

CITY OF FRANKLIN
SPECIAL COMMON COUNCIL MEETING
THURSDAY, OCTOBER 27, 2011, 6:30 P.M.

FRANKLIN CITY HALL, COMMON COUNCIL CHAMBERS
9229 WEST LOOMIS ROAD
FRANKLIN, WISCONSIN 53132

AGENDA

- I. Call to Order and Roll Call
- II. Citizen Comment Period
- III.
 - A. 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 2 properties identified by Acquisition Map Parcel No., Tax Key Number and address, respectively, as follows: 1) 21, 894-9999-001 and 9733 W. Ryan Road; 2) 40, 894-9999-004 and 9733 W. Ryan Road. 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.
 - B. 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.
 - C. Proposed Change Orders to the Contracts for the Public Construction of the Ryan Creek Interceptor Sewer Public Sanitary Sewer Facility Project, to wit: Contract C02006-C01, Super Excavators, Inc., in the net increase amount of \$143,700.00; Contract C02006-C02, Super Excavators, Inc., in the net increase amount of \$367,425.00; Contract C02006-C03, D.F. Tomasini Contractors, Inc., in the net increase amount of \$606,270.00; and Contract C02006-C04, Globe Contractors, Inc., in the net credit amount of \$10,000.00.

Special Common Council Agenda

10/27/11

- D. Ryan Creek Interceptor Sewer Public Sanitary Sewer Facility Project consideration of development assistance to property owners not currently served by public sanitary sewer service (Mayor Taylor).
- E. Proposed policy relative to sewer extension and cost recovery for the Ryan Creek Interceptor Public Sanitary Sewer Project and currently unsewered public sanitary sewer service areas in the City (Mayor Taylor).
- F. Development agreement for the development of a hotel at the property located at 6901 South 76th Street (previously noticed as the proposed Hampton Inn and Suites five story hotel). The Council may enter closed session pursuant to Wis. Stat. §19.85 (1) (e), to consider the terms and negotiation of a development agreement for the development of a hotel at the property located at 6901 South 76th Street, 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.

IV. Adjournment

Notice is further given that upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information, please contact the Franklin City Clerk's office at (414)425-7500.

APPROVAL <i>Slew</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE October 27, 2011
REPORTS AND RECOMMENDATIONS	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 2 properties identified by Acquisition Map Parcel No., Tax Key Number and address, respectively, as follows: 1) 21, 894-9999-001 and 9733 W. Ryan Road; 2) 40, 894-9999-004 and 9733 W. Ryan Road	ITEM NUMBER <i>III. A.</i>

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.

COUNCIL ACTION REQUESTED

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 style="text-align: center;">APPROVAL</p> <p style="text-align: center;"><i>Sw</i></p>	<p style="text-align: center;">REQUEST FOR COUNCIL ACTION</p>	<p style="text-align: center;">MEETING DATE</p> <p style="text-align: center;">October 27, 2011</p>
<p style="text-align: center;">REPORTS AND RECOMMENDATIONS</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;">ITEM NUMBER</p> <p style="text-align: center;"><i>III, B.</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. Attached hereto is a copy of correspondence upon the subject matter from special environmental counsel for the City to the Secretary of the Wisconsin Department of Natural Resources.

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.

October 13, 2011

BY HAND DELIVERY

The Honorable Cathy Stepp, Secretary
Wisconsin Department of Natural Resources
101 South Webster Street
P.O. Box 7921
Madison, Wisconsin 53707-7921

RE: City of Franklin, Water Quality Certification
Request to Reconsider Your Determination Granting the Request for Contested
Case Hearing

Dear Secretary Stepp:

I. INTRODUCTION

On August 10, 2011, the Wisconsin Department of Natural Resources (“WDNR” or the Department”) issued Decision IP-SE-2011-41-04738/04757/04760-04769/04872 granting Water Quality Certification (“WQC”) to the City of Franklin (the “City”) under Section 401 of the Federal Clean Water Act and Ch. NR 299 Wis. Admin. Code. A copy of the WDNR Water Quality Certification is attached as Exhibit 1 (the “Department Determination”). In the Department Determination, the WDNR issued WQC allowing the City to place fill temporarily affecting 1.836 acres of federal wetland for the purpose of installing 5.5 linear miles of sanitary sewer, otherwise known as the “Ryan Creek Interceptor Project.”

In a letter dated October 6, 2011, you granted a petition for a contested case hearing on the Department Determination. (See Exhibit 2 attached).

Godfrey & Kahn represents the City with respect to this matter. The City respectfully submits that the Petition does not meet the jurisdictional requirements of Wis. Stat. § 227.42, or Ch. NR 2 Wis. Admin. Code, under which it was served, and requests that you reconsider your grant of the Petition and deny the petitioners a contested case hearing. Specifically, the Petition served on you and the Department fails to meet the mandatory statutory and regulatory requirements for service of a petition.

LEGAL

II. Basis for Request for Reconsideration

On September 16, 2011, a Petition For A Contested Case Hearing on this matter was delivered via Federal Express to the Department’s mailroom and was signed for by Mr. T.

Westby (“Petition #1”). (See Exhibit 3, attached (the FedEx Tracking Report); Exhibit 4, attached (Petition #1)). Also on September 16, a Petition For A Contested Case Hearing on this matter was received at the Office of the Secretary via facsimile transmission (“Petition #2”). (See, Exhibit 5, attached). Central to the City’s request for reconsideration is that these two petitions – Petition #1 and Petition #2 – are *different* documents containing *different* substantive terms and components. As demonstrated below, independently, each of the two petitions fails to meet the express, mandatory statutory requirements for petitions for contested case hearing.

Strong language in published appellate decisions emphasizes the importance that petitioners seeking to challenge an administrative agency’s decision strictly comply with procedural requirements regarding the service of a petition. For example, in a case decided by the Wisconsin Court of Appeals, a petitioner served on a DHSS attorney a petition for review of an agency decision. The Court strictly enforced the statutory service requirements and held that delivery to an attorney of the agency did not constitute personal delivery to an official of the agency. *Weisensel v DHSS*, 179 Wis. 2d 637, 640-41, 508 N.W.2d 33 (Ct. App. 1993). The relevant statute at issue in *Weisensel*, Wis. Stat. § 227.53 requires a petition for review to be served “personally or by certified mail upon the agency or one of its officials.” The *Weisensel* Court reasoned that “the test [of whether service was perfected] is not whether the method of service was reasonable or whether the agency was prejudiced, but whether the service *strictly complied with statutory requirements*.” *Id.* at 644 (emphasis added). Strict conformity is required, the court held, because “uniformity, consistency and compliance with procedural rules are necessary to maintain a simple, orderly and uniform system of conducting business in the courts.” *Id.* at 647 (citing *Miller Brewing Co. v. LIRC*, 173 Wis. 2d 700, 707, 495 N.W.2d 660, 662 (1993)).

The applicable regulation governing service of the Petition at issue here, Department rule NR 2.03, expressly permits a petition for hearing to be served on the Department only in three ways: (i) by “personal delivery to office of the secretary”; (ii) by certified mail; or (iii) by facsimile transmission to the Secretary. In full, NR 2.03 provides:

NR 2.03 Service on the department. All petitions for hearings, petitions for rules, petitions for declaratory rulings, petitions for review of contested case decisions under s. NR 2.20, answers and complaints required by any statute or rule shall be served on the department by personal delivery to the office of the secretary, by mailing to the secretary by certified mail, at the following address: P. O. Box 7921, Madison, Wisconsin 53707-7921, or by facsimile transmission to the secretary at (608) 266-6983. If the petition is served by facsimile transmission, a copy of the petition shall be mailed to the secretary by regular mail within one week of service. Service by mailing shall be deemed to have been made on the date the petition is received by the department. Service by facsimile received after 4:30 P.M. shall be deemed to have been made on the following day.

NR 2.03 is very specific in its use of *mandatory* language. Personal delivery “*shall*” be to the Office of the Secretary; no other location in DNR’s building at 101 S. Webster St. is sufficient. In fact, a note in the Administrative Code further directs a petitioner that the Office of the Secretary is on the “5th floor” of the building.

Further, Department rule NR 2.05(5) lays out the specific form to which a petition for hearing must conform. Among other requirements, NR 2.05(5) requires that a petition for a hearing must include the phrase: “[t]he undersigned hereby requests that a hearing be held as a contested case under s. 227.42, Stats.” and must include at the end of the petition the “Signature” and “Address” of the petitioner.

In deciding whether to grant a petition, the Department’s rules require the Department to “determine whether the petition meets the jurisdictional requirements of the statutes and rules under which the petition is filed.” Neither individually nor taken together do Petition #1 and/or Petition #2 meet the jurisdictional requirements of NR 2.03.

First, considered individually, Petition #1 and Petition #2 were not served on the Department in accordance with the strict service requirements of NR 2.03. As noted above, NR 2.03 provides for three specific alternative forms of service. Petition #1 was received at the Department’s mailroom via Federal Express. That is not a method of service that is permitted by NR 2.03, and, in addition, the Federal Express package was delivered to the mailroom and not the “Office of the Secretary.” For each of these two independent reasons, Petition #1 was not delivered in compliance with the service requirements of NR 2.03.

Petition #2 also was not served in compliance with NR 2.03. It was served on the Department by facsimile. However, Petition #2 failed to attach or provide the petitioners’ signatures or addresses. (See Exhibit 5.) Providing the petitioners’ signatures and addresses is an *express, mandatory* requirement of NR 2.05(5). The absence of the petitioners’ signatures and addresses from Petition #2 causes it to fail to conform with the form requirements for a valid petition outline in NR 2.05(5), and, consequently, with the service requirements of NR 2.03.

