of one (1) year from acceptance by the City. We also note that pursuant to Section 12 of the Development Agreement, the Developer is not obligated to indemnify the City or the City's officers, agents or employees from any liabilities or losses that arise from or are as a result of the negligence or willful misconduct of the City of Franklin. Both the Developer and the City of Franklin's acts and omissions have caused the current situation.

In speaking with my clients, it appears that the following work that should have been guaranteed by the Letter of Credit, is still incomplete:

1. Completion of the second lift of asphalt on Susanna Court;
2. Completion of the second lift of asphalt on the driveways to Building 14;
3. Completion of the second lift of asphalt on Villa Drive, a public street;
4. South 35<sup>th</sup> Street from Drexel Avenue to 100 feet past Villa Drive has not been restored and may need additional work beyond the second lift of asphalt;
5. Approximately 137 Unit Trees and 60 Street Trees have not been installed and other landscaping remains incomplete despite the requirements in the approved landscape plan.

It is our request that the City of Franklin take responsibility for its failure to inspect improvements before reducing the Letter of Credit. The improvement of South 35<sup>th</sup> Street and Villa Drive, both public right-of-ways, despite the requirement in the Developer's Agreement, should be a general obligation of the City of Franklin since it failed to demand performance by the Developer. No funds remaining under the Letter of Credit should be used to improve South 35<sup>th</sup>

## LICHTSINN &amp; HAENSEL S.C.

Street or Villa Drive. All remaining dollars in the Letter of Credit should instead be used solely for the improvement of the private roads, driveways, and landscaping that may benefit the existing condominium owners within this development. We are requesting that the remaining Letter of Credit funds be used as follows:

1. First, second lift of asphalt on the driveways to Building 14 be completed so that these owners have a safe and sound driveway apron to their units;
2. Second, a second lift of asphalt on Susanna Court be installed to provide a safe and sound private road for the benefit of the condominium owners;
3. Any funds remaining in the Letter of Credit should be used to complete the installation of the approximately 137 Unit Trees and 60 Street Trees that were required to be installed pursuant to the landscape plan.

Although the City of Franklin certainly cannot control the financial situation of the initial Developer, it could have controlled the reductions in the Letter of Credit by performing its clear obligations under the Development Agreement. For that reason, improvements to South 35<sup>th</sup> Street and Villa Drive should be general obligations of the City and the Letter of Credit funds remaining should be used solely to improve the private roads and landscaping improvements within the development as outlined above.

The condominium unit owners in this Association have been working diligently to try to make the best of a very difficult situation. General fairness dictates that the funds remaining in the Letter of Credit should be used to improve the land within the four corners of this development and not public right-of-ways which will benefit the City of Franklin as a whole. We are respectfully requesting that the City of Franklin do the right thing and utilize the remaining funds for the benefit of these condominium owners.

If you have any questions with regard to this, please feel free to contact me.

Very truly yours,

LICHTSINN & HAENSEL, s.c.

By:

  
Michael D. Grgeman

<b>APPROVAL</b> <i>Slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> November 1, 2011
<b>REPORTS AND RECOMMENDATIONS</b>	An Ordinance to Amend the Municipal Code to Provide for a Four Year Term of Office for the Position of Municipal Court Judge Pursuant To Wis. Stat. § 755.02	<b>ITEM NUMBER</b> <i>6.3.</i>

Attached is a draft ordinance as recommended by the City Clerk, to amend the Municipal Code which provides for a 3 year term for Municipal Court Judge to be consistent the general provision of Wis. Stat. § 755.02 providing for a 4 year term.

**COUNCIL ACTION REQUESTED**

Motion to adopt An Ordinance to Amend the Municipal Code to Provide for a Four Year Term of Office for the Position of Municipal Court Judge Pursuant To Wis. Stat. § 755.02.

