

**COUNCIL PROCEEDINGS
PUBLISHED BY THE AUTHORITY OF THE CITY COUNCIL
OF BLOOMINGTON, ILLINOIS**

The Council convened in regular Session in the Council Chambers, City Hall Building, at 7:30 p.m., Monday, December 26, 2006.

The Meeting was opened by Pledging Allegiance to the Flag followed by Silent Prayer.

The Meeting was called to order by the Mayor who directed the City Clerk to call the roll and the following members answered present:

Aldermen: Joseph “Skip” Crawford, Kevin Huette, Allen Gibson, John Hanson, Jim Finnegan, Steven Purcell, Karen Schmidt and Mayor Stephen F. Stockton.

Deputy City Manager Brian Brakebill, City Clerk Tracey Covert, and Corporate Counsel Todd Greenburg were also present.

Absent: Alderman Michael Matejka and City Manager Tom Hamilton.

The following was presented:

Oath of Office – Nikolai Jones and Chad Hitchens, Police Patrol Officers.

Roger Aikin, Police Chief, introduced Nikolai Jones, Police Patrol Officer. Mr. Jones had graduated from Heartland Community College with an Associates Degree in Criminal Justice. He had also spent five (5) years in the Navy. He was accompanied this evening by his father, future father-in-law, and niece.

Chief Aikin introduced Chad Hitchens, Police Patrol Officer. He was a graduate of Kankakee Community College with an Associates Degree in Law Enforcement. He was accompanied this evening by his wife and parents.

Tracey Covert, City Clerk, performed the Oath of Office.

Mayor Stockton presented each officer with their Commission certificate.

The following was presented:

To: Honorable Mayor and Members of the City Council

From: Staff

Subject: Council Proceedings of May 23, 2005

The Council proceedings of May 23, 2005 have been reviewed and certified as correct and complete by the City Clerk.

Respectfully,

Tracey Covert
City Clerk

Tom Hamilton
City Manager

Motion by Alderman Schmidt, seconded by Alderman Purcell that the reading of the minutes of the previous Council Meeting of May 23, 2005 be dispensed with and the minutes approved as printed.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Crawford, Huette, Schmidt, Finnegan, Gibson, Hanson and Purcell.

Nays: None.

Motion carried.

The following was presented:

To: Honorable Mayor and Members of the City Council
From: Staff
Subject: Bills and Payroll

The following list of bills and payrolls have been furnished to you in advance of this meeting. After examination I find them to be correct and, therefore, recommend their payment.

Respectfully,

Brian J. Barnes
Director of Finance

Tom Hamilton
City Manager

(ON FILE IN CLERK'S OFFICE)

Motion by Alderman Schmidt, seconded by Alderman Purcell that the bills and payroll be allowed and orders drawn on the Treasurer for the various amounts as funds are available.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Crawford, Huette, Schmidt, Finnegan, Gibson, Hanson and Purcell.

Nays: None.

Motion carried.

The following was presented:

To: Honorable Mayor and Members of the City Council

From: Staff

Subject: Payments from Various Municipal Departments

1. The seventh partial payment to Peace Meal in the amount of \$624 on a contract amount of \$7,500 of which \$4,368 will have been paid to date for work certified as 58% complete for the John M. Scott Home Delivered Meals. Completion date – May 2007.
2. The seventh partial payment to Peace Meal in the amount of \$2,082 on a contract amount of \$25,000 of which \$14,574 will have been paid to date for work certified as 58% complete for the Peace Meals. Completion date – April 2007.
3. The eighth partial payment to McLean County Health Department in the amount of \$9,015 on a contract amount of \$108,180 of which \$72,120 will have been paid to date for work certified as 67% complete for the Animal Control and Shelter Services. Completion date – April 2007.
4. The fourth and final payment to Soules Bird Repellent Co. in the amount of \$6,000 on a contract amount of \$24,000 of which \$24,000 will have been paid to date for work certified as 100% complete for the Bird Control. Completion date – July 2007.
5. The forty-fifth partial payment to Brisbin, Brook, Beynon Architects in the amount of \$74.26 on a contract amount of \$1,446,000 of which \$1,433,129.66 will have been paid to date for work certified as 99.8% complete for the US Cellular Coliseum Architects. Completion date – April 2006.
6. The twenty-fifth and final payment to Mid-Illinois Mechanical Inc. in the amount of \$180,596 on a contract amount of \$3,613,413 of which \$3,613,412.69 will have been paid to date for work certified as 100% complete for the US Cellular Coliseum. Completion date – April 2006.

7. The thirtieth and final payment to Johnston Contractors, Inc. in the amount of \$326.43 on a contract amount of \$3,541,592 of which \$3,541,592 will have been paid to date for work certified as 100% complete for the Design/Build of the US Cellular Coliseum. Completion date – April 2006.
8. The thirteenth partial payment to Rowe Construction Co. in the amount of \$68,571.60 on a contract amount of \$1,250,603.92 of which \$1,249,983.28 will have been paid to date for work certified as 99% complete for the US Cellular Coliseum Infrastructure Improvements. Completion date – January 2007.
9. The second partial payment to Thompson Dyke & Associates in the amount of \$9,807.41 on a contract amount of \$19,950 of which \$15,960 will have been paid to date for work certified as 80% complete for the Lincoln Leisure Campus Parking. Completion date - August 2006.
10. The thirteenth partial payment to Felmley Dickerson in the amount of \$25,022.10 on a contract amount of \$2,669,586 of which \$2,412,793.47 will have been paid to date for work certified as 90% complete for the Library Expansion. Completion date - November 2006.
11. The sixth partial payment to Ratio Architects in the amount of \$6,423.26 on a contract amount of \$135,240 of which \$78,985.50 will have been paid to date for work certified as 58% complete for the Miller Park Playground Renovations. Completion date – May 2007.
12. The twelfth partial payment to Farnsworth Group in the amount of \$10,570.10 on a contract amount of \$203,300 of which \$137,470.20 will have been paid to date for work certified as 68% complete for the Constitution Trail – Grove to Hamilton. Completion date – November 2006.
13. The twelfth partial payment to Farnsworth Group in the amount of \$463.87 on a contract amount of \$32,562 of which \$16,867.79 will have been paid to date for work certified as 52% complete for the Norfolk Southern Railroad Crossing Negotiations – ML King at White Oak; Hamilton at Commerce, and Hershey at Hamilton. Completion date - February 2007.
14. The eighth partial payment to Testing Services Corporation in the amount of \$3,882.75 on a per ton and hour contract of which \$22,482.05 will have been paid to date for work certified as ongoing for the 2006-2007 Asphalt and Portland Concrete Plant Inspection and Lab Testing. Completion date – July 2007.
15. The second partial payment to Stark Excavating, Inc. in the amount of \$7,655.48 on a contract amount of \$2,959,945.10 of which \$190,361.11 will have been paid to date for work certified as 6% complete for the Fox Creek Road and Scottsdale Avenue Improvements. Completion date – September 2007.

16. The thirteenth partial payment to Stark Excavating, Inc. in the amount of \$19,561 on a contract amount of \$1,399,893.75 of which \$1,107,724.53 will have been paid to date for work certified as 79% complete for the Euclid Avenue – Oakland to Washington. Completion date – December 2006.
17. The eighteenth partial payment to Clark Dietz, Inc. in the amount of \$1,966.79 on a contract amount of \$330,000 of which \$306,642.01 will have been paid to date for work certified as 93% complete for the Hamilton Road – Timberlake to Main Street. Completion date – December 2006.
18. The twenty-sixth partial payment to Foth & Van Dyke/Daily Division in the amount of \$981.80 on a contract amount of \$295,161 of which \$259,457.90 will have been paid to date for work certified as 88% complete for the Design Fox Creek Road and Scottsdale Avenue Relocation. Completion date – January 2007.
19. The seventh partial payment to Lewis, Yockey & Brown, Inc. in the amount of \$12,162.98 on a contract amount of \$120,000 of which \$60,055.97 will have been paid to date for work certified as 50% complete for the Dr. M.L. King Jr. Dr. – Washington to Oakland. Completion date – March 2007.
20. The third partial payment to McLean County Soil and Water Conservation in the amount of \$16,290.75 on a contract amount of \$65,163 of which \$48,872.25 will have been paid to date for work certified as ongoing for the Professional Services. Completion date – Annual.
21. The second partial payment to Cochran & Wilken Inc. in the amount of \$4,025 on a contract amount of \$11,500 of which \$5,750 will have been paid to date for work certified as 50% complete for the Water Department Feasibility Study of Asian Carp Disbursal. Completion date – December 2007.
22. The fourth partial payment to Consoer Townsend & Associates in the amount of \$17,591.43 on a contract amount of \$38,400 of which \$22,942.38 will have been paid to date for work certified as 60% complete for the Water Department Study of Metering at Water Treatment Plant. Completion date – December 2006.
23. The fifth partial payment to Consoer Townsend & Associates in the amount of \$1,965.28 on a contract amount of \$74,800 of which \$15,152.15 will have been paid to date for work certified as 20% complete for the Water Department In-Line Booster Station at Mitsubishi Motorway. Completion date – December 2007.
24. The ninth partial payment to Consoer Townsend & Associates in the amount of \$418.93 on a contract amount of \$185,000 of which \$54,565.05 will have been paid to date for work certified as 29% complete for the Water Department Electrical Improvements at Lake Bloomington. Completion date – December 2007.

25. The fifth partial payment to Alvord, Burdick & Howson, LLC in the amount of \$9,075 on a contract amount of \$33,000 of which \$23,241.21 will have been paid to date for work certified as 70% complete for the Water Department Rate Study. Completion date – December 2007.
26. The sixtieth partial payment to Farnsworth Group in the amount of \$1,337.40 on a contract amount of \$1,077,688.73 of which \$989,132.93 will have been paid to date for work certified as 92% complete for the Design Transmission Water Main to Lake Bloomington. Completion date – January 2007.
27. The seventh and final payment to George Gildner, Inc. in the amount of \$168.95 on a contract amount of \$336,413 of which \$280,338.95 will have been paid to date for work certified as 100% complete for the US Cellular Coliseum Water Main Improvements. Completion date – August 2006.
28. The fourteenth partial payment to Farnsworth Group in the amount of \$14,084.95 on a contract amount of \$295,300 of which \$241,003.25 will have been paid to date for work certified as 82% complete for the Kickapoo Force Main Design, Property Surveys, and Brokaw Road Surveys. Completion date – January 2007.
29. The third partial payment to Farnsworth Group in the amount of \$23,597.35 on a contract amount of \$47,500 of which \$40,733.12 will have been paid to date for work certified as 86% complete for the Division Street CSO Elimination, Phase II. Completion date – March 2007.
30. The tenth partial payment to Clark Dietz, Inc. in the amount of \$18,243.36 on a contract amount of \$140,000 of which \$96,938.82 will have been paid to date for work certified as 69% complete for the Locust – Colton CSO Study. Completion date – January 2007.
31. The first partial payment to Thompson Dyke & Associates in the amount of \$14,000 on a contract amount of \$248,500 of which \$9,500 will have been paid to date for work certified as 4% complete for the McGraw Park – Phase II. Completion date – December 2009.
32. The third partial payment to US Cellular Coliseum in the amount of \$370,711.23 on a contract amount of \$3,142,402.80 of which \$1,252,057.40 will have been paid to date for work certified as 40% complete for the Professional Services. Completion date – May 2007.

All of the above described payments are for planned and budgeted items previously approved by the City Council. I recommend that the payments be approved.