Second, even considered together, these petitions fail the jurisdiction test. First, on their faces, these petitions contain *different* substantive statements, and the record is not clear that these are one and the same petition. While the subject of the petitions is the same, the substantive text differs, and Petition #2 included no signatures or any indication about the identity of the petitioners. The text of the petitions differs in the following way. Petition #1 ends with the following paragraph:

The Statute or administrative rule which accords a right to a hearing is § 227.42 Stats. and § 283.01(6m). Stats.

The same paragraph in Petition #2, however, states as follows:

The Statute or administrative rule other than § 227.42 Stats. which accords a right to a hearing is § 283.01(6m). Stats. and § NR 299.05, Wis. Admin. Code.

Further, after this paragraph, Petition #2 includes several additional paragraphs of text not included in Petition #1. Simply put, these are *different* petitions.

In addition, even if these petitions originate from the same petitioners, each petition -- both the original and the revised petition -- must be correctly served on the Department. Nowhere do the Department rules allow for piecemeal service. As demonstrated above, courts have concluded that these rules require strict adherence when determining adequacy of service.

III. EQUITIES FAVOR THE CITY

The Department cannot and should not consider whether denying this petition for a contested case hearing would be harsh on the petitioners. Courts have consistently denied jurisdiction for failure to comply with a statutory service requirement. See, e.g., *Weisenthal* at 647. That outcome is especially appropriate here, where it would have been easy for the petitioners to include the signature pages of their petition in Petition #2, thereby perfecting the petition in conformity with the Department's rules. Thus, the fatal problems with the petitions are ones of the petitioners' own making.

By contrast, a decision to permit the contested case hearing to proceed, despite the petitioners' failure to follow the Department's own service requirements, will work a severe hardship on the City, the people that the Ryan Creek Interceptor Project will serve, and the State as a whole. Granting the contested case hearing will prevent the City from starting the project until, at the earliest, the hearing is complete. This is likely a point in time that will be many months from today and will jeopardize the entire project (which is, of course, the petitioners' intend).

The Department of Natural Resources had carefully considered the City's request for water quality certificates and decided to grant the certificates in this case, which was necessary for this project to move forward. See Exhibit 1.

The project has qualified for a \$41 million Clean Water Act Fund loan and the City must implement the project contracts by November 22, 2011, in order to meet the deadlines to qualify for the loan. Simply put, win or lose on the merits, if the contested case hearing proceeds, the City and the Milwaukee Metropolitan Sewerage District stand to lose this loan and therefore the project. The Petitioners have had plenty of opportunity to voice concern over this project. The Ryan Creek Interceptor has been a project in planning for more than forty years. There have been some more than 50 publicly noticed meetings over the last 5 or 6 years during which the Ryan Creek Interceptor Project has been considered by governmental bodies, including the City, the Milwaukee Metropolitan Sewerage District, the Southeastern Wisconsin Regional Planning

The Honorable Cathy Stepp, Secretary
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Commission and the Wisconsin Department of Natural Resources. This project has moved forward pursuant to Wisconsin Law.

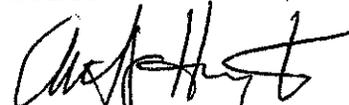
The City raises these points simply to bring to the Department's attention that the Petition demands exacting scrutiny, and thus merits the Department's reconsideration, before a hearing is allowed in an attempt to kill a \$41 million public sanitary sewer project. (Note: in the current economic climate the bids received for this project are approximately \$15 million below the \$41 million estimated total principal and interest costs).

IV. CONCLUSION

For the reasons outlined above, the City respectfully requests that you reconsider your decision and deny petitioners a contested case hearing.

Very truly yours,

GODFREY & KAHN, S.C.



Arthur J. Harrington

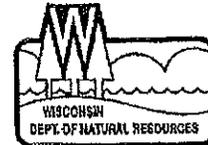
AJH:smr
Attachments

cc: The Honorable Tom Taylor, Mayor City of Franklin
Jesse Wesolowski - Wesolowski, Reidenbach & Sajdak SC
Deborah C. Tomczyk, Reinhart Boerner Van Deuren SC – Hand Delivery
Jane Landretti - DNR Madison, GEF 2 - LS/8 – Hand Delivery

EXHIBIT 1

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
Southeast Region Headquarters
2300 N. Dr. Martin Luther King, Jr. Drive
Milwaukee, WI 53212-3128

Scott Walker, Governor
Cathy Stepp, Secretary
John Hammen, Acting Regional Director
Telephone 414-263-8500
FAX 414-263-8608
TTY Access via relay - 711



August 10, 2011

IP-SE-2011-41-04738/04757/04760-04769/04872

City of Franklin
C/O John Bennett
9229 W. Loomis rd
Franklin, WI 53132

Dear Mr. Bennett:

The Department has completed review of your proposal. Your project affects an isolated wetland, and we have determined that your project meets state standards. Enclosed is a State Water Quality Certification, which approves your project and lists the conditions which must be followed. Please read your certification carefully so that you are fully aware of what is expected of you.

As a condition of the State Water Quality Certification, state law requires that you:

- Publish the enclosed certification as a Class I Notice, at your expense, in the
Franklin Now
15770 W. Cleveland Avenue
New Berlin, WI 53151
414-224-2007
- Obtain, and send to me at the above address, an affidavit of publication from the newspaper to provide proof of publication

Please be aware that only page 2-5 of this document need to be published in the newspaper. Page 1, 6 and 7 do not, but are a part of the final permit document.

This Water Quality Certification decision becomes final 30 days after the date of publication, unless an objection is filed and a hearing is requested. We will contact you only if a hearing is requested.

If you have any questions, please call me at (414) 263-8601.

Sincerely,

Rachel Sabro
Water Management Specialist

cc: U.S. Army Corps of Engineers, via email
Milwaukee County, Kevin Haley, via email
Ruekert & Mielke, via email
WDNR: Jamie Lambert, Warden Blankenheim, Sharon Gayan, via email

Notice of Water Quality Certification
Docket # IP-SE-2011-41-04738 / 04757 / 04760-04769 / 04872

The City of Franklin of 9229 W. Loomis Road, Franklin, WI 53132, has filed an application with the Wisconsin Department of Natural Resources for water quality certification under Section 401 of the Federal Clean Water Act, Section 281.15 and 281.37, Wisconsin Statutes, and Chapter NR 299, Wisconsin Administrative Code.

The project is located in the City of Franklin, Milwaukee County. The project is located along Ryan Creek from 60th Street to 124th Street at the Milwaukee County line. The project includes wetland impacts on parcels known as Tax Keys: 889992000, 8929991000, 8929998000, 8939998000, 8939997002, 8939995001, 8939995002, 8949998002, 8949997002, 9349993001, 8979990000, 8979997000 and 8989998000.

The Department has evaluated this proposal and determined that this activity will meet the standards found in Section NR 299.04, Wis. Admin. Code and certification is granted.

If you would like to know more about this project, contact Rachel Sabre, 2300 N Dr. Martin Luther King Jr. Drive, Milwaukee, WI 53212 or by phone at 414-263-8601. Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request.

Permit Conditions:

1. You must notify Rachel Sabre at phone (414) 263-8601 before starting construction and again not more than 5 days after the project is complete.
2. You must complete the project as described on or before **December 31, 2014**. If you will not complete the project by this date, you must submit a written request for an extension prior to the expiration date of the permit. Your request must identify the requested extension date and the reason for the extension. A permit extension may be granted, for good cause, by the Department. You may not begin or continue construction after the original permit expiration date unless the Department grants a new permit or permit extension in writing.
3. This permit does not authorize any work other than what you specifically describe in your application and plans *prepared by Ruekert & Mielke, P.E. stamped and signed by Anthony Peterson, Violet Razo, Steven Wurster & Joseph Eberle and dated July 28, 2011, and as modified by the conditions of this permit*. If you wish to alter the project or permit conditions, you must first obtain written approval of the Department.
4. You are responsible for obtaining any permit or approval that may be required for your project by local zoning ordinances and by the U.S. Army Corps of Engineers before starting your project.
5. Upon reasonable notice, you shall allow access to your project site during reasonable hours to any Department employee who is investigating the project's construction, operation, maintenance or permit compliance.
6. The Department may modify or revoke this permit if the project is not completed according to the terms of the permit, or if the Department determines the activity is detrimental to the public interest.

7. You must post a copy of this permit at a conspicuous location on the project site, visible from the waterway, for at least five days prior to construction, and remaining at least five days after construction. You must also have a copy of the permit and approved plan available at the project site at all times until the project is complete.
8. Your acceptance of this permit and efforts to begin work on this project signify that you have read, understood and agreed to follow all conditions of this permit.
9. You must submit a series of photographs to the Department, within one week of completion of work on the site. The photographs must be taken from different vantage points and depict all work authorized by this permit.
10. You, your agent, and any involved contractors or consultants may be considered a party to the violation pursuant to Section 30.292, Wis. Stats., for any violations of Chapter 30, Wisconsin Statutes or this permit.
11. All equipment used for the project including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps shall be de-contaminated for invasive and exotic viruses and species prior to use and after use.

The following steps should be taken *every time* you move your equipment to avoid transporting invasive and exotic viruses and species. To the extent practicable, equipment and gear used on infested waters should not be used on other non-infested waters.