## ORDINANCE NO. 2011-\_\_\_\_\_

AN ORDINANCE TO AMEND THE MUNICIPAL CODE TO PROVIDE FOR A FOUR  
YEAR TERM OF OFFICE FOR THE POSITION OF MUNICIPAL COURT JUDGE  
PURSUANT TO WIS. STAT. § 755.02

---

WHEREAS, the Municipal Code currently provides for a three year term of office for the position of Municipal Court Judge; and

WHEREAS, 2009 Wis. Act 402 amended Chapter 755 of the Wisconsin Statutes pertaining to municipal courts and in part providing at Wis. Stat. § 755.02: "Term. The judges shall be elected at large for a term of 4 years unless a different term, not exceeding 4 years nor less than 2 years, is provided by charter ordinance enacted under s.660101. The term shall commence on May 1 of the year of the judge's election."; such provision to be effective for all such terms of office commencing after January 1, 2011, and the current term of Office of City of Franklin Municipal Court Judge expiring following the April, 2012 election; and

WHEREAS, the Common Council having determined it appropriate to amend the Municipal Code so that it is consistent with Wis. Stat. § 755.02.

NOW, THEREFORE, the Mayor and Common Council of the City of Franklin, Wisconsin, do ordain as follows:

- Section 1: §§22-1.B. and 55-1 of the Municipal Code of the City of Franklin, Wisconsin, be and the same are hereby amended as follows: as to the term of office of the municipal court judge, delete "3" years and in place thereof insert "4" years.
- Section 2: The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.
- Section 3: All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.
- Section 4: This ordinance shall take effect and be in force from and after its passage and publication.

Introduced at a regular meeting of the Common Council of the City of Franklin this  
\_\_\_\_\_ day of \_\_\_\_\_, 2011, by Alderman \_\_\_\_\_.

ORDINANCE NO. 2011-\_\_\_\_\_

Page 2

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

APPROVED:

\_\_\_\_\_  
Thomas M. Taylor, Mayor

ATTEST:

\_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSENT \_\_\_\_\_

<p style="text-align: center;"><b>APPROVAL</b></p> <p style="text-align: center;"><i>Slw</i></p>	<p style="text-align: center;"><b>REQUEST FOR COUNCIL ACTION</b></p>	<p style="text-align: center;"><b>MEETING DATE</b></p> <p style="text-align: center;">November 1, 2011</p>
<p style="text-align: center;"><b>REPORTS AND RECOMMENDATIONS</b></p>	<p style="text-align: center;">A Resolution Authorizing Certain Officials to Execute an Agreement Between Veolia Es Emerald Park Landfill, LLC, the City of Muskego, City of Franklin, Town of Norway, Racine County and Waukesha County for the Expansion of Veolia Emerald Park Landfill</p>	<p style="text-align: center;"><b>ITEM NUMBER</b></p> <p style="text-align: center;"><i>G.4.</i></p>

Attached is a copy of a letter from Atty. H. Stanley Riffle representing the City of Muskego, which describes the above-entitled proposed agreement for the purpose of specifically describing the current western horizontal expansion within the terms of the 1999 Negotiated Agreement for the expansion of the Emerald Park Landfill. The Common Council previously adopted Resolution No. 2011- 6743, A Resolution to Waive Renegotiation of Existing Agreements Affecting the Veolia Es Emerald Park Landfill for Proposed Western Expansion. The proposed agreement further documents the intentions of the parties for the inclusion of the western horizontal expansion in the application of the terms of the 1999 Negotiated Agreement. A copy of the proposed agreement and a draft resolution approving the same are attached.

**COUNCIL ACTION REQUESTED**

A motion to adopt A Resolution Authorizing Certain Officials to Execute an Agreement Between Veolia Es Emerald Park Landfill, LLC, the City of Muskego, City of Franklin, Town of Norway, Racine County and Waukesha County for the Expansion of Veolia Emerald Park Landfill.

LAW OFFICES OF  
ARENZ, MOLTER, MACY & RIFFLE, S.C.  
720 N. EAST AVENUE  
P.O. BOX 1348 (53187-1348)  
WAUKESHA, WISCONSIN 53186  
Telephone (262)548-1340  
Facsimile (262)548-9211

DALE W. ARENZ  
DONALD S. MOLTER, JR.  
JOHN P. MACY,  
COURT COMMISSIONER  
H. STANLEY RIFFLE,  
COURT COMMISSIONER  
ERIC J. LARSON

RICK D. TRINDL  
PAUL E. ALEXY  
JULIE A. AQUAVIA  
R. VALJON ANDERSON

October 18, 2011

Attorney Jesse Wesolowski  
City of Franklin  
Wesolowski, Reidenbach, & Sadjak, S.C.  
11402 W. Church St.  
Franklin, WI 53132-2121