Respectfully,

Tom Hamilton, City Manager

Alderman Purcell questioned payment 3. The eighth partial payment to McLean County Health Department in the amount of \$9,015 on a contract amount of \$108,180 of which \$72,120 will have been paid to date for work certified as 67% complete for the Animal Control and Shelter Services. Completion date – April 2007. Brian Brakebill, Deputy City Manager, noted that this was an intergovernmental service agreement with McLean County. Todd Greenburg, Corporation Counsel, addressed the Council. He noted that the City did not have a facility to house stray animals. Alderman Purcell had received complaints from citizens. Mr. Brakebill recommended that complaints be directed to the County Administrator’s Office. Citizens needed to understand the role of animal control. Mayor Stockton noted the contract’s annual cost, (\$108,180).

Alderman Purcell questioned payment 4. The fourth and final payment to Soules Bird Repellent Co. in the amount of \$6,000 on a contract amount of \$24,000 of which \$24,000 will have been paid to date for work certified as 100% complete for the Bird Control. Completion date – July 2007. He noted that this contract was limited to the Downtown. Mr. Brakebill responded affirmatively.

Alderman Purcell questioned payment 20. The third partial payment to McLean County Soil and Water Conservation in the amount of \$16,290.75 on a contract amount of \$65,163 of which \$48,872.25 will have been paid to date for work certified as ongoing for the Professional Services. Completion date – Annual. Mr. Brakebill noted that this contract provided watershed services for Lake Bloomington and Lake Evergreen.

Motion by Alderman Schmidt, seconded by Alderman Purcell that the payments be approved.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Crawford, Huette, Schmidt, Finnegan, Gibson, Hanson and Purcell.

Nays: None.

Motion carried.

The following was presented:

To: Honorable Mayor and Members of the City Council

From: Staff

Subject: Audit of the Accounts for the Township Supervisor of General Assistance Fund and General Town Fund for the Month of November, 2006

Audit of the Accounts for the Township Supervisor of General Assistance Fund and General Town Fund for the month of November were presented for Audit by the Township Supervisor.

The Audit of these accounts took place on Monday, December 26, 2006 at 6:30 p.m. in the Conference Room of Bloomington City Hall and should, at this time, be made a matter of record.

Respectfully,

Tracey Covert
City Clerk

Motion by Alderman Schmidt, seconded by Alderman Purcell that the audit of the bills and payrolls for the Township for the month of November, 2006 be made a matter of record.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Crawford, Huette, Schmidt, Finnegan, Gibson, Hanson and Purcell.

Nays: None.

Motion carried.

The following was presented:

To: Honorable Mayor and Members of the City Council
From: Staff
Subject: Reports

The following reports should be received and placed on file with the City Clerk:

1. Motor Fuel Tax Allotment for the month of November 2006.
2. Monthly Receipt & Expenditure Report, November, 2006.

Respectfully,

Tracey Covert
City Clerk

Tom Hamilton
City Manager

(REPORTS ON FILE IN CLERK'S OFFICE)

Motion by Alderman Schmidt, seconded by Alderman Purcell that the reports be received and placed on file.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Crawford, Huette, Schmidt, Finnegan, Gibson, Hanson and Purcell.

Nays: None.

Motion carried.

The following was presented:

To: Honorable Mayor and Members of the City Council

From: Staff

Subject: Request for Payment of \$19,096.91 to RBT of Illinois, LLC for the City's share of the Construction Cost of Over Sizing the Water Main in the Harvest Pointe Subdivision

On April 10, 2006, Council approved an Annexation Agreement with RBT of Illinois, LLC for Harvest Pointe Subdivision. Harvest Pointe Subdivision is located north of Illinois Route 9, just east of St. Patrick's of Merna Church near the intersection of Towanda Barnes Road and Illinois Route 9. The Annexation Agreement obligated the City to pay for the over sizing of any water mains above twelve inches (12"). The developer constructed approximately 600 feet of sixteen inch (16") water main on Harvest Pointe Drive.

Farnsworth Group, acting as the developer's agent, has submitted a request for payment in the amount of \$19,096.91. Staff has reviewed the bill and finds it to be reasonable. There are funds budgeted for this expense of "Upsize Misc. Developer Mains." Staff respectfully recommends that Council approve the payment of \$19,096.91 to RBT of Illinois, LLC with payment to be made from Water Depreciation Funds (X50200-72540).

Respectfully,

Craig M. Cummings
Director of Water

Douglas G. Grovesteen
Director of Engineering

Tom Hamilton
City Manager

Motion by Alderman Schmidt, seconded by Alderman Purcell that the payment be approved.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Crawford, Huette, Schmidt, Finnegan, Gibson, Hanson and Purcell.

Nays: None.

Motion carried.

The following was presented:

To: Honorable Mayor and Members of the City Council
From: Staff
Subject: Bid Analysis for Rescue Equipment for the Fire Department

Staff respectfully recommends that Council reject all bids submitted for Fire Department rescue equipment and that the purchase be re-bid.

Staff received four responses to an invitation to bid for rescue equipment. Two (2) of the responses were "No Bid" and neither of the vendors submitting bids include the required bid deposit.

Respectfully,

Keith Ranney
Fire Chief

Tom Hamilton
City Manager

Alderman Purcell questioned this item. Dan Shanks, Deputy Chief – Operations, addressed the Council. This bid was for hydraulic power units and a hydraulic spreader. He estimated the cost at \$14,000. Alderman Purcell questioned which station would have received same. Deputy Chief Shanks informed the Council that the Fire Department was undergoing a conversion process. The previous supplier had gone out of business. Equipment replacement was scheduled at Fire Stations #2 & #3. Alderman Purcell questioned if these items would be rebid.

Alderman Sage noted that the bid deposit was missing.

Motion by Alderman Schmidt, seconded by Alderman Purcell that the bids be rejected and the rescue equipment be re-bid.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Crawford, Huette, Schmidt, Finnegan, Gibson, Hanson and Purcell.

Nays: None.

Motion carried.

The following was presented:

To: Honorable Mayor and Members of the City Council

From: Staff

Subject: Local Agency Agreement for Federal Participation and Motor Fuel Tax Resolution for Construction of the White Oak Road & Martin Luther King Jr. Drive, MFT Section No. 96-900306-00-SP

Design of the White Oak Road & Martin Luther King Jr. Drive intersection is complete and the project will be included in the March 2007 Illinois Department of Transportation's (IDOT) state letting. In order to meet this letting schedule, a Local Agency Agreement for Federal Participation must be signed and submitted to IDOT for execution. The funds for this project are included in the City's 2006-2007 Capital Improvement Budget (\$80,000), which began May 1, 2006.

Funding for this project must be fully appropriated prior to the letting. This funding consists of construction costs covered eighty percent (80%) through a combination of Hazard Elimination Safety Program (HES) funding and Surface Transportation Urban (STU) Federal funding. The balance will be covered with City MFT Funds – ten percent (10%) and McLean County funding the remaining ten percent (10%). There is currently a verbal agreement with McLean County for its portion of the funding. This construction work includes pavement widening, new traffic signals, and related items. Therefore, project funding will be programmed as follows:

Federal - Hazard Elimination Safety Funds	\$227,000
Federal - STU Funds	\$413,000
Motor Fuel Tax Funds - 10% Local	\$ 80,000
McLean County Funding - 10% County	<u>\$ 80,000</u>
Total Estimated Funding	\$800,000

As all items are in order, staff respectfully recommends that Council approve the Local Agency Agreement for Federal Participation and an MFT Resolution adopted appropriating \$80,000 in MFT Funds (X20300-72530) for the construction of the White Oak Road & Martin Luther King Jr. Drive intersection, and further that the Mayor and City Clerk be authorized to execute the necessary documents.

Respectfully,

Douglas G. Grovesteen
Director of Engineering

Tom Hamilton
City Manager

(RESOLUTION NO. 2006 - 170 ON FILES IN CLERK'S OFFICE)

Motion by Alderman Schmidt, seconded by Alderman Purcell that the Local Agency Agreement be approved and the Resolution adopted.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Crawford, Huette, Schmidt, Finnegan, Gibson, Hanson and Purcell.

Nays: None.

Motion carried.

The following was presented:

To: Honorable Mayor and Members of the City Council

From: Staff

Subject: License Agreement with Norfolk and Southern Railroad for Sewage Force Mains to Cross Under the Track at Towanda Barnes Road

Farnsworth Group has designed a sewage pump station to be located on the south side of Ireland Grove Road approximately one (1) mile east of Towanda Barnes Road, along the Main Branch of the Kickapoo Creek. The pump station will serve the Grove Subdivision and surrounding future developments. It will pump sewage west through force mains to a gravity sewer connected to the existing interceptor sewer along Little Kickapoo Creek. The force mains will cross perpendicular to the Norfolk and Southern Railroad (NSRR) at Towanda Barnes Road approximately one half (1/2) mile south of Ireland Grove Road. Given this crossing, an Application for Pipe or Wire Occupancy was presented to and approved by Council on September 11, 2006, and subsequently sent to the subject railroad's agent, DMJM Harris.

DMJM Harris has approved the crossing of the railroad and has requested the execution of a License Agreement. This License Agreement will need to be returned to DMJM Harris with two (2) checks. The first check will need to be written in the amount of \$1,830 and made payable to DMJM Harris. A second check will need to be written in the amount of \$25,570 and made payable to NSRR. Please note the first check covers the fee for the Application for Pipe or Wire Occupancy, which was incorrectly made out to Norfolk Southern Corp. The second check covers the insurance fee and one time license fee.

Staff respectfully requests that Council approve the License Agreement with NSRR and approve the processing fee in the amount of \$1,830 and the insurance fee and one time license fee in the amount of \$25,570, and further, that the Mayor and City Clerk be authorized to execute the necessary documents. Funds for this payment will be taken from account #52200-72550.

Respectfully,

Douglas G. Grovesteen
Director of Engineering

Tom Hamilton
City Manager

THIS AGREEMENT, dated as of the 26th day of December, 2006 is made and entered into by and between

NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation, whose mailing address is Three Commercial Place, Norfolk, Virginia, 23510 (hereinafter called "Railway"); and

CITY OF BLOOMINGTON, a political subdivision of the State of Illinois, who's mailing address is 401 1/2 South East Street, Bloomington Illinois 61701 (hereinafter called "Licensee").

WITNESSETH

WHEREAS, Licensee proposes to install, maintain, operate and remove one (1) 16-inch ductile iron sewer pipe encased in a 26-inch steel pipe and one (1) 12-inch ductile iron sanitary sewer pipe encased in a 20-inch steel pipe (hereinafter called the "Facilities") located in, under and across the right-of-way or property and any tracks of Railway, at Milepost SP-369.31, Franklin-Farmdale Line, at or near **Brokaw, McLean County, Illinois**, the same to be located in accordance with and limited to the installation shown on print of drawings marked Exhibits A, dated September 24, 2006 and two (2) Pipe Data Sheets, attached hereto and made a part hereof; and

WHEREAS, Licensee desires a license to use such right-of-way or property of Railway for the installation, construction, maintenance, operation and removal of the Facilities.

NOW, THEREFORE, for and in consideration of the premises, the payment of a non-refundable, non-assignable one-time fee in the amount of TWENTY-FIVE THOUSAND FIVE HUNDRED SEVENTY AND 00/100 DOLLARS (\$25,570.00) (hereinafter called the "Fee") to cover the Risk Financing Fee (as hereinafter defined) in the amount of \$1,000, and a one-time occupancy fee in the amount of \$24,570, and the covenants hereinafter set forth, Railway hereby pennits and grants to Licensee, insofar as Railway has the right to do so, without warranty and subject to all encumbrances, covenants and easements to which Railway's title may be subject, the right to use and occupy so much of Railway's right-of-way or property as may be necessary for the installation, construction, maintenance, operation and removal of the Facilities (said right-of-way or property of Railway being hereinafter collectively called the "Premises"), upon the following terms and conditions:

1. Use and Condition of the Premises. The Premises shall be used by Licensee only for the installation, construction, maintenance, operation and removal of the Facilities and for no other purpose without the prior written consent of Railway, which consent may be withheld by Railway in its sole discretion. Licensee accepts the Premises in their current "as is" condition, as

suited for the installation and operation of the Facilities, and without the benefit of any improvements to be constructed by Railway.