- **Inspect and remove** aquatic plants, animals, and mud from your equipment.
 - **Drain all water** from your equipment that comes in contact with infested waters, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps
 - **Dispose of** aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.
 - **Wash your equipment** with hot (>104° F) and/or high pressure water OR allow your equipment to **Dry thoroughly for 5 days.**
12. Your project shall temporarily impact no more than 1.836 acres of federal wetland in accordance with the Ruekert & Mielke plans dated June 2011. A total of 1.836 acres of wetland will be temporarily disturbed for the installation of sanitary sewer. The temporary wetland impacts are as follows: Wetland 2 is 0.03 acres, Wetland 3 is 0.19 acres, Wetland 4 is 0.04 acres, Wetland 6 is 0.14 acres, Wetland 8 is 0.02 acres, Wetland 9 is 0.15 acres, Wetland 10 is 0.006 acres, Wetland 17 is 0.47 acres, Wetland 19 is 0.26 acres, Wetland 22 is 0.07 acres, Wetland 23 is 0.19 acres, Wetland 30 east is 0.20 acres, Wetland 34 is 0.07 acres. **No other wetlands on site shall be disturbed.** All impacts are temporary and shall be restored in accordance with the approved Ruekert & Mielke and Cedarburg Sciences application and plans.
 13. The excavation of the trench in the wetlands must be done in layers and placed back in the trench in the same orientation as it was removed.
 14. The wetland must be restored to its original topographic elevations. No mounding or excess fill is allowed by this permit.

15. You shall hold a pre-construction meeting in which the consultants, all contractors, the City of Franklin, Milwaukee County and the Department are invited to attend. You shall notify the Department a minimum of 10 working days prior to the date of the meeting.
16. You shall implement the Construction Site Erosion and Sediment Control Technical Standards the Department developed and approved in accordance with s. NR 151.31, Wisconsin Administrative Code. These standards can be found on the Runoff Management Home Page of the Department's website which is currently <http://dnr.wi.gov/runoff/stormwater/techstds.htm>.
17. All erosion control measures must be in place and functioning properly prior to any soil disturbing activity.
18. Removal of vegetative cover and the amount of exposed earth shall be kept to the minimum possible consistent with good construction practice.
19. Erosion control measures must be inspected, and any necessary repairs or maintenance performed, before and after every rainfall even exceeding ½ inch and at least once per week.
20. You are not allowed to temporarily or permanently stockpile excavated or fill material in any wetlands or waterways.
21. If dewatering is necessary for construction the pumping of water to approved Department BMP treatment device, "dirt-bag" or similar device for total sediment solid (TSS) removal to achieve resultant liquid with no greater than 40 mg/l of TSS should be used. At no time shall you directly pump water directly to wetland or waterway without first treating for water quality with method above.
22. Final site stabilization requires the establishment of non-aggressive native plants and in accordance with the approved Cedarburg Sciences Restoration Plan.
23. Site stabilization between October 1 and April 15 requires sodding or seeding and mulching (with a non-toxic tackifier).
24. During excavation of the trench through wetlands and waterways, earth must be stockpiled in an upland area separated from the stream and wetland by a protective, vegetated buffer strip or a silt screen.
25. The installation of the sanitary sewer will cross Ryan Creek three times and the Root River once within the project corridor. All sanitary sewer installation at these four crossings will be done via jack and bore beneath the waterways. No open cut of the waterways is permitted in accordance with this permit.
26. No machinery shall be operated on the bed of Ryan Creek, the Root River or any other navigable waterway in association with this project.
27. For work under this permit you shall comply with all other state regulations including, but not limited to, Wisconsin Admin. Code NR 116 Floodplain Zoning, NR 216 Stormwater Management, NR 500-600 series Solid Waste. This permit has not been reviewed for compliance with these regulations, this is your responsibility.

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin Statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

To request a contested case hearing pursuant to s. 227.42, Wis. Stats. and s. NR 299.05, Wis. Admin. Code, you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources, PO Box 7921, Madison, WI 53707-7921.

A request for a contested case hearing must follow the service requirements found in s. NR 2.03 and the form prescribed in s. NR 2.05(5), Wis. Admin. Code, and must include the following information:

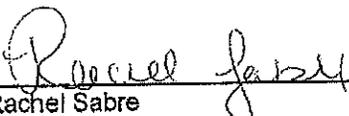
1. A description of the Department's action or inaction which is the basis for the request;
2. The substantial interest of the petitioner which is injured in fact or threatened with injury by the Department's action or inaction;
3. Specific information explaining why the petitioner's interests are adversely affected by the Department's determination;
4. Evidence of a lack of legislative intent that this interest is not to be protected;
5. An explanation of how the injury to the petitioner is different in kind or degree from the injury to the general public caused by the Department's action or inaction;
6. That there is a dispute of material fact, and what the disputed facts are;
7. The statute or administrative rule other than s. 227.42, Wis. Stats., which accords a right to a hearing;
8. Specific reasons why the proposed activity violates the standards under s. NR 299.04(1)(b), Wis. Admin. Code;
9. A statement that the petitioner will appear and present information supporting its objections in a contested case hearing.

This determination becomes final in accordance with the provisions of s. NR 299.05(7), Wis. Admin. Code, and is judicially reviewable when final. For judicial review of a decision pursuant to ss. 227.52 and 227.53, Wis. Stats., you have 30 days after the decision becomes final to file your petition with the appropriate circuit court and to serve the petition on the Secretary of the Department of Natural Resources. The petition must name the Department of Natural Resources as the respondent.

Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request.

Dated at Southeast Region Headquarters on 08/10/2011

WISCONSIN DEPARTMENT OF NATURAL RESOURCES
For the Secretary



Rachel Sabre
Water Management Specialist

FINDINGS OF FACT

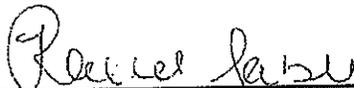
1. John Bennett of the City of Franklin has filed an application for to impact wetlands adjacent to Ryan Creek & Root River, located in the City of Franklin, Milwaukee County, also described as running along Ryan Creek from 60th Street to 124th Street at the Milwaukee County Line.
2. The proposed project is to temporarily impact 1.836 acres of Federal Wetland for the purpose of installing 5.5 linear miles of sanitary sewer. The installation of the sanitary sewer will cross Ryan Creek three times and the Root River once within the project corridor. All sanitary sewer installation at these four crossings will be done via jack and bore beneath the waterways. No open cut of the waterways is permitted in accordance with this permit.
3. The Department has completed an investigation of the project site and has evaluated the project as described in the application and plans. The project site has two navigable waterways that cross the project corridor. The Root River will be crossed once and Ryan Creek will be crossed three times. All sanitary sewer installation at these four crossings will be done via jack and bore beneath the waterways. No open cut of the waterway will occur. Southeastern Wisconsin Regional Planning Commission (SEWRPC) delineated the wetlands in the project corridor. Franklin Park State Natural Area is located within the project corridor. Wetlands will be temporarily impacted in that area for purpose of jack and boring under Ryan Creek.
4. The proposed project, if constructed in accordance with this permit will not adversely affect water quality, will not increase water pollution in surface waters and will not cause environmental pollution as defined in s. 283.01(6m), Wis. Stats.
5. This project will impact wetlands if constructed in accordance with this permit. All impacts are temporary and will be restored after the project has been completed.
6. The Department of Natural Resources and the applicant have completed all procedural requirements and the project as permitted will comply with all applicable requirements of Sections 1.11, 281.15, 281.37 and 401 CWA, Wisconsin Statutes and Chapters NR 102, 103, 115, 116, 117, 150, 299, 300 and 310 of the Wisconsin Administrative Code.

CONCLUSIONS OF LAW

1. The Department has authority under the above indicated Statutes and Administrative Codes, to issue a permit for the construction and maintenance of this project.
2. The project has been reviewed for compliance with Chapter NR 103, Wisconsin Administrative Code. The Department has determined that the proposed project is not wetland dependent and that a practicable alternative does not exist. The proposed project, if constructed in accordance with this permit, will not result in significant adverse impacts to the functional values of the affected wetlands, significant adverse impacts to water quality or other significant adverse environmental consequences

Dated at Milwaukee Service Center on August 10, 2011

WISCONSIN DEPARTMENT OF NATURAL RESOURCES
For the Secretary

A handwritten signature in cursive script that reads "Rachel Sabre". The signature is written in black ink and is positioned above a horizontal line.

Rachel Sabre - Water Management Specialist

EXHIBIT 2

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
101 S. Webster Street
Box 7921
Madison WI 53707-7921

Scott Walker, Governor
Cathy Stepp, Secretary
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711



October 6, 2011

SUSANNE M. BAYEL
9733 W. RYAN RD.
FRANKLIN WI 53132

JOSEPH HERITZ
10931 W. RYAN RD.
FRANKLIN WI 53132

JEFFREY HERITZ
7411 S. 49TH ST.
FRANKLIN WI 53132

SCOTT LUDWIG
9110 W. BOSCH LN.
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BARB BARWA
10052 S. 112TH ST
FRANKLIN WI 53132

JANE PROM
9918 S. 112TH ST
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GRACE M. BARWA
10034 S. 112TH ST
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ROBERT DIEDRICH
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JOAN LANGENNOHL
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DONALD LANGENNOHL
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JOSEPH BRAUN
9918 S. 112TH ST.
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MELISSA BRAUN
9918 S. 112TH ST.
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JEAN LANGENNOHL
9970 S. 112TH ST.
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JACQUELINE IODER
10338 W. RYAN RD.
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KURT NAPIENTER
10233 W. RYAN RD.
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EARL HOLTERMAN
8180 W. OAKWOOD RD.
FRANKLIN WI 53132

SCOTT A. MAYER
9733 W. RYAN RD.
FRANKLIN WI 53132

PAULENE M. ACKER
10023 S. 92ND ST.
FRANKLIN WI 53132

DOROTHY BOSCH
883 W. OAKWOOD RD.
FRANKLIN WI 53132

IN RE: Petition for Contested Case Hearing Regarding DNR Decision # IP-SE-2011-41-04738/04757/04760-04769/04872 Granting Water Quality Certification ("WQC") Under Section 401 of the Federal Clean Water Act, Ss. 281.15 & 281.37, Wis. Stats., and Ch. NR 299, Wis. Admin. Code, to Place Fill Temporarily Affecting 1.836 Acres of Federal Wetland For the Purpose of Installing 5.5 Linear Miles Of Sanitary Sewer Crossing Ryan Creek 3 Times and the Root River One Time, City of Franklin, Milwaukee County

Dear Ms. Bayel et. al.:

On September 16, 2011, we received and reviewed your request for a contested case hearing pursuant to s. 227.42, Stats., and s. NR 299.05(5), Wis. Admin. Code, regarding the above Water Quality Certification decision. DNR's preliminary decision was issued August 10, 2011, and published Aug. 18, 2011, so your petition was timely received within 30 days of publication as required by s. NR 299.05(5), Wis. Admin. Code, and s. NR 2.03, Wis. Admin. Code.