Mr. Dale Shaver, Director  
Waukesha County Parks & Land Use Department  
1320 Pewaukee Road, Rm. 230  
Waukesha, WI 53188

Ms. Julie Andersen, Planning Department  
Racine County  
Ives Groves Office Complex  
14200 Washington Ave.  
Sturtevant, WI 53177

Mr. Tom Kramer, Business Manager/Treasurer  
Town of Norway  
6419 Heg Park Road  
Wind Lake, WI 53185

*via e-mail only*

Re: Veolia Emerald Park Landfill – Western Horizontal 2011 Expansion Request

Dear Lady and Gentlemen:

Enclosed please find a proposed agreement from Veolia which memorializes the differences from the original 1999 Agreement as it will be changed by the perimeters of the new expansion request. This document is similar to the one signed in 2008 that outlined the current and continuing obligations as well as completed obligations from the 2005 expansion. As you may recall certain items have been completed such as road improvements and others remain until closure such as payments to the affected municipalities. The purpose of the proposed agreement is, as before, to outline which obligations remain and which have been completed. We will be recommending approval of this agreement to the City of Muskego and ask that you consult with your governing bodies to consider taking the same action.

Should you have any thoughts or further suggestions regarding the response, I would be happy to discuss them with you.

LAW OFFICES OF  
ARENZ, MOLTER, MACY & RIFFLE, S.C.

Affected Municipalities - Obligation Agreement  
October 18, 2011  
p. 2

Very truly yours,

ARENZ, MOLTER, MACY & RIFFLE, S.C.,

*Stan*

H. Stanley Riffle

HSR/JAA/jr

enc.

c: Mayor Kathy Chiaverotti, w/out enc.  
Attorney Melissa Bachhuber, w/out enc.

**AGREEMENT BETWEEN VEOLIA ES EMERALD PARK LANDFILL, LLC,  
THE CITY OF MUSKEGO, CITY OF FRANKLIN,  
TOWN OF NORWAY, RACINE COUNTY AND WAUKESHA COUNTY FOR  
THE EXPANSION OF VEOLIA EMERALD PARK LANDFILL**

This Agreement dated \_\_\_\_\_, 2011, is made and entered into by and among Veolia ES Emerald Park Landfill, LLC (“Veolia”) and the City of Muskego, City of Franklin, Town of Norway, Racine County and Waukesha County, collectively referred to herein as “Affected Municipalities.” The Affected Municipalities were parties to a 1999 Negotiated Agreement (hereafter “Negotiated Agreement”) with Superior Emerald Park Landfill, Inc., (the predecessor owner of the landfill) entered into as part of a stipulation settling certain issues before the Waste Facility Siting Board on June 24, 1999. This Agreement is the result of the implementation of Article IV, paragraph 27 of the Negotiated Agreement.

WHEREAS, the parties to the Negotiated Agreement had the option to waive negotiations for future expansions of the landfill and, that option, found at Article IV, paragraph 27 of the Negotiated Agreement, provides that if the parties waived negotiations, all terms and rate schedules found in the Negotiated Agreement would be applied to any subsequent expansion; and,

WHEREAS, Veolia filed an Initial Site Report for expansion of the Emerald Park Landfill; and,

WHEREAS, the Parties prepared and gave notice of their intention to waive negotiations and to pursue continuance of existing terms and rate schedules found in the Negotiated Agreement; and,

WHEREAS, none of the parties involved wish to proceed under the provisions of §289.33, Stats., as they are willing to accept the terms of the Negotiated Agreement; and,

WHEREAS, said election to accept the terms of the Negotiated Agreement were approved in resolutions passed by the Affected Municipalities; and,

WHEREAS, although willing to proceed under the Negotiated Agreement, there are certain terms found in that Negotiated Agreement that are either no longer applicable due to fulfillment of those terms by either Veolia or the Affected Municipalities or that are inconsistent with the application for expansion of the Emerald Park Landfill; and,

THEREFORE, this Agreement sets forth the remaining and future obligations with respect to the expansion for each party as applicable under the Negotiated Agreement in order to clarify the obligations of all parties.