2. Installation of the Facilities; Railway Support. Licensee shall, at its expense, install, construct, maintain and operate the Facilities on a lien-free basis and in such a manner as such installation, construction, maintenance and operation of the Facilities shall be in accordance with (a) the plans and specifications (if any) shown on the prints attached hereto and any other specifications prescribed by Railway, (b) applicable laws, regulations, ordinances and other requirements of federal, state and local governmental authorities, and (c) applicable specifications adopted by the American Railway Engineering and Maintenance-of-Way Association, when not in conflict with the applicable plans, specifications, laws, regulations, ordinances or requirements mentioned in (a) and (b), above. All underground pipes must have secondary pipe containment if the material flowing through the pipeline poses a safety or environmental hazard. Any change to the character, capacity or use of the Facilities shall require execution of a new agreement.

3. Railway Support. Railway shall, at Railways option, furnish, at the sole expense of Licensee, labor and materials necessary, in Railways sole judgment, to support its tracks and to protect its traffic (including, without limitation, flagging) during the installation, maintenance, repair, renewal or removal of the Facilities.

4. Electronic Interference. Licensee will provide Railway with no less than sixty (60) days advance written notice prior to the installation and operation of cathodic protection in order that tests may be conducted on Railway's signal, communications and other electronic systems (hereinafter collectively called the "Electronic Systems") for possible interference. If the Facilities cause degradation of the Electronic Systems, Licensee, at its expense, will either relocate the cathodic protection or modify the Facilities to the satisfaction of Railway so as to eliminate such degradation. Such modifications may include, without limiting the generality of the foregoing, providing additional shielding, reactance or other corrective measures deemed necessary by Railway. The provisions of this paragraph 4 shall apply to the Electronic Systems existing as of the date of this Agreement and to any Electronic Systems that Railway may install in the future.

5. Corrective Measures. If Licensee fails to take any corrective measures requested by Railway in a timely manner, or if an emergency situation is presented which, in Railways judgment, requires immediate repairs to the Facilities, Railway, at Licensee's expense, may undertake such corrective measures or repairs as it deems necessary or desirable.

6. Railway Changes. If Railway shall make any changes, alterations or additions to the line, grade, tracks, structures, roadbed, installations, right-of-way or works of Railway, or to the character, height or alignment of the Electronic Systems, at or near the Facilities, Licensee shall, upon thirty (30) days prior written notice from Railway and at its sole expense, make such changes in the location and character of the Facilities as, in the opinion of the chief engineering officer of Railway, shall be necessary or appropriate to accommodate any construction, improvements, alterations, changes or additions of Railway.

7. Assumption of Risk. Unless caused solely by the negligence of Railway or caused solely by the willful misconduct of Railway, Licensee hereby assumes all risk of damage to the Facilities and Licensee's other property relating to its use and occupation of the Premises or business carried on the Premises and any defects to the Premises; and Licensee hereby indemnifies Railway, its officers, directors, agents and employees from and against any liability for such damage.

8. Entry Upon Premises. Prior to commencement of any work to be performed on or about the Premises, Licensee shall notify the appropriate Division Engineer for the scheduling of protection and inspection. Within seventy-two (72) hours after the Division Engineer's actual receipt of such notification, the Division Engineer shall review the necessity and availability of flagmen for the proposed work and advise Licensee of such matters and the estimated cost therefore. No work shall be permitted on or about the Premises without the presence of Railway's flagman or the Division Engineer's waiver of the requirement for flag protection. Entry on or about the Premises or any other Railway right-of-way without the Division Engineer's prior approval shall be deemed trespassing. Licensee agrees to pay Railway, within thirty (30) days after delivery of an invoice therefore, for any protection and inspection costs incurred by Railway, in Railway's sole judgment, during any such entry.

9. Liens; Taxes. Licensee will not permit any mechanic's liens or other liens to be placed upon the Premises, and nothing in this Agreement shall be construed as constituting the consent or request of Railway, express or implied, to any person for the performance of any labor or the furnishing of any materials to the Premises, nor as giving Licensee any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that could give rise to any mechanic's liens or other liens against the Premises. In addition, Licensee shall be liable for all taxes levied or assessed against the Facilities and any other equipment or other property placed by Licensee within the Premises. In the event that any such lien shall attach to the Premises or Licensee shall fail to pay such taxes, then, in addition to any other right or remedy available to Railway, Railway may, but shall not be obligated to, discharge the same. Any amount paid by Railway for any of the aforesaid purposes, together with related court costs, attorneys' fees, fines and penalties shall be paid by Licensee to Railway within ten (10) days after Railway's demand therefore.

10. Indemnification. Licensee hereby agrees to indemnify and save harmless Railway, its officers, directors, agents and employees, from and against any and all liabilities, claims, losses, damages, expenses (including attorneys' fees) or costs for personal injuries (including death) and property damage to whomsoever or whatsoever occurring (hereinafter collectively called "Losses") that arise in any manner from (a) the installation, construction, maintenance, operation, presence or removal of, or the failure to properly install, construct, maintain, operate or remove, the Facilities, or (b) any act, omission or neglect of Licensee, its agents, servants, employees or contractors in connection therewith, unless caused solely by the negligence of Railway or caused solely by the willful misconduct of Railway.

11. Insurance.

(a) Without limiting in any manner the liabilities and obligations assumed by Licensee under any other provision of this Agreement, and as additional protection to Railway, Licensee shall, at its expense, pay the Risk Financing Fee set forth in subparagraph (i) below and shall procure and maintain with insurance companies satisfactory to Railway, the insurance policies described in subparagraphs (ii) and (iii).

(i) Upon execution of this Agreement, Licensee shall pay Railway a risk financing fee of \$1,000.00 per installation (herein called the "Risk Financing Fee") to provide Railroad Protective Liability Insurance or such supplemental insurance (which may be self-insurance) as Railway, in its sole discretion, deems to be necessary or appropriate.

(ii) Prior to the installation of the Facilities, or any subsequent entry by Licensee upon the Premises or other Railway property, Licensee, and each of its contractors, shall at its sole expense procure and maintain for the course of any such installation or entry, a Commercial General Liability Insurance policy having a combined single limit of not less than \$1,000,000 for each occurrence, naming Railway as an additional insured and containing products and completed operations and contractual liability coverage;

(iii) Prior to any entry upon the Premises or other Railway property occurring after installation of the Facilities, unless Railway elects to make available and Licensee pays the then current risk financing fee for each affected installation, Licensee, or its contractor, shall at its sole expense procure and maintain during such entry a policy of Railroad Protective Liability Insurance naming Norfolk Southern Railway Company as a named insured and having combined single limits of not less than \$2,000,000 for each occurrence and \$6,000,000 in the aggregate. Such policy shall be written using Insurance Services Offices Form Numbers CG 00 35 01 07 98 and Pollution Exclusion Amendment Form CG 28 31 07 98.

(b) All insurance required under the preceding subsection (a) shall be underwritten by insurers, and be of such form and content, as may be acceptable to Railway. Evidence of such insurance (a certificate of insurance for the Commercial General Liability Insurance policy and an original Railroad Protective Liability Insurance policy for subsequent entry when Railway does not make available a risk financing fee therefore) shall be furnished to Railway's Director Risk Management, Three Commercial Place, Norfolk, Virginia 23510-2191 for review and approval.

12. Environmental Matters. Licensee assumes all responsibility for any environmental obligations imposed under applicable laws, regulations, ordinances or other requirements of federal state and local governmental authorities relating to (a) the installation, construction, maintenance, operation or removal of the Facilities, including notification and reporting of any releases, and (b) any contamination of any property, water, air or groundwater arising or resulting, in whole or in part, from Licensee's operation or use of the Premises pursuant to this Agreement. In addition, Licensee shall obtain any necessary permits to install, construct, maintain, operate or remove the Facilities. Licensee agrees to indemnify and hold harmless Railway from and against any and all fines, penalties, demands or other Losses (including attorneys' fees) incurred by Railway or claimed by any person, company or governmental entity relating to (a) any contamination of any property, water, air or groundwater

due to the use or presence of the Facilities on the Premises, (b) Licensee's violation of any laws, regulations or other requirements of federal, state or local governmental authorities in connection with the use or presence of the Facilities on the Premises or (c) any violation of Licensee's obligations imposed under this paragraph. Without limitation, this indemnity provision shall extend to any cleanup and investigative costs relating to any contamination of the Premises arising or resulting from, in whole or in part, Licensee's use of the Facilities or any other activities by or on behalf of Licensee occurring on or about the Premises. Licensee further agrees not to dispose of any trash, debris or wastes, including hazardous waste, on the Premises and will not conduct any activities on the Premises which would require a hazardous waste treatment, storage or disposal permit.

13. Assignments and Other Transfers.

(a) Licensee shall not assign, transfer, sell, mortgage, encumber, sublease or otherwise convey (whether voluntarily, involuntarily or by operation of law) this Agreement or any interest therein, nor license, mortgage, encumber or otherwise grant to any other person or entity (whether voluntarily, involuntarily or by operation of law) any right or privilege in or to the Premises (or any interest therein), in whole or in part, without the prior written consent of Railway, which consent may be withheld by Railway in its sole discretion. Any such assignment or other transfer made without Railway's prior written consent shall be null and void and, at Railway's option, shall constitute an immediate default of this Agreement. Notwithstanding the foregoing, upon prior written notice to Railway, Licensee may assign this Agreement to a parent, a wholly-owned subsidiary of Licensee or a wholly-owned subsidiary of Licensee's parent without Railway's consent; provided however that no such assignment shall relieve Licensee of its obligations under this Agreement.

(b) Railway shall have the right to transfer and assign, in whole or in part, all its rights and obligations hereunder and in or to the Premises. From and after the effective date of any such assignment or transfer, Railway shall be released from any further obligations hereunder; and Licensee shall look solely to such successor-in-interest of Railway for the performance of the obligations of "Railway" hereunder.

14. Meaning of "Railway". The word "Railway" as used herein shall include any other company whose property at the aforesaid location may be leased or operated by Railway. Said term also shall include Railway's officers, directors, agents and employees, and any parent company, subsidiary or affiliate of Railway and their respective officers, directors, agents and employees.

15. Default; Remedies

(a) The following events shall be deemed to be events of default by Licensee under this Agreement:

(i) Licensee shall fail to pay the Fee or any other sum of money due hereunder and such failure shall continue for a period of ten (10) days after the due date thereof;

(ii) Licensee shall fail to comply with any provision of this Agreement not requiring the payment of money, all of which terms, provisions and covenants shall be deemed material, and such failure shall continue for a period of thirty (30) days after written notice of such default is delivered to Licensee;

(iii) Licensee shall become insolvent or unable to pay its debts as they become due or Licensee notifies Railway that it anticipates either condition;

(iv) Licensee takes any action to, or notifies Railway that Licensee intends to file a petition under any section or chapter of the United States Bankruptcy Code, as amended from time to time, or under any similar law or statute of the United States or any State thereof; or a petition shall be filed against Licensee under any such statute; or

(v) A receiver or trustee shall be appointed for Licensee's license interest hereunder or for all or a substantial part of the assets of Licensee, and such receiver or trustee is not dismissed within sixty (60) days of the appointment.