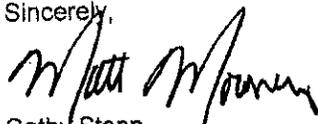
In your petition you allege that the City has not demonstrated:

- (a) that no practicable alternatives exist to avoid adverse impacts to wetlands;
- (b) that it has taken all practicable measures to minimize adverse impacts to the functional values of the affected wetland;
- (c) that the project will not result in significant adverse impacts to water quality or other significant adverse environmental consequences;
- (d) that DNR considered impacts from the project on the maintenance and protection of the hydrologic function of impacted wetlands (s. NR 103.03(1)(b));
- (e) that DNR adequately considered potential adverse impacts to wetlands in areas of special natural resource interest ("ASNRI") which you identify as both Ryan Creek and the Root River.

I have determined that your petition meets the requirements of s. 227.42, Stats., and s. NR 299.05(5), Wis. Admin. Code, and we are therefore **GRANTING** your request for a contested case hearing. Due to the number of hearing requests we are processing, it may be a number of weeks before this hearing is ready to be conveyed to the Division of Hearings and Appeals (DHA) in the Department of Administration for hearing. When we complete processing the file, we will transmit it to DHA where it will be assigned to an administrative law judge (ALJ) and scheduled for hearing.

If you have any questions regarding the hearing, please contact DNR attorney Jane Landretti at (608) 267-7456.

Sincerely,


for Cathy Stepp
Secretary

cc: Rachel Sabre – DNR SER (Milwaukee)
Jane Landretti – DNR (Madison) - GEF 2 – LS/8
Jamie Lambert – DNR SER (Milwaukee)
Sharon Gayan – DNR SER (Milwaukee)
Conservation Warden Nick Blankenheim – DNR SER (Milwaukee)
U.S. Army Corps of Engineers
Milwaukee County, Kevin Haley
Ruekert & Mielke
~~Duncan Moss, Godfrey & Kahn~~

EXHIBIT 3



Detailed Results

Tracking no.: 869443558626

Select time format: 12H

Delivered

Delivered
Signed for by: T.WESTBY

Shipment Dates	Destination
Ship date Sep 15, 2011	Signature Proof of Delivery
Delivery date Sep 16, 2011 9:07 AM	

Shipment Options

Hold at FedEx Location
Hold at FedEx Location service is not available for this shipment.

Shipment Facts

Service type	Priority Envelope - Direct Signature Required	Delivered to Reference	Mallroom 060417-0002 1704
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Shipment Travel History

Select time zone: Local Scan Time

All shipment travel activity is displayed in local time for the location

Date/Time	Activity	Location	Details
Sep 16, 2011 9:07 AM	Delivered		
Sep 16, 2011 8:14 AM	On FedEx vehicle for delivery	MADISON, WI	
Sep 16, 2011 7:36 AM	At local FedEx facility	MADISON, WI	
Sep 16, 2011 6:11 AM	At destination sort facility	MADISON, WI	
Sep 16, 2011 4:58 AM	Departed FedEx location	MEMPHIS, TN	
Sep 15, 2011 11:40 PM	Arrived at FedEx location	MEMPHIS, TN	
Sep 15, 2011 8:33 PM	Left FedEx origin facility	WAUKESHA, WI	
Sep 15, 2011 4:44 PM	Picked up	WAUKESHA, WI	

EXHIBIT 4

RECEIVED

SEP 16 2011

To the Wisconsin Department of Natural Resources:

DNR
OFFICE OF THE
SECRETARY

The undersigned hereby request that a hearing be held as a contested case under § 227.42 Stats. *ZRP*

The agency action which is the basis for the request for a hearing is the issuance of State Water Quality Certification by letter to the City of Franklin, c/o John Bennett dated August 10, 2011 to authorize the City to disturb wetlands to install an interceptor sanitary sewer along Ryan Creek from 60th Street to State Trunk Highway 36.

The substantial interest injured or threatened with injury by agency action is adverse impacts to impacted wetlands, including, but not limited to, adverse impacts to vegetation and soils, reduced wetlands functionality and potential groundwater contamination and/or limitation on recharge.

The basis for a finding that there is no evidence of legislative intent that the interest is not to be protected is: Wisconsin has significant regulatory protection of wetlands and a well-established public trust doctrine.

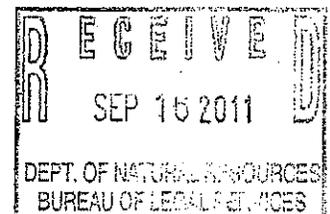
The injury to the persons requesting the hearing is different in kind or degree from injury to the general public caused by the agency action because the undersigned are residents and/or property owners of lands to be traversed by the City of Franklin's disturbance of the wetlands.

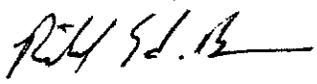
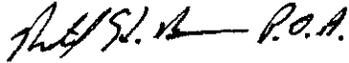
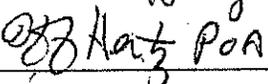
The disputed facts are:

- (1) that the City has no alternative but to impact 1.836 acres of federal wetlands;
- (2) that the City has no alternative but to install its sanitary sewer crossing Ryan Creek three times and crossing the Root River once; and
- (3) that the proposed wetlands disturbance will not have significant and permanent adverse impacts to the wetlands.

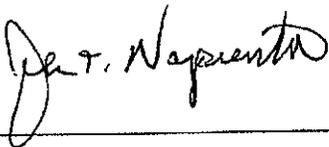
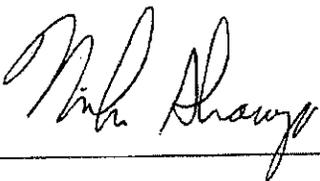
The statute or administrative rule which accords a right to a hearing is § 227.42 Stats and § 283.01(6m). Stats.

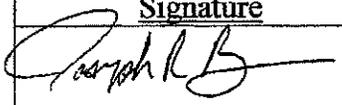
Signatures and addresses on following page.



Signature	Name	Address
	Richard H. Barwa	10052 So. 112 th Street Franklin, WI 53132
Grace M. Barwa  P.O.A.	Grace M. Barwa	10034 So. 112 th Street Franklin, WI 53132
Jane Prom  P.O.A.	Jane Prom	9914 South 112 th Street Franklin, WI 53132
Barb Barwa	Barb Barwa	10052 S. 112 th St. Franklin, WI 53132
	SCOTT LUDWIG	9110 W. BOSCH W. FRANKLIN WI 53132
	JEFFREY HERITZ	7241 S. 46 th FRANKLIN WI 53132
Joseph Heritz  POA	Joseph Heritz	10931 W Ryan Franklin 53132
	Susanne M Beyer	9733 W Ryan Rd Franklin WI 53132

* PRIMARY CONTACT

<u>Signature</u>	<u>Name</u>	<u>Address</u>
	ROBERT ADIEDRICH	1111 W RYAN Rd FRANKLIN, WI 53132
	Marsha Napientek	10233 W Ryan Rd Franklin WI 53132
	Jan T. Napientek	10233 W. Ryan Rd Franklin WI 53132
	PAT LAMBERT-SHAWGO	10250 W. RYAN FRANKLIN, WI 53132
	Mike Shungo	10250 W. Ryan Rd. Franklin, WI. 53132
	Ted Ignasiak	9880 So. 112 st So. 112 st
	Donald LANGENOHL	9944 So 112 th FRANKLIN, WI 53132
	JOAN LANGENOHL	9944 So 112 th St FRANKLIN, WI 53132

<u>Signature</u>	<u>Name</u>	<u>Address</u>
	JOSEPH R. BRAUN	9918 S. 112 TH ST FRANKLIN, WI 53132
Melissa Braun	Melissa Braun	9918 S. 112 TH ST. Franklin, WI 53132
James Langenohl	JAMES LANGENOHLE	9970 So 112TH ST 53132
Jean E. Langenohl	Jean E. Langenohl	9970 S. 112 Franklin, WI 53132
Jacqueline Ioder	Jacqueline ioder	10338 W. Ryan Rd. Franklin, WI 53132
	KURT NAPIENTER	10233 West Ryan Rd Franklin, WI 53132
Earl Holtermann	EARL Holtermann	8750 West Cedarwood Rd Franklin
	Scott A Meyer	9733 W Ryan Rd Franklin WI 53132
Paulene M. Acker	PAULENE M. ACKER	10023 So. 92 ND ST. FRANKLIN WI 53132

Signature	Name	Address
<i>Franky Bosch</i>	Dorothy Bosch	8830 W OAKWOOD Franklin W. 53132

EXHIBIT 5

FACSIMILE MESSAGE

PLEASE DELIVER THE FOLLOWING TO:

Memory Tag: 2# 105

Name:	Holly	Facsimile No.	608-266-6983
Company:	Secretary of State's Office	Phone No.	608-267-7556

REQUESTED BY Jamie M. Stefan
EXTENSION 4545

Total number of pages sent, including this page

IF ANY PROBLEMS OCCUR WITH THIS TRANSMISSION OR IF YOU HAVE NOT RECEIVED ALL THE PAGES, PLEASE CALL OUR FACSIMILE OPERATOR AT 262-951-4545.