**I. WAIVER OF NEGOTIATIONS UNDER §289.33, STATS.**

This Agreement supplements and clarifies the Negotiated Agreement. All parties to this Agreement therefore waive the following: (a) any rights they may have under the terms of §289.33, Stats.; (b) any rights they may have to proceed under §289.33, Stats.; and (c) to negotiate or seek arbitration as to the terms for expansion of the landfill. All terms, conditions, and rates found in the Negotiated Agreement remain in full force and effect except as modified herein and except as such terms and conditions are no longer applicable due to satisfaction or expiration or inconsistency with this Agreement.

**II. WAIVER OF NEGOTIATIONS FOR EXPANSION DESCRIBED IN THE VEOLIA INITIAL SITE REPORT PURSUANT TO ARTICLE IV, PARAGRAPH 27 OF THE NEGOTIATED AGREEMENT.**

- A. The terms of the Negotiated Agreement shall be updated as follows to reflect the new expansion area and consistent with Veolia's Initial Site Report ("ISR") dated \_\_\_\_\_. Exhibit A, Legal Description of Active Fill Area and Article I, the definition of Active Fill Area is amended to include the total expansion capacity as finally approved by the DNR. Attached hereto as **Exhibit A** is the new area depicting the total capacity of the landfill to include the current area described in the Negotiated Agreement and the proposed expansion area described in the ISR (the "Expansion Area"). Further, Article IV, paragraph 17, and Article I, Definitions, are amended to be consistent with the total expansion capacity, including height and area restrictions as described in the ISR.
- B. The Affected Municipalities have passed resolutions waiving their right to contest the expansion described in the ISR, whereby they acknowledged and agreed that by doing so, they shall grant Veolia all rights and approvals, including permits, zoning, siting, conditional use permits as may be necessary for Veolia to conduct any landfill related

activities on property owned (whether now owned or acquired at a later time by Veolia) which supports landfill operations consistent.

- C. Veolia shall prepare a Landfill Post-Closure Plan for the Expansion Area as part of its Plan of Operations.
- D. All other conditions and terms of the Negotiated Agreement remain in force and effect unless: specifically modified herein; are inconsistent with the terms of this Agreement; or are described as completed and terminated obligations in the Implementation Agreement dated May 20, 2008.

City of Muskego

City of Franklin

By \_\_\_\_\_

By \_\_\_\_\_

Attest: \_\_\_\_\_  
\_\_\_\_\_, Clerk

Attest: \_\_\_\_\_  
\_\_\_\_\_, Clerk

Waukesha County

Town of Norway

By \_\_\_\_\_

By \_\_\_\_\_

Attest: \_\_\_\_\_  
\_\_\_\_\_, Clerk

Attest: \_\_\_\_\_  
\_\_\_\_\_, Clerk

Racine County

Veolia ES Emerald Park Landfill, LLC

By \_\_\_\_\_

By \_\_\_\_\_

Attest: \_\_\_\_\_  
\_\_\_\_\_, Clerk

Attest: \_\_\_\_\_  
\_\_\_\_\_

**Exhibit A**



STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

RESOLUTION NO. 2011-\_\_\_\_

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO EXECUTE AN AGREEMENT BETWEEN VEOLIA ES EMERALD PARK LANDFILL, LLC, THE CITY OF MUSKEGO, CITY OF FRANKLIN, TOWN OF NORWAY, RACINE COUNTY AND WAUKESHA COUNTY FOR THE EXPANSION OF VEOLIA EMERALD PARK LANDFILL

WHEREAS, the City of Franklin is an Affected Municipality, together with the City of Muskego, the Town of Norway, Racine County and Waukesha County, as set forth in that certain 1999 Negotiated Agreement for the expansion of the Emerald Park Landfill, now operated by Veolia ES Emerald Park Landfill, LLC; and

WHEREAS, the parties to the Negotiated Agreement desiring to specifically include for documentation purposes the area of a western horizontal expansion for which Veolia has filed an initial site report with the Wisconsin Department of Natural Resources, within the application of the terms of the Negotiated Agreement.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the Agreement Between Veolia Es Emerald Park Landfill, LLC, the City of Muskego, City of Franklin, Town of Norway, Racine County and Waukesha County for the Expansion of Veolia Emerald Park Landfill, in the form and content as annexed hereto, together with such technical changes as may be approved by the City Attorney, be and the same is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk be and the same are hereby authorized to execute and deliver the Agreement.

Introduced at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_ day of \_\_\_\_\_, 2011.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_ day of \_\_\_\_\_, 2011.