(b) Upon the occurrence of any event or events of default by Licensee, whether enumerated in this paragraph 15 or not, Railway shall have the option to pursue any remedies available to it at law or in equity without any additional notices to Licensee. Railway's remedies shall include, but not be limited to, the following: (i) termination of this Agreement, in which event Licensee shall immediately surrender the Premises to Railway; (ii) entry into or upon the Premises to do whatever Licensee is obligated to do under the terms of this License, in which event Licensee shall reimburse Railway on demand for any expenses which Railway may incur in effecting compliance with Licensee's obligations under this License, but without rendering Railway liable for any damages resulting to Licensee or the Facilities from such action; and (iii) pursuit of all other remedies available to Railway at law or in equity, including, without limitation, injunctive relief of all varieties.

16. Railway Termination Right. Notwithstanding anything to the contrary in this Agreement, Railway shall have the right to terminate this Agreement and the rights granted hereunder, after delivering to Licensee written notice of such termination no less than sixty (60) days prior to the effective date thereof, upon the occurrence of any one or more of the following events:

(a) If Licensee shall discontinue the use or operations of the Facilities; or

(b) If Railway shall be required by any governmental authority having jurisdiction over the Premises to remove, relocate, reconstruct or discontinue operation of its railroad on or about the Premises; or

(c) If Railway, in the good faith judgment of its Superintendent, shall require a change in the location or elevation of its railroad on or about the location of the Facilities or the Premises that might effectively prohibit the use or operation of the Facilities; or

(d) If Railway, in the good faith judgment of its Superintendent, determines that the maintenance or use of the Facilities unduly interferes with the operation and maintenance of the facilities of Railway, or with the present or future use of such property by Railway, its lessees, affiliates, successors or assigns, for their respective purposes.

17. Condemnation. If the Premises or any portion thereof shall be taken or condemned in whole or in part for public purposes, or sold in lieu of condemnation, then this Agreement and the rights granted to Licensee hereunder shall, at the sole option of Railway, forthwith cease and terminate. All compensation awarded for any taking (or sale proceeds in lieu thereof) shall be the property of Railway, and Licensee shall have no claim thereto, the same being hereby expressly waived by Licensee.

18. Removal of Facilities- Survival. The Facilities are and shall remain the personal property of Licensee. Upon the expiration or termination of this Agreement, Licensee shall remove the Facilities from the Premises within thirty (30) days after the effective date thereof. In performing such removal, unless otherwise directed by Railway, Licensee shall restore the Premises to the same condition as existed prior to the installation or placement of Facilities, reasonable wear and tear excepted. In the event Licensee shall fail to so remove the Facilities or restore the Premises, the Facilities shall be deemed to have been abandoned by Licensee, and the same shall become the property of Railway for Railway to use, remove, destroy or otherwise dispose of at its discretion and without responsibility for accounting to Licensee therefore; provided, however, in the event Railway elects to remove the Facilities, Railway, in addition to any other legal remedy it may have, shall have the right to recover from Licensee all costs incurred in connection with such removal and the restoration of the Premises. Notwithstanding anything to the contrary contained in this Agreement, the expiration or termination of this Agreement, whether by lapse of time or otherwise, shall not relieve Licensee from Licensee's obligations accruing prior to the expiration or termination date, and such obligations shall survive any such expiration or other termination of this Agreement.

19. Entire Agreement. This Agreement contains the entire agreement of Railway and Licensee and supersedes any prior understanding or agreement between Railway and Licensee respecting the subject matter hereof; and no representations, warranties, inducements, promises or agreements, oral or otherwise, between the parties not embodied in this Agreement shall be of any force or effect.

20. Attorneys' Fees. If Railway should bring any action under this Agreement, or consult or place the Agreement or any amount payable by Licensee hereunder, with an attorney concerning or for the enforcement of any of Railway's rights hereunder, then Licensee agrees in each and any such case to pay to Railway all costs, including but not limited to court costs and attorneys' fees, incurred in connection therewith.

21. Severability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby; and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be

added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

22. Modifications; Waiver; Successors and Assigns. This Agreement may not be altered, changed or amended, except by instrument in writing signed by both parties hereto. No provision of this Agreement shall be deemed to have been waived by Railway unless such waiver shall be in a writing signed by Railway and addressed to Licensee, nor shall any custom or practice that may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of Railway to insist upon the performance by Licensee in strict accordance with the terms hereof. The terms and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided. If there shall be more than one Licensee, the obligations hereunder imposed upon Licensee shall be joint and several.

23. Notice. Any and all other notices, demands or requests by or from Railway to Licensee, or Licensee to Railway, shall be in writing and shall be sent by (a) postage paid, certified mail, return receipt requested, or (b) a reputable national overnight courier service with receipt therefore, or (c) personal delivery, and addressed in each case as follows:

If to Railway:

c/o Norfolk Southern Corporation
1200 Peachtree Street, NE – 12th Floor
Atlanta, Georgia 30309-3504
Attention: Director Contract Services

If to Licensee:

City of Bloomington
401 1/2 South East Street
Bloomington, Illinois 61701

Either party may, by notice in writing, direct that future notices or demands be sent to a different address. All notices hereunder shall be deemed given upon receipt (or, if rejected, upon rejection).

24. Miscellaneous. All exhibits, attachments, riders and addenda referred to in this License are incorporated into this Agreement and made a part hereof for all intents and purposes. Time is of the essence with regard to each provision of this Agreement. This Agreement shall be construed and interpreted in accordance with and governed by the laws of the State in which the Premises are located. Each covenant of Railway and Licensee under this Agreement is independent of each other covenant under this Agreement. No default in performance of any covenant by a party shall excuse the other party from the performance of any other covenant. The provisions of Paragraphs 7, 9, 10, 12 and 18 shall survive the expiration or earlier termination of this Agreement.

25. Limitations of Grant. Licensee acknowledges that the license granted hereunder is a quitclaim grant, made without covenants, representations or warranties with respect to Railway's (a) right to make the grant, (b) title in the Premises, or (c) right to use or make available to others the Premises for the purposes contemplated herein. Railway is the owner and/or holder of the Premises subject to the terms and limitations under which it is owned or held, including without limitation conditions, covenants, restrictions, easements (including any pre-existing fiber optic easements or licenses), encroachments, leases, licenses, permits, mortgages, indentures, reversionary interests, fee interests, zoning restrictions and other burdens and limitations, of record and not of record, and to rights of tenants and licensees in possession, and Licensee agrees that the rights licensed hereunder are subject and subordinate to each and all of the foregoing. Licensee accepts this grant knowing that others may claim that Railway has no right to make it, and Licensee agrees to release, hold harmless and indemnify (and, at Railway's election, defend, at Licensee's sole expense, with counsel approved by Railway) Railway, its affiliated companies, and its and their respective officers, directors, agents and employees, from and against any detriments to, or liabilities of, any type or nature arising from such claims, including punitive damages and any forfeitures declared or occurring as a result of this grant.

26. Limitations Upon Damages. Notwithstanding any other provision of this Agreement, Railway shall not be liable for breach of this Agreement or under this Agreement for any consequential, incidental, exemplary, punitive, special, business damages or lost profits, as well as any claims for death, personal injury, and property loss and damage which occurs by reason of, or arises out of, or is incidental to the interruption in or usage of the Facilities placed upon or about the Premises by Licensee, including without limitation any damages under such claims that might be considered consequential, incidental, exemplary, punitive, special, business damages or loss profits.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate, each part being an original, as of the date first above written.

Witness:

NORFOLK SOUTHERN
RAILWAY COMPANY

Nancy L. Smith
As to Railway

By: Malcolm G. Roop
Real Estate Manager

Witness:

CITY OF BLOOMINGTON

Tracey Covert
As to Licensee

Stephen F. Stockton
Mayor

Activity Number 1094944
JSM: November 30, 2006

Motion by Alderman Schmidt, seconded by Alderman Purcell that the License Agreement with NSRR and approve the processing fee in the amount of \$1,830 and the insurance fee and one time license fee in the amount of \$25,570, and further, that the Mayor and City Clerk be authorized to execute the necessary documents.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Crawford, Huette, Schmidt, Finnegan, Gibson, Hanson and Purcell.

Nays: None.

Motion carried.

The following was presented:

To: Honorable Mayor and Members of the City Council

From: Staff

Subject: Access Easement for State Farm

The Main Street Parking garage was constructed after the Griesheim and the Unity building were destroyed by fire. There was a north/south alley that ran between those two buildings and the State Farm building to the east. That alley was vacated to make way for the garage. The garage now occupies the space between the Snyder Building and State Farm.

The west entrance to the State Farm building formerly opened out to the alley, but now opens directly into the City's garage. State Farm has concerns about the safety and security of persons using that entrance. There is no place for people to line up when entering the building and delivery vehicles have no place to park and turn around. State Farm wishes to construct a vestibule and have open space for staging deliveries and requested an easement in order to make these improvements.

State Farm provided staff with a sketch of the proposed easement area and a form of Access Easement agreement. Staff reviewed both and has no objection to either. The proposed easement area will eliminate some parking spaces, however, State Farm has agreed to pay the City the monthly lease fee for the lost spaces in consideration for the easement. The loss of those spaces will not cause any problems with meeting the demand for parking in the facility. This garage is limited to monthly users and when the garage is fully leased, not all spaces are used every day.

The easement will run for an initial term of thirty (30) years and renew automatically for successive thirty (30) year terms unless terminated by the City. The term is tied to the average life expectancy of parking structures and gives the City an opportunity to modify or terminate the

agreement at a time when it would naturally be considering whether it is still in the best interest of the City to allow the use of the space in that manner.

Staff respectfully recommends that Council approve the Access Easement and that the Mayor and City Clerk be authorized to execute the necessary documents.

Respectfully,

Hannah R. Eisner
Deputy Corporation Counsel

Tom Hamilton
City Manager

ACCESS EASEMENT

This ACCESS EASEMENT is entered into this 26th day of December, 2006 by and between the City of Bloomington (hereinafter referred to as the "City") and State Farm Mutual Automobile Insurance Company (hereinafter referred to as "State Farm").

RECITALS

- A. The City is the sole owner of certain real estate (hereinafter referred to as the "Property") in the City of Bloomington, McLean County, Illinois, which is legally described in Exhibit A and incorporated herein by this reference.
- B. The City operates a municipal parking garage (hereinafter referred to as the "Garage") on the Property.
- C. State Farm owns the property to the east of and immediately adjacent to the City's property which property is improved with a multi-story office building, (hereinafter referred to as the "Building")
- D. The west entry door of the State Farm building opens directly onto the City's garage.
- E. The City has agreed to convey to State Farm an Access Easement across the City's Property to allow for ingress to and egress from the building.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and State Farm agree as follows:

1. **Grant of Easement.** The City hereby grants and conveys to State Farm an easement (the "Access Easement") for ingress and egress to State Farm's Building. The location of the Access Easement is shown on the Map on Exhibit B (the "Easement Property").