COMMENTS:

Holly-

Per our phone conversation, please attach these new cover petition pages to the signature pages that you received via FedEx this morning. Thank you for your help in this matter.

Jamie Stefan

RECEIVED

SEP 16 2011 *zrp*
DNR
OFFICE OF THE
SECRETARY
FED EX

R	E	C	E	I	V	E	D
SEP 16 2011							
DEPT. OF NATURAL RESOURCES BUREAU OF LEGAL SERVICES							

To the Wisconsin Department of Natural Resources:

The undersigned hereby request that a hearing be held as a contested case under § 227.42 Stats.

The agency action which is the basis for the request for a hearing is the issuance of State Water Quality Certification by letter to the City of Franklin, c/o John Bennett dated August 10, 2011 to authorize the City to disturb wetlands to install an interceptor sanitary sewer along Ryan Creek from 60th Street to State Trunk Highway 36.

The substantial interest injured or threatened with injury by agency action is adverse impacts to impacted wetlands, including, but not limited to, adverse impacts to vegetation and soils, reduced wetlands functionality and potential groundwater contamination and/or limitation on recharge.

The undersigned petitioners' interests are adversely affected by the Department's determination permitting the City to impact 1.836 acres of federal wetlands as part of its sewer extension project because the petitioners are residents of and/or property owners of lands on which the City of Franklin's project will have the above-noted detrimental impacts to wetlands, vegetation, soils and groundwater.

The basis for a finding that there is no evidence of legislative intent that the interest is not to be protected is: Wisconsin has significant regulatory protection of wetlands and a well-established public trust doctrine.

The injury to the persons requesting the hearing is different in kind or degree from injury to the general public caused by the agency action because the undersigned petitioners are residents and/or property owners of lands to be traversed by the City of Franklin's disturbance of the wetlands.

There is a dispute of material fact, as follows:

- (1) that the City has no alternative but to impact 1.836 acres of federal wetlands;
 - (2) that the City has no alternative but to install its sanitary sewer crossing Ryan Creek three times and crossing the Root River once; and
 - (3) that the proposed wetlands disturbance will not have significant and permanent adverse impacts to the wetlands.
-

The statute or administrative rule other than § 227.42 Stats which accords a right to a hearing is § 283.01(6m), Stats and § NR 299.05, Wis Adm Code.

The City's proposed sewer extension project violates several standards under § NR 299.04(1)(b), including but not limited to the following:

(1) The City has not shown that "no practicable alternative exists which would avoid adverse impacts to wetlands" as required by § NR 103.08(4)(a)(1), Wis Adm Code;

(2) The City has not shown that "all practicable measures to minimize adverse impacts to the functional values of the affected wetlands have been taken," as required by § NR 103.08(4)(a)(2);

(3) The City has not shown that its project "will not result in significant adverse impacts to water quality or other significant adverse environmental consequences," as required by § NR 103.08(4)(a)(3);

(5) In granting its approval, the WDNR failed to consider impacts from the City's project on the maintenance and protection of the hydrologic function of impacted wetlands, in violation of § NR 103.08(3)(c).

(6) In granting its approval, the WDNR failed to adequately consider potential adverse impacts to wetlands in areas of special natural resource interest (i.e., both Ryan Creek and the Root River), in violation of § NR 103.08(3)(f).

The undersigned petitioners will appear and present information supporting their objections in a contested case hearing.

Signatures and addresses of petitioners are presented on the following page.

APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE October 27, 2011
REPORTS AND RECOMMENDATIONS	Proposed Change Orders to the Contracts for the Public Construction of the Ryan Creek Interceptor Sewer Public Sanitary Sewer Facility Project, to wit: Contract C02006-C01, Super Excavators, Inc., in the net increase amount of \$143,700.00; Contract C02006-C02, Super Excavators, Inc., in the net increase amount of \$367,425.00; Contract C02006-C03, D.F. Tomasini Contractors, Inc., in the net increase amount of \$606,270.00; and Contract C02006-C04, Globe Contractors, Inc., in the net credit amount of \$10,000.00	ITEM NUMBER <i>III. c.</i>

The petition filed for a contested case hearing upon the Wisconsin Department of Natural Resources' grant of the Water Quality Certification permit has required staff and the project consultant to provide for a change to construction methods for the project which will totally avoid any wetland impacts, as the petition timing, triggering the hearing process, regardless of any ultimate determination of the validity of or upon the merits of the petition, would put the process beyond the current available time limits for the Clean Water Fund Loan Program financing closing. Attached hereto is a copy of correspondence dated October 26, 2011 from the Senior Project Manager which describes the proposed changes. The Senior Project Manager will be present at the meeting.

COUNCIL ACTION REQUESTED

A motion to direct staff and the Senior Project Manager to return the proposed change orders to the Common Council in contract form for approval.

October 26, 2011

Mr. John M. Bennett, P. E.
City Engineer/Director of Public Works
City of Franklin
9229 West Loomis Road
Franklin, WI 53132

RE: Ryan Creek Sanitary Sewer Interceptor
Changes Due to Elimination of Wetland Impacts

Dear Mr. Bennett:

Due to circumstances beyond the City's control, it is necessary to alter the construction methods for this Project so as to eliminate any impacts to any existing wetlands along the Project's construction route. This change will result in increased costs to the Project. These changes (and related costs) have been discussed in detail with both the staffs of the Wisconsin Department of Natural Resources and MMSD.

CONTRACT C01

One manhole will be moved 128 feet east to allow the tunnel shaft to be constructed outside the wetlands. In addition, approximately 120 feet of sewer will be bored under a wetland instead of using open cut construction. The cost of these changes is \$210,000 less \$66,300 for deletion of corresponding bid items for open cut construction and wetland restoration for a net increase for Contract C01 of \$143,700.

CONTRACT C02

Approximately 280 feet of sewer will be bored under two wetlands instead of using open cut construction. The cost of this change is \$466,500 less \$99,075 for deletion of corresponding bid items for open cut construction and wetland restoration for a net increase for Contract C02 of \$367,425.

CONTRACT C03

Approximately 220 feet of sewer will be bored under 2 wetlands instead of using open cut construction. Also, a temporary bridge will have to be constructed over a portion of the same wetland complex to allow the contractor to access a portion of the project with materials and equipment during construction. Two manholes will be moved 5 feet west to provide additional clearance from a wetland. The cost of these changes is \$710,000 less \$103,730 for deletion of



Mr. John M. Bennett, P. E.
City of Franklin
October 26, 2011
Page 2

corresponding bid items for open cut construction and wetland restoration for a net increase for Contract C03 of \$606,270.

In addition, an additional 2 acres of temporary easement will be required at an estimated cost of \$500.00.

CONTRACT C04

The wetland restoration bid item for Contract C04 will be eliminated resulting in a credit to Contract C04 of \$10,000.

These individual components and corresponding costs are summarized on the enclosed two spreadsheets.

These amounts are based primarily on unit prices and estimated quantities. Actual quantities, and therefore, the final contract prices, may vary.

The credits and deletions to each of the contracts will be handled in the final accounting for each of the contracts.

Please contact me if you have any questions.

Very truly yours,

RUEKERT/MIELKE

Joseph W. Eberle, P.E.
Principal/Senior Project Manager

JWE:sjs

Enclosure

cc: Jesse A. Wesolowski, City of Franklin, (w/encl.)
File

City of Franklin
Ryan Creek Sanitary Sewer Interceptor
Plan B Preliminary Cost Detail

DRAFT 10-25-11

Objective: Eliminate all wetland impacts

1. **Contract CO 01**
 - a. Move MH 2 128' east to allow tunnel shaft to be constructed outside wetlands (DWG 14R-1)
 - i. Estimated Net Cost - \$ 0.00
 - b. Auger Bore under Wetland # 23 approximately 120' to avoid wetland (DWG 19R-2)
 - i. Estimated Net Cost - \$ 143,700
2. **Contract CO 02**
 - a. Auger Bore under Wetland # 17 approximately 180' to avoid wetland (DWG 15R-1)
 - i. Estimated Net Cost - \$ 251,425
 - b. Auger Bore under WL # 38 approximately 100' to avoid wetland (DWG 17R-1)
 - i. Estimated Net Cost - \$ 116,000
3. **Contract CO 03**
 - a. Auger Bore under Wetland # 9 approximately 100' to avoid wetland (DWG 16R-1)
 - i. Estimated Net Cost - \$ 131,975
 - b. Obtain additional Temporary Easement around narrowest part of Wetland # 9 (DWG 16-R1)
 - i. Estimated Net Cost - \$ 500.00
 - c. Construct Temporary Bridge over Wetland # 9 for Project construction access (DWG 16R-1)
 - i. Needs to support minimum 200,000 lb. load
 - ii. Needs to function for approximately 12 months
 - iii. Estimated Net Cost - \$ 100,000
 - d. Move MH 29 and MH 30 5' west to provide additional clearance from Wetland # 34 (DWG17R-1)
 - i. Estimated Net Cost - \$ 0.00
 - e. Auger Bore past Wetland # 34 approximately 120' to avoid wetland (DWG 17R-1)
 - i. Deepest portion of the Project
 - ii. Limited easement width between wetland and property line
 - iii. No possibility to obtain additional easement to the west
 - iv. Estimated Net Cost - \$ 374,295
4. **Contract CO 04**
 - a. Eliminate Wetland restoration
 - i. Estimated Net Cost - (\$ 10,000)