APPROVED:

ATTEST:

\_\_\_\_\_  
Thomas M. Taylor, Mayor

\_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSENT \_\_\_\_\_

<p style="text-align: center;"><b>APPROVAL</b></p> <p style="text-align: center;"><i>Slw</i></p>	<p style="text-align: center;"><b>REQUEST FOR COUNCIL ACTION</b></p>	<p style="text-align: center;"><b>MEETING DATE</b></p> <p style="text-align: center;">11/01/11</p>
<p style="text-align: center;"><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p style="text-align: center;">Committee of the Whole Recommendations</p>	<p style="text-align: center;"><b>ITEM NUMBER</b></p> <p style="text-align: center;"><i>G.5.</i></p>

The Council may act on recommendations from the Committee of the Whole meeting on October 31, 2011.

- A. Eagle Scout Leadership Service Project presentation by Scot Skowronski and authorization to upgrade lumber to cedar for the construction of a gazebo in Ken Windl Park with funding from the Parks Department 2011 Capital Outlay Park Improvement Fund.
- B. Concept review for a proposed Gordon Food Service Marketplace and future commercial development (at 6919 S. 27th Street) (Bill Casey, applicant).
- C. Concept review for a proposed indoor controlled environment agriculture development (at 3617 W. Elm Road) (Scott Biller, applicant).
- D. Concept review for a proposed mixed use development (at approximately 7000 W. Rawson Avenue) (The Hintze Group, applicant).
- E. Common Council agenda setting.

<p style="text-align: center;"><b>APPROVAL</b></p> <p style="text-align: center;"><i>slw</i></p>	<p style="text-align: center;"><b>REQUEST FOR COUNCIL ACTION</b></p>	<p style="text-align: center;"><b>MEETING DATE</b></p> <p style="text-align: center;">November 1, 2011</p>
<p style="text-align: center;"><b>REPORTS AND RECOMMENDATIONS</b></p>	<p style="text-align: center;">Ryan Creek Interceptor Sewer Project Wisconsin Department of Natural Resources Water Quality Certification Permit request for contested case hearing</p>	<p style="text-align: center;"><b>ITEM NUMBER</b></p> <p style="text-align: center;"><i>G.6.</i></p>

The Council may enter closed session pursuant to Wis. Stat. §19.85(1)(e), to consider the terms and negotiation of the Wisconsin Department of Natural Resources Water Quality Certification Permit request for contested case hearing litigation pertaining to the extension of the Ryan Creek Interceptor Sewer project, for competitive and bargaining reasons, and pursuant to Wis. Stat. §19.85 (1) (g), to confer with legal counsel for the Common Council who is rendering advice concerning strategy to be adopted by the body with respect to the litigation, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.

**COUNCIL ACTION REQUESTED**

Motion to enter closed session pursuant to Wis. Stat. §19.85 (1) (e), to consider the terms and negotiation of the Wisconsin Department of Natural Resources Water Quality Certification Permit request for contested case hearing litigation pertaining to the extension of the Ryan Creek Interceptor Sewer project, for competitive and bargaining reasons, and pursuant to Wis. Stat. §19.85 (1) (g), to confer with legal counsel for the Common Council who is rendering advice concerning strategy to be adopted by the body with respect to the litigation, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.

<b>APPROVAL</b> <i>Slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> November 1, 2011
<b>REPORTS AND RECOMMENDATIONS</b>	Acquisition of easement rights and interests in property for the location, extension, installation and maintenance of public sanitary sewer facilities to provide sanitary sewer service to the southwest area of the City of Franklin by way of the Ryan Creek Interceptor sewer installation upon property in the area from the intersection of South 60th Street and West Ryan Road generally following the Ryan Creek to the intersection of West Ryan Road and South 112th Street, thence westerly along West Ryan Road to the west City limits, upon the following property identified by Acquisition Map Parcel No., Tax Key Number and address, respectively, as follows: 19, 894-9997-002 and 9623 South 92nd Street	<b>ITEM NUMBER</b>  <i>G.7.</i>
<p>The Council may enter closed session pursuant to Wis. Stat. §19.85(1)(e), to discuss the acquisition of easement rights for the subject extension of the Ryan Creek Interceptor Sewer for the above mentioned properties; and to re-enter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.</p> <p style="text-align: center;"><b>COUNCIL ACTION REQUESTED</b></p> <p>Motion to enter closed session pursuant to Wis. Stat. §19.85 (1) (e), to consider the terms and negotiation of the public acquisition of easement(s) for public sanitary sewer service for the extension of the Ryan Creek Interceptor Sewer project, for competitive and bargaining reasons, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.</p> <p style="text-align: center;">or</p> <p>A motion to authorize the purchase of the subject easement rights subject to the terms negotiated by City representatives with the representative for the owner in acquisition negotiations in the form and content as presented to the Common Council at this meeting.</p> <p style="text-align: center;">or</p> <p>A motion to authorize acquisition pursuant to the issuance of a jurisdictional offer.</p>		