2. **Payment.** The Access Easement will eliminate a number of parking spaces in the City's parking garage and State Farm agrees to pay, via a separate agreement, the fee for leasing an agreed upon number of spaces at the monthly rate in effect for each year the easement remains in effect.
3. **Use of Access Easement.** The purpose of the Access Easement is to provide secure, year round, access to and from State Farm's property by State Farm employees, suppliers and vendors.
4. **Improvements.** State Farm shall have the right, but not the obligation, to construct, at its sole expense, improvements upon the Easement Property to make the Easement Property suitable for State Farm employees, suppliers and vendors, subject to prior approval of plans by the City, which approval shall not be unreasonably withheld. Preliminary plans of proposed improvements which have been approved by the City are indicated on the drawing attached as Exhibit C. The City shall not be obligated to install any improvements on the Easement Property. Improvements to the Easement Property made at the expense of State Farm shall remain the property of State Farm and can be removed or altered by State Farm, subject to approval by the City. Upon removal of any improvements State Farm shall restore the Easement Property to original condition, reasonable wear and tear excepted.
5. **Maintenance.** State Farm shall be responsible for maintaining the Easement Property to the extent necessary for the uses described in this Access Easement and to insure that the easement and any improvements installed within the easement area do not pose any hazard to members of the public using the City's property. To the extent that the City needs to conduct maintenance or structural repairs or improvements to the City's Property, or to maintain, repair or replace any utilities that service the City's Property and that are located on or above or below the Easement Property, the City shall have the right to perform work or service said utilities provided that the City notifies State Farm prior to commencing any maintenance, replacements or repairs. The City agrees to use best efforts not to unreasonably interfere with State Farm's use of the Access Easement.
6. **Damage to Easement Property.** The City shall have no responsibility for damage to any improvements installed within the easement area, except for damage that results from the gross negligence or willful and wanton misconduct of City's employees, contractors or agents. City shall have no responsibility for damage to any improvements caused by members of the public using the City's parking facility. State Farm shall assume the risk of damage caused by any such third party and shall further indemnify and hold City harmless from any claim of damage or injury, including death, arising from or related to the presence of the improvements within the easement area.

7. **Rights Reserved.** The easement shall be subject to the rights of all existing utilities located within the easement area and City further reserves the right to allow additional public utilities to be placed within the easement area, whether or not such utilities are provided by the City so long as the presence of such utilities do not interfere with State Farm's use of the easement area or the improvements installed therein. The owner and/or operator of any utilities located within the easement area shall have the right to enter the easement area to perform maintenance, replacement or repairs to its facilities with the understanding that, except in the case of emergencies, State Farm shall be notified prior to commencing any work and work shall be performed so as not to interfere with State Farm's use of the Access Easement.
8. **Enforcement of Agreement.** The City and State Farm shall have the right to legally enforce this Access Easement and the covenants, conditions and restrictions set forth herein, by whatever action or actions are legally available, including limitation, enjoining any violation or threatened violation hereof.
9. **Amendments.** This Access Easement may not be modified, amended or terminated except by execution and recording of a written instrument signed by both the City and State Farm.
10. **Successors.** All of the terms, covenants, conditions, and obligations set forth in this Access Easement shall inure to the benefit of and bind the City and State Farm, and their respective personal representatives, heirs, successors, transferees and assigns, and shall continue as a servitude running in perpetuity with the City's property.
11. **Transfer of Ownership.** Whenever a transfer of ownership occurs, the liability of the transferor for any breach of covenant occurring thereafter shall automatically terminate with respect to such transferor. Any transferee shall automatically assume and be bound by the burdens and obligations hereunder running with the land to the owner of the portion being transferred.
12. **Term.** This easement shall be in effect for a period of thirty years and shall renew automatically for successive terms of thirty years at the end of each preceding term unless terminated sooner by either party. State Farm may terminate the Access Easement at any time by giving written notice to City and recording a release thereof with the Office of Recorder of Deeds of McLean County, Illinois with directions for delivery of the same to the City, whereupon all rights, duties and liabilities hereby created shall terminate as to such easement except for liabilities incurred hereunder prior to such termination. State Farm shall be required to remove all improvements installed within the easement area within ninety (90) days of terminating the Access Easement and restore the easement area to the condition it was in before the . City may terminate the easement during any term then in effect if State Farm fails to perform any of its obligations under this Agreement. City must give State Farm written notice of

default and intent to terminate the easement, which notice must be given ninety (90) days prior to the effective date of any termination and shall also give State Farm an opportunity to cure any default. City may terminate this Agreement and the end of any term by giving State Farm written notice of its intent not to renew for a successive term one (1) year prior to the expiration of the then current term.

13. **Notices.** All notices and other communications given pursuant to this Access Easement shall be in writing and shall be deemed properly served if delivered in person to the party to whom it is addressed or two (2) days after deposit in the U.S. mail if sent postage prepaid by U.S. registered or certified mail, return receipt requested, addressed as follows:

(a) To the City: Hannah Eisner
City of Bloomington — Legal Department
109 East Olive Street
Bloomington, IL 61701

(b) To State Farm: Ron Ferris
State Farm — Corporate Properties
112 East Washington Street
Bloomington, IL 61710

Either party may change the name of the person or address to which notices and other communications are to be given by so notifying the other party.

14. **Severability.** If any provision or specific application of this Access Easement is found to be invalid by a court of competent jurisdiction, the remaining provisions or specific applications of this Access easement shall remain valid and binding.
15. **Governing Law.** This Access Easement shall be governed by and construed under the laws of the State of Illinois.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

By:
Title: Asst. Vice President

THE CITY OF BLOOMINGTON

By: Stephen F. Stockton
Title: Mayor

Property Legal Description

AS TO PARCEL 1:

All that portion of the following described premises below a plane which is 818.11 feet above mean sea level, to wit:

PARCEL 1:

Lots 44 and 45 in the Original Town, now City of Bloomington, McLean County, Illinois; all of the 10 foot wide east-west vacated alley lying South of and adjacent to the South lines of said Lots 44 and 45, EXCEPT the East 12 feet of said Lot 44; and Lots 1-8 inclusive in the Assessor's Subdivision of Lots 46 and 47 in said Original Town; EXCEPT from all the above the East 63.83 feet of even width, in McLean County, Illinois.

AS TO PARCEL 2:

All that portion of the following described premises below a plane which is 832.72 feet above mean sea level, to wit:

PARCEL 2:

The East 63 83 feet of even width of the following described property: Lots 44 and 45 in the Original Town, now City of Bloomington, McLean County, Illinois; all of the 10 feet wide east-west vacated alley lying South of and adjacent to the South lines of said Lots 44 and 45 EXCEPT the East 12 feet of said Lot 44; and Lots 1-8 inclusive, in the Assessor's subdivision of Lots 46 and 47 in said original Town, in McLean County, Illinois.

Alderman Purcell questioned this item. He noted that four (4) parking spaces would be lost. He questioned payment for same. Brian Brakebill, Deputy City Manager, noted that State Farm was willing to pay the monthly parking fee for these spaces. Mark Huber, Director – PACE, addressed the Council. The fee amount was currently being negotiated. State Farm was updating its security system. The easement would provide clearance for a loading and unloading area. He believed that the current rate was \$40 per month per space.

Motion by Alderman Schmidt, seconded by Alderman Purcell that the Access Easement be approved and the Mayor and City Clerk be authorized to execute the necessary documents.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Crawford, Huette, Schmidt, Finnegan, Gibson, Hanson and Purcell.

Nays: None.

Motion carried.

The following was presented:

To: Members of the City Council

From: Liquor Commission

Subject: Application of Todino's, Inc., d/b/a Todino's Italian Restaurant, located at 4109 E. Oakland, for an RAS liquor license, which will allow the sale of all types of alcohol by the glass for consumption on the premises seven (7) days a week

The Bloomington Liquor Commissioner Stephen Stockton called the Liquor Hearing to hear the application of Todino's, Inc., d/b/a Todino's Italian Restaurant, located at 4109 E. Oakland, requesting an RAS liquor license which would allow the sale of all types of alcohol by the glass for consumption on the premises seven (7) days a week. Present at the hearing were Liquor Commissioners Stephen Stockton, Rich Buchanan, Marabeth Clapp, and Steve Petersen; Hannah Eisner, Deputy Corporation Counsel; Asst. Chief Ed Moser, Police Department; Tracey Covert, City Clerk; and Emily Todino, Applicant and owner.

Commissioner Stockton requested that the Applicants explain the business plan. He noted that Todino's had held an RBS liquor license in the recent past. The application before the Commission was for an RAS liquor license. Emily Todino, Applicant and owner, addressed the Commission. Todino's Pizza had ceased liquor sales in January 2006. The facility had been remodeled. A bar had been installed. This application was for a full liquor license.

Commissioner Stockton noted that he had visited with the Applicant a couple of months ago. Ms. Todino noted that the restaurant was family owned. Todino's Pizza was three (3) years old. It had been a struggle. Liquor sales would provide additional revenue. Todino's would offer a separate dining room and full wait staff. Todino's would be the local home town sports bar. She hoped to build a separate facility on Towanda Barnes Rd. in the near future.

Commissioner Buchanan had stopped by the restaurant today. It was not open. He noticed the gaming machines. Ms. Todino noted that most of these machines were being removed. The vintage games would be placed in the lobby area by the hostess. Todino's offered 5,000 square feet of space.

Commissioner Buchanan questioned if there would be a full bar. Ms. Todino responded affirmatively. There would be bar stools and tables. There would be big screen televisions. There were plans to add items to the menu. Todino's was not interested in the college crowd. She described the clientele as thirty-five to eighty (35 - 80) years of age. Todino's was a family oriented restaurant. Most of the tables seat eight to ten (8 - 10) people. The restaurant is geared towards large crowds. Commissioner Stockton noted such as before and after Central Catholic football games.

Commissioner Petersen questioned the previous RB liquor license. Ms. Todino noted that there had been cash flow issues. At this time, Todino's was looking to expand total ticket sales revenue. Todino's needed more foot traffic. She hoped to attract new customers, "families".

Todino's would offer beer and pizza, wine with pasta, and simple mixed drinks such as rum and coke and gin and tonic. Todino's has had customers walk out due to no liquor sales. Todino's needed to establish a bar. Expansion plans included being open until midnight. Currently, Todino's closed for business at 8:00 p.m.

Commissioner Stockton questioned if Todino's would have the appearance of a tavern after certain hours. Ms. Todino responded negatively. Todino's was a destination. The lunch buffet would be back after January 1, 2007. Todino's was in close proximity to State Farm. She also cited Game Time's adult sport leagues as frequent customers.

Commissioner Buchanan noted the 11:00 p.m. closing time on Thursday, Friday and Saturday nights. He questioned if there were any plans to expand the closing hour to 1:00 to 2:00 a.m. Ms. Todino responded negatively. She restated that there was interest to be open until midnight on Friday and Saturday nights.

Commissioner Stockton questioned the bar's capacity. Ms. Todino noted that there would be six (6) bar stools and four (4) four top tables. Patrons seating in the bar area would be able to see the television and the dining area. Commissioner Stockton put the Applicant on notice that as a protective measure the Commission would reserve the right to impose conditions if there was the appearance of a tavern. He added that the Applicant had provided testimony that Todino's would close at 11:00 p.m. Ms. Todino assured the Commission that if the restaurant was open then the kitchen would also be open.

Commissioner Buchanan expressed his opinion that based upon the Applicant's testimony this should not be an issue.

Motion by Commissioner Buchanan, seconded by Commissioner Clapp to that the application by Todino's, Inc., d/b/a Todino's Italian Restaurant, located at 4109 E. Oakland Ave., requesting an RAS liquor license which allows the sale of all types of alcohol by the glass for consumption on the premises seven (7) days a week be approved.

Based on the above, the Liquor Commission recommends to the City Council that an RAS liquor license for Todino's, Inc., d/b/a Todino's Italian Restaurant, located at 4109 E. Oakland Ave., be created, contingent upon compliance with all applicable health and safety codes.

Respectfully,

Stephen F. Stockton
Chairman of Liquor Commission

Motion by Alderman Schmidt, seconded by Alderman Purcell that an RAS liquor license for Todino's, Inc., d/b/a Todino's Italian Restaurant located at 4109 E. Oakland Ave., be created, contingent upon compliance with all applicable health and safety codes.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Crawford, Huette, Schmidt, Finnegan, Gibson, Hanson and Purcell.