Total Estimated Net Cost – Plan B

\$	0.00
	143,700.00
	251,425.00
	116,000.00
	131,975.00
	500.00
	100,000.00
	0.00
	374,295.00
	<u>(10,000)</u>
\$	<u>1,107,895.00</u>

City of Franklin
 Ryan Creek Sanitary Sewer Interceptor
 Projected Contract Increases

	<u>Original Award Amount</u>	<u>Proposed Change Order Amount</u>	<u>% of Original Contract</u>	<u>Projected Net Contract Increases</u>				<u>% of Original Contract</u>
				<u>Eliminate Wetland Restoration</u>	<u>Eliminate Corresponding Open Cut</u>	<u>Estimated Net Change</u>		
Contract CO 01	\$ 5,435,671.00	\$ 210,000.00	3.86%	\$ 15,300.00	\$ 51,000.00	\$ 143,700.00	2.64%	
Contract CO 02	3,338,775.00	466,500.00	13.97%	24,875.00	74,200.00	367,425.00	11.00%	
Contract CO 03	5,374,692.00	710,000.00	13.21%	19,250.00	84,480.00	606,270.00	11.28%	
Contract CO 04	4,797,210.00	-	0.00%	10,000.00	-	(10,000.00)	-0.21%	
	<u>\$ 18,946,348.00</u>	<u>\$ 1,386,500.00</u>	<u>7.32%</u>	<u>\$ 69,425.00</u>	<u>\$ 209,680.00</u>	<u>\$ 1,107,395.00</u>	<u>5.84%</u>	

Note: Actual increases are less due to the elimination of some bid items in the final accounting (i.e. We will no longer have to perform wetland restoration (\$ 69,425) and the proposed work replaces the corresponding open cut sewer (\$ 209,680).

DRAFT 11-25-11

<p style="text-align: center;">APPROVAL</p> <p style="text-align: center;"><i>Slw</i></p>	<p style="text-align: center;">REQUEST FOR COUNCIL ACTION</p>	<p style="text-align: center;">MEETING DATE</p> <p style="text-align: center;">October 27, 2011</p>
<p style="text-align: center;">REPORTS AND RECOMMENDATIONS</p>	<p style="text-align: center;">Ryan Creek Interceptor Sewer Public Sanitary Sewer Facility Project consideration of development assistance to property owners not currently served by public sanitary sewer service (Mayor Taylor)</p>	<p style="text-align: center;">ITEM NUMBER</p> <p style="text-align: center;"><i>III. D.</i></p>

In addition to presenting the subject of a potential amendment to the Municipal Code with regard to special assessments for public sanitary sewer in relation to the Ryan Creek Interceptor project on this agenda, the Mayor has requested staff to review the potential for some form of development assistance to property owners not currently served by public sanitary sewer service. Attached hereto is a copy of a memo from the Director of Finance and Treasurer dated October 25, 2011. The memo notes that the concept discussed is subject to a determination as to its legal viability by the City Attorney. The City Attorney, in consultation with the General Counsel for the *League of Wisconsin Municipalities*, at the outset, does note the following from League "FAQs":

Taxation FAQ 7

Can a municipality grant a full or partial property tax exemption to a property owner or a business?

No. Article VIII, sec. 1. of the Wisconsin Constitution provides that "The rule of taxation shall be uniform...." This provision, which applies only to the property tax, *Gottlieb v. Milwaukee*, 33 Wis.2d 408, 427-28, 147 N.W.2d 633 (1967), does, however, contain language which allows the legislature to classify and exempt property. *Nash Sales, Inc. v. Milwaukee*, 198 Wis. 281, 224 N.W. 126 (1929). The provision contains certain exemptions, such as the language specifying that the taxation of agriculture and undeveloped land need not be uniform with the taxation of other property, but it should be noted that this language enables the state legislature to enact certain nonuniform provisions.

Unlike the state, municipalities do not have the power to create full or partial exemptions and a municipality may not lawfully grant a property tax break because such action would violate the uniformity clause of the Wisconsin Constitution. Thus, the assessment of property cannot be frozen as an incentive for businesses to locate in a community, nor can a municipality agree to give tax rebates to property tax owners or rebates of tax increment financing (TIF) to businesses in a TIF district. In a similar vein, property that is destroyed after the January 1 assessment date is still subject to full taxation for that year; no adjustment can be made for the damage. Taxation 961 and Taxation 953.

It does not follow, however, that a municipality cannot give any incentives to property owners or renters. Municipalities may install public improvements without levying special assessments. Municipalities may also rent out unneeded land or buildings to others and there is no property tax due for the municipally owned property. Wis. Stat. sec. 70.11(2).

Moreover, there are accepted methods of encouraging economic development. The tax increment financing (TIF) law, Wis. Stat. 66.1105, with its allowance of land acquisition write down expenses as a project cost, Wis. Stat. sec. 66.1105(2)(f)1c, is one example. The authority of municipalities to benefit industry by installing roads and utilities (but not buildings) pursuant to Wis. Stat. sec. 66.1101(3), is another.

Finally, there is some old case law upholding municipal agreements with property owners that establish

payments by the municipality to a property owner of an amount based on taxes for continuing services. The amount to be paid must still be in accord with the value of the services. See *Monroe Water Works v. Monroe*, 110 Wis. 11, 85 N.W. 685 (1901). However, it is not always easy to fit an agreement into this category and avoid invalidation by the courts. See *Ehrlich v. Racine*, 26 Wis. 2d 352, 132 N.W.2d 489 (1985) and *Cornwell v. City of Stevens Point*, 159 Wis. 2d 136, 464 N.W. 2d 33 (Ct. App. 1990). Accordingly, even where continuing services are clearly involved, it may be more prudent to base the payment on something other than taxes so that the payment reflects the value of the services.

In the end, this means that municipalities may provide certain benefits and incentives to property owners and businesses, but municipalities cannot grant total or partial property tax breaks to property owners or businesses.

Powers of Municipalities FAQ 2

Can a municipality offer to waive or reimburse payment of property taxes, as an incentive to businesses or other property owners to locate in the community?

No. Municipalities are prohibited from granting property tax breaks by a clause contained in the Wisconsin Constitution which is referred to as the Uniformity Clause. Article VIII, sec. 1 of the Wisconsin Constitution provides that "The rule of taxation shall be uniform...." Although the provision contains language which allows the state legislature to classify and exempt property for tax purposes, municipalities do not have the power to create full or partial exemptions.

In *Cornwell v. City of Stevens Point*, [1] the Wisconsin Court of Appeals held that a contract between a property owner and city in which the city agreed to reimburse the property owner for all real estate taxes payable on the property violated the uniformity clause and was void. In exchange for the reimbursement of property taxes, the contract required the property owner to petition the city to annex the land, precluded the owner from developing the land, and granted the city the right to pump groundwater from the land for use in its municipal water system. The term of the contract was 99 years.

In concluding that the contract violated the uniformity clause, the *Cornwell* court discussed two cases, one upholding and the other invalidating payments based on the property tax. In the first case, *Monroe Water Works v. Monroe*, [2] the Wisconsin Supreme Court upheld a contract in which a water company agreed to maintain fire hydrants and provide the city water on a daily basis for public buildings and other public uses in exchange for the city's payment of the company's real property taxes. The court ruled that the arrangement did not violate the uniformity clause because it was well established that a city may pay for services by an amount equal to taxes.

In the second case, *Ehrlich v. City of Racine* [3] the court struck down an agreement in which the city agreed to pay a sum equal to the difference between the amount of property taxes based on the actual valuation and a lower valuation in exchange for the property owners' agreement to petition for annexation and grant the city an easement for a storm sewer to alleviate a flooding problem. The court held that the agreement amounted to a partial tax exemption and therefore violated the uniformity clause. The court distinguished the *Monroe* case because in that case the payment was for continuing services and was thus not comparable to an annexation agreement involving payment for an easement.

The *Cornwell* court concluded that the agreement not to develop land and to give the city rights to groundwater more closely resembled the grant of an easement in the *Ehrlich* case than the purchase of continuing services in the *Monroe* case. The court noted that the city did get benefits from the contract, but that it was not enough for the city to get a "good deal." The existence of such benefits, the court reasoned, is not enough to outweigh the "compelling" public policy of equal treatment for all taxpayers.

The *Cornwell* court further concluded that even if the arrangement were viewed as involving payment for continuing services, it would still not pass constitutional muster under the uniformity clause because "it must appear that the sum so stipulated to be paid is a fair and just allowance for the actual services to be rendered...."

[4] The court said that there was nothing in the record to show that the amount of tax reimbursements in any way related to the value of the benefits received by the city.

The *Cornwell* case shows that an agreement in which a municipality pays a property owner an amount based on taxes is questionable. Although there is old case law to the effect that such payments are valid for continuing services, the amount to be paid must still be in accord with the value of the services. This suggests that even

where continuing services are clearly involved, it may be more prudent to base the payment on something other than taxes so that the payment reflects the value of the services.

The uniformity clause also prevents municipalities from freezing property assessments as an incentive for locating in a community, or from agreeing to give tax rebates to property tax owners or rebates of TIF increments to businesses in a TIF district.

Although a municipality may not waive the payment of property taxes or in most instances reimburse a property owner for payment of taxes, there are accepted methods of encouraging economic development. As pointed out in League legal opinion Taxation #992, a municipality may install public improvements without levying special assessments. Other examples include the tax increment financing law (TIF) law which allows land acquisition write down expenses as a project cost. [5] Municipalities are also authorized to benefit industry by installing roads and utilities (but not buildings) pursuant to sec. 66.52, Stats.