<p><b>APPROVAL</b></p> <p><i>Slw</i></p>	<p><b>REQUEST FOR COUNCIL ACTION</b></p>	<p><b>MEETING DATE</b></p> <p><b>11/1/2011</b></p>
<p>Licenses and Permits</p>	<p><b>Miscellaneous Permits</b></p>	<p>ITEM NUMBER</p> <p><i>H.L.</i></p>

See attached list from meeting of November 1, 2011

**COUNCIL ACTION REQUESTED**



9229 W. Loomis Road  
Franklin, WI 53132-9728

414-425-7500

**License Committee  
Agenda\*  
Alderman's Room  
November 1, 2011 – 5:45 p.m.**

<b>1.</b>	<b>Call to Order &amp; Roll Call</b>	<b>Time</b>			
<b>2.</b>	<b>Applicant Interviews &amp; Decisions</b>				
	<b>License Applications Reviewed</b>		<b>Recommendations</b>		
	<b>Type/ Time</b>	<b>Applicant Information</b>	<b>Approve</b>	<b>Hold</b>	<b>Deny</b>
	<b>Operator 5:50 p.m.</b>	<b>Karns, Jonathon W</b> 2150 W Meyer Ln Oak Creek, WI 53154 Target Store			
	<b>Operator 5:55 p.m.</b>	<b>Hayes, Jeffrey M</b> 2927 S 97 <sup>th</sup> St West Allis, WI 53227 The Hideaway Pub & Eatery			
	<b>Operator 6:00 p.m.</b>	<b>Hussain, Kimberly L</b> 4236 S 61 <sup>st</sup> St #1 Greenfield, WI 53220 Eric's Setback			
	<b>Operator 6:05 p.m.</b>	<b>Rasool, Mubeen</b> 9306 S Cobblestone Way #A Franklin, WI 53132 Gas Station on Forest Home			
	<b>Operator 6:10 p.m.</b>	<b>Hamilton, Whitney V</b> 1634 S 81 <sup>st</sup> St West Allis, WI 53214 Walgreens – 76 <sup>th</sup> St			
	<b>Operator</b>	<b>Banda, Tracey A</b> 6830 W Kathleen Ct #3 Franklin, WI 53132 Open Pantry Food Store			
	<b>Operator</b>	<b>Benson, Chloe E</b> 8016 S 58 <sup>th</sup> St Franklin, WI 53132 Open Pantry Food Store			
<b>3.</b>	<b>Adjournment</b>		<b>Time</b>		

\*Notice is given that a majority of the Common Council may attend this meeting to gather information about an agenda item over which they have decision-making responsibility. This may constitute a meeting of the Common Council per State ex rel. Badke v. Greendale Village Board, even though the Common Council will not take formal action at this meeting.

<b>APPROVAL</b> <i>Steve Dow</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> <b>11/01/2011</b>
<b>Bills</b>	<b>Vouchers and Payroll Approval</b>	<b>ITEM NUMBER</b> <i>I.1.</i>

Provided separately for Council approval is a list of vouchers Nos. 140422 through 140576 in the amount of \$ 1,530,251.05. Included in this listing is \$ 26,751.87 in Library vouchers. The net City vouchers are \$ 1,503,499.18.

Approval is requested for the net payroll of October 21, 2011 in the amount of \$359,926.19.

**COUNCIL ACTION REQUESTED**

Motion approving net City vouchers in the range of Nos.140422 through 140576 in the amount of \$ 1,503,499.18.

Approval is requested for the net payroll of October 21, 2011 in the amount of \$359,926.19