Nays: None.

Motion carried.

The following was presented:

To: Honorable Mayor and Members of the City Council
From: Staff
Subject: Revision of Chapter 17: Section 92: Emergency Medical Services

Staff respectfully requests Council approve the revision of Chapter 17: Section 92: Emergency Medical Services to the City Code. The revision establishes a fee for service for emergency medical services provided by the Fire Department outside those services normally provided by the Fire Department's ambulances.

The first revision corrects the existing rate for ambulance services. Staff intended the rate to be 125% of the Medicare allowable for transportation services and has been billing at that rate. Currently the City Code indicates 135% of Medicare allowable as the result of a previous typographical error.

The second revision establishes a fee for emergency medical services provided by Fire Department personnel on board another agency's ambulance. Under the current Medicare fee schedule, that fee for service will be \$203.50. This fee will be charged when other agencies request Intermediate or Advanced Life Support services from the department.

The final revision establishes a fee for emergency medical services provided by Fire Department when there is no patient transport involved. Under the current Medicare fee structure, the fee for service will be \$101.75. This fee will be charged when department personnel provide Intermediate or Advanced Life Support services to a patient and that patient is not subsequently transported to the hospital. There will continue to be no fee for service for Basic Life Support, first aide, or non-medical assistance provide to patients who do not require ambulance transport.

Staff respectfully requests that the Text Amendment be approved and the Ordinance passed.

Respectfully,

Keith Ranney
Fire Chief

Tom Hamilton
City Manager

ORDINANCE NUMBER 2006 - 139

AN ORDINANCE AMENDING SECTION 92 OF CHAPTER 17 REGARDING FEES FOR EMERGENCY MEDICAL TRANSPORTATION SERVICES AND ESTABLISHING FEES FOR INTERMEDIATE LIFE SUPPORT AND ADVANCED LIFE SUPPORT SERVICES

BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF BLOOMINGTON, ILLINOIS:

Section One: That subsection (b) of Section 92 of Chapter 17 of the Bloomington City Code, 1960, as amended, is further amended as follows (additions are indicated by underlines; deletions are indicated by strikeouts):

Chapter 17: Section 92: Emergency Medical Services.

(b) Fee for Emergency Medical Services and Transportation by the City of Bloomington. There is hereby established a fee for emergency medical services and related transportation services provided by the City of Bloomington. Such fee shall be ~~435~~ 125 percent of the Medicare allowable fee established and published from time to time for the types of emergency medical transportation services provided by the United States Department of Health and Human Services Centers for Medicare and Medicaid Services or such successor agency.

The fee for intermediate life support service or advanced life support services, where transportation services are provided by another agency, shall be 50 percent of the fee established and published from time to time for the types of emergency medical transportation services provided by the United States Department of Health and Human Services Centers for Medicare and Medicaid Services or such successor agency

The fee for intermediate life support service or advanced life support services, which do not include transportation services, shall be 25 percent of the fee established and published from time to time for the types of emergency medical transportation services provided by the United States Department of Health and Human Services Centers for Medicare and Medicaid Services or such successor agency.

Section Two: Except as provided for herein, the Bloomington City Code, 1960, as amended, shall remain in full force and effect.

Section Three: That the City Clerk be, and she is hereby authorized to publish this ordinance in pamphlet form as provided by law.

Section Four: That this ordinance shall be ~~effective immediately upon passage and approval~~ effective ten (10) days after the date of its publication.

Section Five: That this ordinance is adopted pursuant to the home rule authority of the City of Bloomington conferred by Article VII, Section 6 of the 1970 Illinois Constitution.

PASSED this 26th day of December, 2006.

APPROVED this 27th day of December, 2006.

APPROVED:

Stephen F. Stockton, Mayor

ATTEST:

Tracey Covert, City Clerk

Motion by Alderman Schmidt, seconded by Alderman Purcell that the Text Amendment be approved and the Ordinance passed.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Crawford, Huette, Schmidt, Finnegan, Gibson, Hanson and Purcell.

Nays: None.

Motion carried.

The following was presented:

To: Honorable Mayor and Members of the City Council

From: Staff

Subject: Ordinance Amending Section 63 of Chapter 2 of the City Code, Relating to the Hiring of Entry-level Police Officers and Firefighters

The City Code permits the hiring of entry level police officers and firefighters who have successfully completed their probationary period with other municipalities. The Fire Chief has recommended that the Board of Fire and Police Commissioners be authorized to hire firefighters who might still be on probation with another employer. The Police Chief has expressed his preference for hiring police officers who have successfully completed probation in the municipality which originally hired them. The Board has no objection to having the option to hire firefighters who may still be on probation with their employers, and recognizes that this may be of use as the City seeks to hire certified paramedics.

The proposed Ordinance will make the appropriate amendment to the City Code. Staff respectfully recommends its passage and approval.

December 26, 2006

1307

Respectfully submitted,

J. Todd Greenburg
Corporation Counsel

Keith Ranney
Fire Chief

Roger Aikin
Police Chief

Tom Hamilton
City Manager

ORDINANCE NUMBER 2006 - 140**AN ORDINANCE AMENDING SECTION 63 OF CHAPTER 2 OF THE CITY CODE,
RELATING TO ENTRY-LEVEL HIRING OF POLICE OFFICERS AND
FIREFIGHTERS****BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF BLOOMINGTON, ILLINOIS:**

Section One: That subsection (g) of Section 63 of the Bloomington City Code, 1960, as amended, is further amended as follows: (additions are indicated by underlines; deletions are indicated by strikeouts):

(g) Alternative Method of Hiring Entry-Level Police Officers and Firefighters. When a vacancy exists in the Police or Fire Departments, the City Manager, at his discretion, may authorize the Chief of Police or the Fire Chief to appoint a person to the position of police officer or firefighter, without regard to whether such person is on the Register of Eligibles established by the Board of Fire and Police Commissioners for original appointment as a police officer or firefighter, if the appointee meets the following qualifications:

(1) In the case of a firefighter, he or she has previous status as a firefighter in the United States of America; in the case of a police officer, he or she has previous post-probationary status as a police officer ~~or firefighter~~ in the United States of America

(2) he or she is currently in good standing in the Police or Fire Department in which the person serves or left the Police or Fire Department in good standing; and

(3) he or she has substantially equivalent skills and abilities as a City of Bloomington post-probationary police officer or firefighter, as determined by the Chief of Police or Fire Chief.

The Chief of Police or Fire Chief may require applicants to submit themselves to such examination as he or she deems necessary to determine fitness for duties as a police officer or firefighter.

The Chief of Police or Fire Chief shall present the qualifications of any person selected for appointment for the approval of and for appointment by the Board of Fire and Police Commissioners.

No person shall be entitled to appointment as a matter of right under this subsection.

Section Two: Except as provided for herein, the Bloomington City Code, 1960, as amended, shall remain in full force and effect.

Section Three: That the City Clerk be, and she is hereby authorized to publish this ordinance in pamphlet form as provided by law.

Section Four: That this ordinance shall be effective ten days after publication.

Section Five: That this ordinance is adopted pursuant to the home rule authority of the City of Bloomington conferred by Article VII, Section 6 of the 1970 Illinois Constitution.

PASSED this 26th day of December, 2006.

APPROVED this 27th day of December, 2006.

APPROVED:

Stephen F. Stockton, Mayor

ATTEST:

Tracey Covert, City Clerk

Alderman Purcell questioned qualifications to apply. Dan Shanks, Deputy Chief – Operations, addressed the Council. He informed them that an individual must possess both an EMT – P, (Paramedic), license and a Firefighter II certificate. He noted that fire staff assignments are a minimum of two (2). An Experienced Officer Hiring Program (EOHP) should increase the number of eligible candidates. The goal was to attract individuals early in their careers.

Alderman Purcell noted that obtaining an EMT – P license was a two (2) year process. Deputy Chief Shanks informed the Council that currently there were seven (7) candidates. All held an EMT-P license. The Fire Department had eighteen (18) vacancies. The EOHP would provide a way to supplement the entry level testing process.

Motion by Alderman Schmidt, seconded by Alderman Purcell that the Text Amendment be approved and the Ordinance passed.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Crawford, Huette, Schmidt, Finnegan, Gibson, Hanson and Purcell.

Nays: None.

Motion carried.

The following was presented:

To: Honorable Mayor and Members of the City Council

From: Staff

Subject: Petition filed by Wittenberg II, LLC, requesting approval of the Preliminary Plan for the 10.3 acre Prairie Gardens at Prairie Vista Planned Unit Development located along the west side of South Morris Avenue, west of the Prairie Vista Golf Course and north of Lutz Road. Case PS-10-06

BACKGROUND INFORMATION:

Adjacent Zoning

north: R-1C Single Family Residence District

south: R-1 Single Family Residential (County)

east: S-2 Public Lands & R-1 Single Family Residential

west: R-2 Mixed Residence District

Adjacent Land Uses

north: vacant lots for detached single family dwellings

south: two single family dwellings

east: golf course & dwelling unit

west: vacant lots for attached single family dwellings

Current Zoning: R-2, Mixed Residence District.

Current Land Use: vacant.

Comprehensive Plan: indicates low to medium residential use for this property.

The Preliminary Plan proposes the subdivision of this property into fifteen (15) lots, including twelve (12) lots for attached single family dwellings (Lots 301 through 312) and three (3) lots for four (4) unit townhouse buildings (Lots 204 through 206), in a planned unit development, (PUD), with a density not exceeding twelve (12) dwelling units per acre.

These lots would be accessible from the following public streets: Lots 301 through 312 from Treeline Drive; Lot 204 from both Treeline Drive and South Morris Avenue; Lot 205 from Treeline Drive, South Morris Avenue, and Lutz Road; and Lot 206 from both Lutz Road and Timberline Drive. The Plan also indicates that a forty-three foot, (43') strip of land along the east edge of Lots 204 and 205 would be dedicated as public right of way for the west half of South Morris Avenue and a thirty-six foot (36') strip of land along the south edge of Lots 205 and 206 will be dedicated as public right of way for the north half of Lutz Road.

The new sixteen inch (16") Morris Avenue and Treeline Drive should be realigned further south and depicted on the Preliminary Plan as being located within a public utility easement along a future private street through Lot 204 from South Morris Avenue to Treeline Drive, and in between Lots 302 and 303. This realignment makes the water main more accessible for maintenance purposes by the City.

Section 24-5.2 E. of the City's Land Subdivision Code reads as follows:

E. Architectural Plans. When townhouses (row houses) are proposed as a part of a planned unit development in the R-1A, R-1B, R-1C and R-2 districts, building elevations and architectural renderings shall be required with submission of the preliminary development plan.

For all residential planned unit developments, typical building elevations and architectural renderings shall be required with submission of the preliminary development plans. (Ordinance No. 1998-42)

Wittenberg II, LLC, the petitioner, should address this requirement either by providing the typical building elevations and architectural renderings or by requesting a waiver to defer the submission of such until the filing of the Final Development Plan for the Prairie Gardens at Prairie Vista PUD.

PLANNING COMMISSION PUBLIC HEARING:

The Planning Commission held a public hearing on this petition on December 13, 2006. Mr. Frank Miles, Attorney at Law, 202 N. Center Street, was present at this public hearing to present arguments in favor of this petition and to answer questions. He explained that there is a desire to place a new 16" water main that will cross this property and serve the Luther Oaks development that is already underway. He noted that the idea originally was to route a water main south along Morris Avenue and west on Lutz Road to the Luther Oaks development to the west.

Later in the planning for Wittenberg Woods it was intended to route a water main through the middle of the development. Mr. Miles noted that Luther Oaks is "half built" and the developer was eager to see the water main constructed.