COUNCIL ACTION REQUESTED

Motion to direct staff to further research and report back to the Common Council at its November 15, 2011 regular meeting as to the viability of development assistance to property owners not currently served by public sanitary sewer service.

M E M O R A N D U M

DATE: October 25, 2011
TO: File
FROM: Cal Patterson, Director of Finance & Treasurer
RE: Economic Development Grant for current non-sewered properties

Based upon an August 2010 study the City has about 500 non sewered taxable properties. Through a recent action of another taxing jurisdiction those properties will become sewered and taxable to MMSD starting with the tax bill received in 2012. Because of the importance of development of this area to the City an Economic Development Grant is proposed.

The purpose of the grant would be to transition the impact of the taxes levied by another level of government on the existing property owners over a ten year period. The first year grant would be 90% of the initial sewer taxes due. Each year the grant would reduce by 10% of the initial sewer taxes due. The last year of the grant would be in year 9.

The grants would be subject to the following conditions:

- Grants are limited to property owners existing on the date that the properties are first assessed for sewer taxes (Believed to be 1/1/2012)
- Properties would be eligible provided they are more than 1,000 ft from the existing sewer system
- Grant discontinues if the property is sold
- Grant is discontinued if the legal ownership changes
- Grant is discontinued if the property becomes less than 1,000 feet from sewer service

Eligibility for the grant would be determined on the property status on November 1st each year. The calculated grant amount would be included on the property tax bill as a deduction to the amounts otherwise due such that the total amount due would reflect the economic development grant. The tax bill program will need to be checked to make sure it will properly handle the negative amounts. The alternative would be to process payments to each parcel reflecting the annual grant amount.

The funding for the grant would come annually from the fund balance in the General Fund. The first year grant based upon the 2010 study and assuming that no property is sold and sewer lines are not extended would be \$124,221 in year one reducing to \$13,802 in year 9. For the nine year period the total cost is estimated at \$621,104. Sales of property and extension of sewer lines will reduce the above cost estimate.

The City Attorney will need to determine if this type of economic development grant is allowable by statute.

**City of Franklin
Non Sewered Information**

	Parcels	Land Value	Improv Value	Total Value		
Parcels Within 1,000 feet of RCI						
and in Sewer service area	32	2,236,800	3,060,900	5,297,700		
not in Sewer service area	88	6,106,200	9,979,300	16,085,500		
2009 Assessed Value	120	8,343,000	13,040,200	21,383,200		
MMSD Tax Rate		\$ 1.3764743	\$ 1.3764743	\$ 1.3764743		
Additional Tax Levy		\$ 11,483.93	\$ 17,949.50	\$ 29,433.43	\$	29,433.43
Parcels Within 1,000 feet of existing Sewer Service						
and in Sewer service area						
Sections 745, 753 & 754	9	621,600	1,181,100	1,802,700		
Sections 800 & 801	11	629,800	485,900	1,115,700		
Sections 798 & 843	2	12,900	-	12,900		
not in Sewer service area	2	96,500	5,900	102,400		
2009 Assessed Value	24	1,360,800	1,672,900	3,033,700		
MMSD Tax Rate		\$ 1.3764743	\$ 1.3764743	\$ 1.3764743		
Additional Tax Levy		\$ 1,873.11	\$ 2,302.70	\$ 4,175.81	\$	4,175.81
Parcels Outside RCI Sewer Service area (Islands) excluding TIF Parcels						
North 1						
Sections 708, 744, 745, 763 & 754	64	5,522,500	16,123,900	21,646,400	29,795.71	
West 2						
Sections 798, 799 & 800	45	3,143,100	3,979,000	7,122,100		
Sections 842, 843, 845 & 846	35	3,259,900	6,093,700	9,353,600	22,678.38	
Southeast In Sewer Service Area - 3						
Sections 929, 931, 932 & 947	8	446,800	683,300	1,130,100	1,555.55	
Southeast - 4						
Sections 948 to 982	13	951,300	1,882,000	2,833,300	3,899.96	
2009 Assessed Value	165	13,323,600	28,761,900	42,085,500		
MMSD Tax Rate		\$ 1.3764743	\$ 1.3764743	\$ 1.3764743		
Additional Tax Levy		\$ 18,339.59	\$ 39,590.02	\$ 57,929.61	\$	57,929.61
Parcels within RCI Sewer Service area (More than 1,000')						
Sections 844 to 845	4	239,500	412,500	652,000		
Sections 844, 845, 888 & 889	13	888,800	2,337,200	3,226,000		
Sections 848	6	452,500	820,700	1,273,200		
Sections 884, 885, 886 & 887	18	1,262,100	1,001,200	2,263,300		
Sections 894 & 896	5	524,200	1,433,400	1,957,600		
North edge - 6	46	3,367,100	6,005,000	9,372,100		
2009 Assessed Value						
MMSD Tax Rate		\$ 1.3764743	\$ 1.3764743	\$ 1.3764743		
Additional Tax Levy		\$ 4,634.79	\$ 8,265.73	\$ 12,900.45	\$	12,900.45
RCI South area						
Sections 933 & 946	11	269,800	548,500	818,300		
Sections 891 to 939	50	2,957,100	4,879,400	7,836,500		
Sections 940 to 946	31	2,506,800	2,918,700	5,425,500		
Sections 983 to 989	17	1,481,700	2,344,100	3,825,800		
2009 Assessed Value	109	7,215,400	10,690,700	17,906,100		
MMSD Tax Rate		\$ 1.3764743	\$ 1.3764743	\$ 1.3764743		
Additional Tax Levy		\$ 9,931.81	\$ 14,715.47	\$ 24,647.29	\$	24,647.29
Subtotal without 25 year area	464	33,609,900	60,170,700	93,780,600	\$	129,086.59
Over 25 year area						
Sections 948 to 982	28	2,115,800	3,467,700	5,583,300		
Sections 940 to 946	12	992,600	1,829,600	2,822,200		
Sections 983 to 989	22	1,587,700	2,246,300	3,834,000		
2009 Assessed Value	60	4,695,900	7,543,600	12,239,500		
MMSD Tax Rate		\$ 1.3764743	\$ 1.3764743	\$ 1.3764743		
Additional Tax Levy		\$ 6,463.79	\$ 10,383.57	\$ 16,847.36	\$	16,847.36
Subtotal without TIF Area	524	38,305,800	67,714,300	106,020,100		145,933.94
Revenue to TIF Districts						
Sections 930 & 931 TIF #2	5	667,700	747,800	1,415,500	1,948.40	
Sections 951, 978 & 979 TIF #4	28	5,951,900	11,302,300	17,254,200	23,749.96	
Total Tax Levy	33	\$ 6,619,600	\$ 12,050,100	\$ 18,669,700		
Parcels Outside Sewer Service area		\$ 1.3764743	\$ 1.3764743	\$ 1.3764743		
		\$ 9,111.71	\$ 16,586.65	\$ 25,698.36	\$	25,698.36
Total	497	40,229,500	72,220,800	112,450,300		171,632.31

Total 2009 taxes on non-sewered properties	171,632.31
Less taxes on parcels within 1,000 feet of RCI	\$ (29,433.43)
Less taxes on parcels Within 1,000 feet of existing Sewer Service	\$ (4,175.81)
	<u>138,023.07</u>

Economic Development Grants:

Year 1	124,220.76
Year 2	110,418.46
Year 3	96,616.15
Year 4	82,813.84
Year 5	69,011.53
Year 6	55,209.23
Year 7	41,406.92
Year 8	27,604.61
Year 9	13,802.31
Year 10	-

621,103.81

<p>APPROVAL <i>Slw</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE October 27, 2011</p>
<p>REPORTS AND RECOMMENDATIONS</p>	<p>Proposed policy relative to sewer extension and cost recovery for the Ryan Creek Interceptor Public Sanitary Sewer Project and currently unsewered public sanitary sewer service areas in the City (Mayor Taylor)</p>	<p>ITEM NUMBER <i>III.E.</i></p>

The Council reviewed an initial policy relative to sewer extension and cost recovery for the Ryan Creek Interceptor service area in the southwest portion of the City at its regular meeting on December 21, 2010. The minutes of the meeting provide: "It was the consensus of the Common Council to approve the initial proposed policy dated December 15, 2010, relative to sewer extension and cost recovery for the Ryan Creek Interceptor service area in the southwest portion of the City." A copy of the report of the City's consultant upon the subject is attached hereto.

COUNCIL ACTION REQUESTED

A motion to direct staff, as a priority, and the City consultant on the subject, to provide a draft of legislation to implement the policy at the regularly scheduled meeting of the Common Council on November 15, 2011.



December 15, 2010

Common Council
City of Franklin
9229 West Loomis Road
Franklin, WI 53132

RE: Sewer Extension Cost Recovery Policy

Dear Common Council Members:

As authorized, Ruckert/Mielke has prepared an initial proposed sewer extension and cost recovery policy for review, consideration and direction from the Common Council. We have reviewed the City's existing policies as well as example policies from other municipalities, outlined the key issues, and prepared the initial outline of a proposed policy, as described below.

Components of a Sewer Extension Cost Recovery Policy

The key components that need to be addressed in a sewer extension cost recovery policy are as follows:

- Connection policy – under what circumstances and terms will properties with available sewer service be required to connect to the system.
- Initial financing – under what circumstances and to what extent will the City be willing to provide any upfront financing of new sewer extensions.
- Terms of cost recovery for developers – when a developer is required to provide upfront financing for a sewer extension that will ultimately serve a larger area than the initial development, under what terms and conditions will the City reimburse the developer for a portion of the initial costs.
- Use of special assessments and/or impact fees – For areas outside of an initial development that triggers a sewer extension, how will special assessments and/or impact fees be used to collect the appropriate portion of the costs from each property served.
- Deferral of special assessments – If special assessments are levied, under what terms and conditions will assessments be deferred.