He noted that when the developer had discussions with staff. The City has requested that the easement not be placed along the back of the lots to the north, but rather aligned with the right of way of a proposed east-west road that would be located further south in the Prairie Gardens development. The petitioner was willing to make this amendment to the plan.

Mr. Miles explained that a row of vacant lots had been laid out with this development but the building elevations and architectural drawings would be presented later with the development plan when ready to move forward with development of this area. He stressed that the desire to set a route for the needed water main was the reason for this current plan.

No testimony was presented at this hearing in opposition to this petition.

PLANNING COMMISSION RECOMMENDATION:

After having given consideration to the proposed Preliminary Plan for the Prairie Gardens at Prairie Vista PUD and the arguments presented at the public hearing, the Planning Commission passed a motion by a vote of 10 to 0 to recommend Council approval of Case PS-10-06 as revised for the amended water main location and with deferral of building elevations and architectural renderings.

STAFF RECOMMENDATION:

Staff concurs with the Planning Commission recommendation for Council approval of the Prairie Gardens at Prairie Vista PUD in Case PS-10-06.

Respectfully submitted,

Kenneth Emmons
City Planner

Tom Hamilton
City Manager

**PETITION FOR APPROVAL OF PRELIMINARY DEVELOPMENT PLAN FOR A
PLANNED UNIT DEVELOPMENT**

State of Illinois)
)ss.
County of McLean)

TO: THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF BLOOMINGTON, ILLINOIS.

Now comes Wittenberg II, LLC hereinafter referred to as your Petitioner(s) respectfully representing and requesting as follows:

1. That your petitioner are interested as Owner/Developer in the premises hereinafter in Exhibit A attached hereto and made a part hereof to be known by this reference;
2. That your Petitioner seeks approval of the Preliminary Development Plan for a planned unit development on said premises to be known and described as Prairie Gardens at Prairie Vista P.U.D. which Preliminary Development Plan is attached hereto and made a part hereof;
3. That your Petitioner also seeks approval of the following exemptions or variations from the provisions of Chapter 24, of the Bloomington City Code: those shown on the approved Preliminary Plan or permitted by annexation agreements of record if any.

WHEREFORE, your Petitioner prays that the Preliminary Development Plan for the Prairie Gardens at Prairie Vista P.U.D. planned unit development subdivision submitted herewith be approved with the exemptions or variations as requested herein.

Respectfully submitted,

Wittenberg II, LLC

By: Frank A. Miles

ORDINANCE NO. 2006 - 141

**AN ORDINANCE APPROVING THE PRELIMINARY DEVELOPMENT PLAN OF
THE PRAIRIE GARDENS AT PRAIRIE VISTA P.U.D. PLANNED UNIT
DEVELOPMENT**

WHEREAS, there was heretofore filed with the City Clerk of the City of Bloomington, McLean County, Illinois, a petition for approval of the Preliminary Development Plan for the Prairie Gardens at Prairie Vista P.U.D. Planned Unit Development, legally described in Exhibit A attached hereto and made a part hereof by this reference; and

WHEREAS, said Petition requests the following exemptions or variations from the provisions of the Bloomington City Code, 1960, as amended: those shown on the approved Preliminary Plan or permitted by annexation agreements of record if any; and

WHEREAS, said Petition is valid and sufficient and conforms to the requirements of the statutes in such cases made and the Preliminary Plan attached to said Petition was prepared in compliance with the requirements of the Bloomington City Code except for said requested exemptions and/or variations; and

WHEREFORE, said exemptions and/or variations are reasonable and in keeping with the intent of the Land Subdivision code, Chapter 24 of the Bloomington City Code, 1960, as amended.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Bloomington, McLean County, Illinois:

1. That the Preliminary Plan of the Prairie Gardens at Prairie Vista P.U.D. Planned Unit Development and any and all requested exemptions and/or variations be, and the same is hereby approved.
2. That this Ordinance shall be in full force and effective as the time of its passage and approval.

PASSED this 26th day of December, 2006.

APPROVED this 27th day of December, 2006.

Stephen F. Stockton
Mayor

ATTEST:

Tracey Covert
City Clerk

EXHIBIT A
Legal Description

A part of the SW ¼ of the SE ¼ of Section 17, Township 23 North, Range 2 East of the Third Principal Meridian, City of Bloomington, McLean County, Illinois, more particularly described as follows: Beginning at the southwest corner of Lot 102 in Wittenberg Woods At Prairie Vista, according to the Plat thereof recorded as Document No. 2004-31490 in the McLean County Recorder of Deeds Office; thence N.58°-38'-08"E. 400.00 feet to the southeast corner of Lot 106 in said Wittenberg Woods At Prairie Vista; thence S.01°-21'-52"E. 16.15 feet on the west right of way line of Morris Avenue as dedicated in said Wittenberg Woods At Prairie Vista; thence S89°.-39'-16"E. 43.02 feet to the east line of the SW¼ of the SE¼ of Section 17; thence S.01°-21'-52"E. 362.48 feet on the east line of the SW¼ of the SE¼ of Section 17; thence S.87°-22'-45"W 231.99 feet; thence S.01°-21'-52"E. 202.80 feet parallel With said east line of the SW¼ of the SE¼ of Section 17; thence. S.89°-57'-17"E. 232.00 feet parallel with the south line of the SW¼ of the SE¼ of said Section 17 to the east line of said SW¼ of the SE¼ of Section 17; thence S.01°-21'-52"E. 406.00 feet to the southeast corner of the SW¼ of the SE¼ of Section 17; thence N.89°-57'-17"W. 693.13 feet on the south line of the SW¼ of the SE¼ of said Section 17; thence N.00°-02'-.43"E. 196.19 feet; thence N.08°-35'-42"E. 110.42 feet, thence N.01°-21'-52"W. 29.76 feet; thence N.88°-38'-08"E. 10.00 feet thence S.01°-21'-52"E. 110.00 feet; thence N.88°-38'-08"E. 216.00 feet; thence N.01°-21'-52"W. 133.94 feet, thence northwesterly 75.5 feet on a non-tangential curve concave to the west having a radius of 70.00 feet, central angle of 62°-00'-20" and a chord of 72.11 feet bearing N.01°-21'-52"W. from the last described course; thence N.01°-21'-52"W. 551.75 feet parallel with the east line of the SW¼ of the SE¼ of said Section 17 to the Point of Beginning, containing 10.30 acres, more or less, with assumed bearings given for description purposes only.

Motion by Alderman Schmidt, seconded by Alderman Purcell that the revised Preliminary Plan be approved and the Ordinance be passed.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Crawford, Huette, Schmidt, Finnegan, Gibson, Hanson and Purcell.

Nays: None.

Motion carried.

The following was presented:

December 26, 2006

1315

To: Honorable Mayor and Members of the City Council

From: Staff

Subject: Petitions submitted by Cedar Ridge, LLC and Sunrise Company, LLC requesting Annexation and Rezoning to R-1C, High Density Single Family Residence District; S-2 Public Lands and Institutions District; and B-1 Highway Business District for approximately 129.2 acres of vacant land located north of I-74, south of Woodrig Road, east of US Route 51, west of Hendrix Road, southwest of the extension of Bunn Street, and south of Woodrig Road. (Case Z-12-06) (southeast of Ward #1)

BACKGROUND INFORMATION:

On June 12, 2006, Council approved an Annexation Agreement (Case Z-12-06) for this 129.2 acre tract that is to be known as the Cedar Ridge Subdivision. Now Cedar Ridge, LLC and Sunrise Company, LLC, the owners, wish to annex and rezone this tract, consistent with the terms of this Annexation Agreement. Upon annexation, the northwestern 4.48 acres, owned by Sunrise Company, LLC, will be zoned B-1 Highway Business District, while the remainder, owned by Cedar Ridge, LLC, will be zoned R-1C High Density Single Family Residence District and S-2 Public Lands and Institutions District (the proposed school/park site and storm water detention basin sites). This tract is currently zoned R-1 Single Family Residential under the McLean County Zoning Ordinance.

The property in question is contiguous to the City's Corporate limits, and all required public hearings on the annexation agreement were held on May 24, 2006 and June 12, 2006.

STAFF RECOMMENDATION:

Staff recommends Council approval of these petitions and passage of these Ordinances consistent with this annexation agreement.

Respectfully,

Kenneth Emmons
City Planner

Tom Hamilton
City Manager

PETITION FOR ANNEXATION AND REZONING TO THE CITY OF BLOOMINGTON, MCLEAN COUNTY, ILLINOIS

State of Illinois)
) ss:
County of McLean)

TO: THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF BLOOMINGTON, McLEAN COUNTY, ILLINIOS

NOW COMES Cedar Ridge of Bloomington, L.L.C., an Illinois limited liability company hereinafter referred to as your petitioner, respectfully representing and requesting as follows:

1. That your petitioner is the buyer of the premises legally described as Tract No. 1, and Tract No. 2 in Exhibit A attached hereto and made a part hereof.
2. That said premises presently has a zoning classification of Agriculture under the provisions of the McLean County Zoning Ordinance.
3. That your petitioner hereby requests that the Honorable Mayor and City Council of the City of Bloomington, McLean County, Illinois annex said property to the City.
4. That the premises which is described above is contiguous to the City of Bloomington.
5. That the premises upon annexation should be zoned as provided in Exhibit B hereto.

WHEREFORE, your petitioner respectfully prays that said premises be annexed to the City of Bloomington, McLean County, Illinois.

Respectfully submitted:

Cedar Ridge of Bloomington, LLC

By: Mercer Turner, its Attorney

EXHIBIT A

TRACT 1:

A part of the East Half of Section 21 and a part of the West Half of Section 22, all in Township 23 North, Range 2 East of the Third Principal Meridian, more particularly described as follows: Beginning at a point on the East Line of said Section 21, said Point being 12.955 chains (855.03 feet) south of the Northeast Corner of Section 21; thence east 8.04 chains (530.64 feet) along an existing fence to the fence which marks the West Right-of-Way Line of the former Illinois Traction System Railroad; thence south 2,140.2 feet along the fence which marks the said West

Right-of-Way Line to a point on the Northerly Right-of-Way Line of FAI Route 05-Section 57-20, said Point lying 210 feet north of Station 753+82 on Transit Line 11 on the Right-of-Way Plat for said Route as said Right-of-Way Line is shown in Book 14 of Plats, at Page 138, in the Office of the Recorder of Deeds, McLean County, Illinois; thence northwesterly 940 feet along the said North Right-of-Way Line to a point which is 250 feet north of Station 744+00 on said Transit Line; thence northwesterly 397.4 feet along said Right-of-Way Line to a point which is 250 feet north of Station 740+47.26 of said Transit Line and which Point also lies in existing north-south fence; thence north 1,893.9 feet along said fence to a cornerpost; thence east 10.68 chains (704.88 feet) along an existing fence to the Point of Beginning, in McLean County, Illinois.

TRACT 2:

Part of Section 21, Township 23 North, Range 2 East of the Third Principal Meridian, described as follows: Beginning at a point on the East Line of said Section 21, 9.975 chains south of the Northeast Corner thereof; thence north $89^{\circ}-34'$ west, 10.53 chains; thence north $03^{\circ}-16'$ west, 0.21 chain; thence north $89^{\circ}-59'$ west, 20.80 chains; thence south $4^{\circ}-27'$ east, 32.10 chains; thence north $85^{\circ}-48'$ east, 16.22 chains; thence north $06^{\circ}-00'$ west, 2.77 chains; thence north $85^{\circ}-48'$ east, 4.23 chains; thence north $03^{\circ}-57'$ west, 24.05 chains; thence north $87^{\circ}-22'$ east, 10.68 chains to the East Line of said Section 21; thence north $04^{\circ}-12'$ west, 2.98 chains to the Place of Beginning, in McLean County, Illinois.