Issues and Alternatives

The following sections outline the City's current policies, important considerations and suggested alternatives for each of the components of a sewer extension cost recovery policy.



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1. Connection policy

a. Current policies:

- i. Sewer (§190-22) – within one year of notice that sewer is available, unless building is > 400 feet from the main
- ii. Water – no connection requirement

b. Issues:

- i. It may be necessary and reasonable to require connection within a certain period of time if sewer is extended to an existing subdivision, particularly if there are failing septic systems.
- ii. Requiring connection of large parcels and working farms may force premature development

c. Wisconsin Statutes 281.45 – municipalities may require connection to sewer and water, but do not have to require connection.

d. Suggested policies:

- i. Alternative 1 – defer until subdivision or other development for vacant properties and as long as the building has a working onsite system for developed properties
- ii. Alternative 2 – same as above, except require connection within 1 year of sewer becoming available for all properties in a subdivision within which the majority of property owners petition for sewer service

2. Initial financing

a. Current policies:

- i. Water extensions (§207-23)
 1. City may finance if there is an immediate public need and funds are available, or the project otherwise benefits the City
 2. Landowner finances if there is no immediate public need or funds are not available
- ii. Sewer extensions – no written policy, but a similar policy in practice. Sewer extensions have typically been in response to failing septic systems in subdivisions. The City has financed the project and levied special assessments up to a maximum amount, with the remainder funded by the sewer connection fee.

b. Issues:

- i. Depending on the location, the sewer extension could be very costly
- ii. How much risk does the City want to take in order to support economic development?
- iii. Where would funds come from to carry the costs if the City finances any of these extensions?
- iv. It may be desirable to have a consistent policy for all projects.



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c. Suggested policies:

- i. Alternative 1 – City requires developer and/or abutting property owners to finance the entire cost of any extensions requested by developers; City finances the cost if the City decides to provide an extension on its own initiative or at the request of existing developed properties.
- ii. Alternative 2 – Developer finances the 8-inch or 12-inch equivalent on all projects and the City finances the oversize costs; City finances the 8-inch or 12-inch equivalent cost only if the City decides to provide an extension on its own initiative or at the request of existing developed properties.

3. Terms of cost recovery for developers

a. Current policies:

- i. Water extensions (§207-23)
 1. Reimbursed without interest
 2. Oversize cost is reimbursed in 5 annual installments
 3. Nonoversize portion is reimbursed as abutting property owners connect, for a period of no more than 15 years
 4. Later connections pay for the actual 8” or 12” equivalent cost for the main, with no maximum.
- ii. Sewer extensions – usually not developer driven. City finances the project and levies special assessments, up to a pre-determined maximum.

b. Issues:

- i. Should the amount and timing of reimbursement be fixed or only occur as abutting properties connect?
- ii. Should there be a maximum time limit for reimbursements?

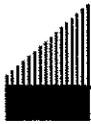
c. Suggested policies:

- i. Alternative 1 – Only reimburse the developer as abutting properties connect and/or there is impact fee/connection fee funding available
- ii. Alternative 2 – Reimburse the oversize cost on a fixed schedule, similar to the water main extension policy, and reimburse the nonoversize cost as abutting property owners connect, up to a period of 15 years.

4. Special assessment or impact fees

a. Current policies:

- i. Sewer – combination of assessments and connection fees. Ordinance does not detail specific policies.
- ii. Water (§207-23)
 1. 8-inch equivalent – special assessment or reimbursement from connecting property owners in accordance with PSC water main extension rules
 2. Oversize cost – water impact fee



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b. Issues:

i. Special assessments

1. Lien on the property
2. Can be collected immediately or deferred until sale, subdivision, connection, rezoning, etc.
3. Can allow for installment payments
4. Have to go through the report and hearing process for each new project
5. Would need to do an area-wide assessment based on acreage or RECs or a similar method if assessing the entire cost of trunk sewers. This could result in a "stacking effect" where properties on the upstream end of the system could end up paying for multiple assessments if oversize costs are assessed

ii. Impact / connection fees

1. Not a lien on the property
2. Cannot be collected until time of connection or building permit
3. Does not allow for installment payments
4. Could establish impact / connection fees for the entire area with a single report and public hearing
5. Could have a uniform charge throughout the entire area

c. Suggested policies:

- i. Alternative 1 – special assess for the 8-inch or 12-inch equivalent with an impact / connection fee for the oversize costs
- ii. Alternative 2 – use impact fees for the entire cost

5. Deferral policy for special assessments

a. Current policies for deferral of assessments (§207-15):

- i. Undeveloped/vacant properties > 2.5 acres and > 330 feet of frontage
- ii. Properties > 2.5 acres with one residential dwelling that is an excessive distance from the sewer or water mains
- iii. Deferral, for the shorter of 10 years or until connection, of up to 300 feet of frontage for water assessments if the property abuts a transmission line, is used for residential purposes and has an adequate water supply
- iv. Deferral until sale, connection or up to 10 years for sanitary sewer or water assessments for property zoned I-1 Institutional District.

b. Issues:

- i. Don't want to force sale and development of large parcels and farms.
- ii. Could potentially allow a single residential building on a large parcel to connect without requiring payment of the entire assessment or fee.

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c. Suggested policies:

- i. Alternative 1 – deferral of entire assessment until subdivision, construction of improvements or connection, then require payment of the entire assessment
- ii. Alternative 2 – deferral of entire assessment until subdivision, construction of improvements or connection. If the triggering event involves the development of the property (i.e. subdivision), require payment of the entire assessment. If the triggering event is the connection of a single residence on a large parcel that could be further subdivided, only require payment of a minimum amount related to serving that single dwelling unit (i.e. a minimum amount of frontage or a single REC).

Initial Proposed Policy

After review of the City's existing policies and other example policies and consideration of the issues and alternatives described above, an initial proposed sewer extension cost recovery policy has been developed for consideration and direction by the City Council. The proposed policy accounts for the fact that there will be different types of sewer extensions. Sewer extensions in the Ryan Creek Interceptor service area will be primarily driven by new development. However, in other situations, there will be City-driven sewer extensions, for example those to serve existing subdivisions with failing septic systems. These different types of extensions require different treatment, and the City's policy must account for both situations. The following sections describe the proposed policy for developer-driven extensions and City-driven extensions.

1. Developer-driven extensions

- a. Connection – connection is not required until the property is subdivided or developed, unless the septic system fails.
- b. Initial financing – The entire cost of the extension is initially financed by the landowner(s) or developer(s), including oversize costs.
- c. Terms of developer cost-recovery – Properties that connect to the extension within a certain period of time are required to reimburse the developer/landowner for the equivalent cost of the minimum diameter main needed to serve their development, up to a maximum amount per front foot, as established from time to time by the City. Any costs in excess of the maximum potential reimbursement from connecting properties (the oversize cost) is reimbursed to the developer/landowner in 5 equal annual installments, if funds are available. All costs are reimbursed without interest.
- d. Use of special assessments / impact fees – No special assessments are imposed on the abutting properties, since these properties are required to reimburse the



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developer. A uniform impact fee is imposed over the entire Ryan Creek Interceptor service area to cover the oversize costs of all anticipated future trunk sewer extensions. The existing sewer connection fee remains in place for the area currently provided with sewer service.

e. Deferral of special assessments – not applicable to developer-driven mains.

2. City-driven extensions

a. Connection – Extensions are not undertaken by the City unless a majority of the property owners in the area served want the connection. Therefore, if the city extends sewer, abutting property owners are required to connect within one year, unless the building an excessive distance from the main.

b. Initial financing - City may finance if there is an immediate public need and funds are available, or the project otherwise benefits the City.

c. Terms of developer cost-recovery – Not applicable to City-driven and financed mains.

d. Use of special assessments / impact fees – If the City extends and finances a main to serve an area where the majority of the property owners want sewer service, special assessments will be levied for the minimum diameter main needed to serve the abutting properties, up to a maximum amount per front foot, as established from time to time by the City. A uniform impact fee will be imposed over the entire Ryan Creek Interceptor service area to cover the oversize costs of all anticipated future trunk sewer extensions. The existing sewer connection fee remains in place for the area currently provided with sewer service.

e. Deferral of special assessments – Special assessments are deferred until connection, subdivision or other development of the property.

This is an initial proposed policy, intended as discussion points for the Council to consider and provide direction on the overall policy. After the overall policy is agreed to, the specific ordinance language and finer details can be drafted for the Council's consideration.

Respectfully submitted,

Christine A. Cramer, M.U.P.
Senior Economic Consultant

CAC:lfc

<p style="text-align: center;">APPROVAL</p> <p style="text-align: center;"><i>Slw</i></p>	<p style="text-align: center;">REQUEST FOR COUNCIL ACTION</p>	<p style="text-align: center;">MEETING DATE</p> <p style="text-align: center;">October 27, 2011</p>
<p style="text-align: center;">REPORTS AND RECOMMENDATIONS</p>	<p style="text-align: center;">Development agreement for the development of a hotel at the property located at 6901 South 76th Street (previously noticed as the proposed Hampton Inn and Suites five story hotel)</p>	<p style="text-align: center;">ITEM NUMBER</p> <p style="text-align: center;"><i>III, F,</i></p>

The Council may enter closed session pursuant to Wis. Stat. §19.85(1)(e), to discuss a development agreement for the development of a hotel at the property located at 6901 South 76th Street; and to re-enter 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 a development agreement for the development of a hotel at the property located at 6901 South 76th Street, 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.