EXCEPTION NO. 1:

A part of the East Half of Section 21, Township 23 North, Range 2 East of the Third Principal Meridian, more particularly described as follows: Beginning at the Northeast Corner of Tract 2 of a Survey by George L. Farnsworth Jr., recorded October 5, 1954, as Document No. 29618; thence south $85^{\circ}-48'$ west, 279.35 feet; thence north $06^{\circ}-00'$ west, 50.02 feet; thence north $85^{\circ}-48'$ east, 281.14 feet; thence south $03^{\circ}-57'$ east, 50.00 feet to the Point of Beginning, in McLean County, Illinois.

EXCEPTION NO. 2:

That part conveyed to the State of Illinois by Warranty Deed recorded October 18, 1963, as Document No. 43464, in McLean County, Illinois.

TRACT 3:

Five acres off the West Side of Lot 5 in the Subdivision of the Northeast Quarter of Section 21, Township 23 North, Range 2 East of the Third Principal Meridian, as subdivided by Commissioners Case of Miller vs. Miller No. 733 Chancery, except (Exception No. 3) the East 76 Feet of the North 150 Feet and also except (Exception No. 4) all of the West 74 Feet of the East 150 Feet of the North 150 Feet, and also except (Exception No. 5) any portion thereof lying within Woodrig Road Right-of-Way, which has been previously annexed. in McLean County, Illinois.

PETITION FOR ANNEXATION AND REZONING TO THE CITY OF BLOOMINGTON, MCLEAN COUNTY, ILLINOIS

State of Illinois)
) ss:
County of McLean)

TO: THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF BLOOMINGTON, MCLEAN COUNTY, ILLINOIS

NOW COMES Sunrise Company, L.L.C., an Illinois limited liability company hereinafter referred to as your petitioner, respectfully representing and requesting as follows:

1. That your petitioner is the buyer of the premises legally described as Tract No. 3 in Exhibit A attached hereto and made a part hereof.
2. That said premises presently has a zoning classification of Agriculture under the provisions of the McLean County Zoning Ordinance.
3. That your petitioner hereby requests that the Honorable Mayor and City Council of the City of Bloomington, McLean County, Illinois annex said property to the City.
4. That the premises which is described above is contiguous to the City of Bloomington.
5. That the premises upon annexation should be zoned as provided in Exhibit B hereto.

WHEREFORE, your petitioner respectfully prays that said premises be annexed to the City of Bloomington, McLean County, Illinois.

Respectfully submitted:

Sunrise Company, L.L.C.

By: James Shirk, Manager

EXHIBIT A

TRACT 1:

A part of the East Half of Section 21 and a part of the West Half of Section 22, all in Township 23 North, Range 2 East of the Third Principal Meridian, more particularly described as follows: Beginning at a point on the East Line of said Section 21, said Point being 12.955 chains (855.03 feet) south of the Northeast Corner of Section 21; thence east 8.04 chains (530.64 feet) along an existing fence to the fence which marks the West Right-of-Way Line of the former Illinois

Traction System Railroad; thence south 2,140.2 feet along the fence which marks the said West Right-of-Way Line to a point on the Northerly Right-of-Way Line of FAI Route 05-Section 57-20, said Point lying 210 feet north of Station 753+82 on Transit Line 11 on the Right-of-Way Plat for said Route as said Right-of-Way Line is shown in Book 14 of Plats, at Page 138, in the Office of the Recorder of Deeds, McLean County, Illinois; thence northwesterly 940 feet along the said North Right-of-Way Line to a point which is 250 feet north of Station 744+00 on said Transit Line; thence northwesterly 397.4 feet along said Right-of-Way Line to a point which is 250 feet north of Station 740+47.26 of said Transit Line and which Point also lies in existing north-south fence; thence north 1,893.9 feet along said fence to a cornerpost; thence east 10.68 chains (704.88 feet) along an existing fence to the Point of Beginning, in McLean County, Illinois.

TRACT 2:

Part of Section 21, Township 23 North, Range 2 East of the Third Principal Meridian, described as follows: Beginning at a point on the East Line of said Section 21, 9.975 chains south of the Northeast Corner thereof; thence north 89° -34' west, 10.53 chains; thence north 03° -16' west, 0.21 chain; thence north 89° -59' west, 20.80 chains; thence south 4° -27' east, 32.10 chains; thence north 85° -48' east, 16.22 chains; thence north 06° -00' west, 2.77 chains; thence north 85° -48' east, 4.23 chains; thence north 03° -57' west, 24.05 chains; thence north 87° -22' east, 10.68 chains to the East Line of said Section 21; thence north 04° -12' west, 2.98 chains to the Place of Beginning, in McLean County, Illinois.

EXCEPTION NO. 1:

A part of the East Half of Section 21, Township 23 North, Range 2 East of the Third Principal Meridian, more particularly described as follows: Beginning at the Northeast Corner of Tract 2 of a Survey by George L. Farnsworth Jr., recorded October 5, 1954, as Document No. 29618; thence south 85° -48' west, 279.35 feet; thence north 06° -00' west, 50.02 feet; thence north 85° -48' east, 281.14 feet; thence south 03° -57' east, 50.00 feet to the Point of Beginning, in McLean County, Illinois.

EXCEPTION NO. 2:

That part conveyed to the State of Illinois by Warranty Deed recorded October 18, 1963, as Document No. 43464, in McLean County, Illinois.

TRACT 3:

Five acres off the West Side of Lot 5 in the Subdivision of the Northeast Quarter of Section 21, Township 23 North, Range 2 East of the Third Principal Meridian, as subdivided by Commissioners Case of Miller vs. Miller No. 733 Chancery, except (Exception No. 3) the East 76 Feet of the North 150 Feet and also except (Exception No. 4) all of the West 74 Feet of the East 150 Feet of the North 150 Feet, and also except (Exception No. 5) any portion thereof lying within Woodrig Road Right-of-Way, which has been previously annexed in McLean County, Illinois.

ORDINANCE NO. 2006 - 142**AN ORDINANCE ANNEXING CERTAIN TERRITORY AS HEREINAFTER DESCRIBED TO THE CITY OF BLOOMINGTON, MCLEAN COUNTY, ILLINOIS**

WHEREAS, there has heretofore entered into a certain Agreement for Annexation between the City of Bloomington and Cedar Ridge of Bloomington, L.L.C. an Illinois limited liability company, and Sunrise Company, L.L.C. an Illinois limited liability company, which Agreement is attached hereto and made a part hereof by this reference as Exhibit C; and

WHEREAS, the City Council of the City of Bloomington, after proper notices were given, conducted a Public Hearing on said Annexation Agreement and rezoning; and

WHEREAS, the City Council of the City of Bloomington has determined that said premises are contiguous to the corporate limits of the City of Bloomington and are not within the confines of any other municipality of the State of Illinois, and that the Owner has given all notices required to be given by 65 ILCS 5/7-1-1; and

WHEREAS, the City Council of the City of Bloomington has considered the question of annexation and has determined that said Annexation Agreement is proper and in due form according to the statutes of the State of Illinois as in such case made and provided. Said City Council has further determined that the proposed zoning, as established in the aforesaid Agreement, follows the general comprehensive plan and development theme heretofore established by the corporate authorities of the City of Bloomington and should be place in effect as to said land upon the annexation of same, all as by Statute specifically provided.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Bloomington, McLean County, Illinois:

SECTION ONE: That the City Council of the City of Bloomington, Illinois, determines that the territory described in the attached Exhibit A is not within the confines of any municipality of the State of Illinois, but is however, contiguous to the City of Bloomington.

SECTION TWO: That the property hereinabove described is by this Ordinance hereby be rezoned and annexed to and does by said Ordinance become a part of the incorporated City of Bloomington, McLean County, Illinois and that the boundary of said City is hereby changed to include the property hereinabove described.

SECTION THREE: That the Annexation Agreement, hereinabove referred to and hereto attached be and the same hereby is ratified, affirmed, and incorporated into this Ordinance.

SECTION FOUR: The Exhibit B premises be hereby zoned as follows under Chapter 44 of the Bloomington City Code, as described in Exhibit B hereto.

SECTION FIVE: That this Ordinance shall be in full force from the date of its passage.

PASSED this 26th day of December, 2006.

APPROVED this 27th day of December, 2006.

Stephen F. Stockton
Mayor

ATTEST:

Tracey Covert
City Clerk

EXHIBIT A

TRACT 1:

A part of the East Half of Section 21 and a part of the West Half of Section 22, all in Township 23 North, Range 2 East of the Third Principal Meridian, more particularly described as follows: Beginning at a point on the East Line of said Section 21, said Point being 12.955 chains (855.03 feet) south of the Northeast Corner of Section 21; thence east 8.04 chains (530.64 feet) along an existing fence to the fence which marks the West Right-of-Way Line of the former Illinois Traction System Railroad; thence south 2,140.2 feet along the fence which marks the said West Right-of-Way Line to a point on the Northerly Right-of-Way Line of FAI Route 05-Section 57-20, said Point lying 210 feet north of Station 753+82 on Transit Line 11 on the Right-of-Way Plat for said Route as said Right-of-Way Line is shown in Book 14 of Plats, at Page 138, in the Office of the Recorder of Deeds, McLean County, Illinois; thence northwesterly 940 feet along the said North Right-of-Way Line to a point which is 250 feet north of Station 744+00 on said Transit Line; thence northwesterly 397.4 feet along said Right-of-Way Line to a point which is 250 feet north of Station 740+47.26 of said Transit Line and which Point also lies in existing north-south fence; thence north 1,893.9 feet along said fence to a cornerpost; thence east 10.68 chains (704.88 feet) along an existing fence to the Point of Beginning, in McLean County, Illinois.

TRACT 2:

Part of Section 21, Township 23 North, Range 2 East of the Third Principal Meridian, described as follows: Beginning at a point on the East Line of said Section 21, 9.975 chains south of the Northeast Corner thereof; thence north 89°-34' west, 10.53 chains; thence north 03°-16' west, 0.21 chain; thence north 89°-59' west, 20.80 chains; thence south 4°-27' east, 32.10 chains; thence north 85°-48' east, 16.22 chains; thence north 06°-00' west, 2.77 chains; thence north 85°-48' east, 4.23 chains; thence north 03°-57' west, 24.05 chains; thence north 87°-22' east, 10.68 chains to the East Line of said Section 21; thence north 04°-12' west, 2.98 chains to the Place of Beginning, in McLean County, Illinois.

EXCEPTION NO. 1:

A part of the East Half of Section 21, Township 23 North, Range 2 East of the Third Principal Meridian, more particularly described as follows: Beginning at the Northeast Corner of Tract 2 of a Survey by George L. Farnsworth Jr., recorded October 5, 1954, as Document No. 29618; thence south 85°-48' west, 279.35 feet; thence north 06°-00' west, 50.02 feet; thence north 85°-48' east, 281.14 feet; thence south 03°-57' east, 50.00 feet to the Point of Beginning, in McLean County, Illinois.

EXCEPTION NO. 2:

That part conveyed to the State of Illinois by Warranty Deed recorded October 18, 1963, as Document No. 43464, in McLean County, Illinois.

TRACT 3:

Five acres off the West Side of Lot 5 in the Subdivision of the Northeast Quarter of Section 21, Township 23 North, Range 2 East of the Third Principal Meridian, as subdivided by Commissioners Case of Miller vs. Miller No. 733 Chancery, except (Exception No. 3) the East 76 Feet of the North 150 Feet and also except (Exception No. 4) all of the West 74 Feet of the East 150 Feet of the North 150 Feet, and also except (Exception No. 5) any portion thereof lying within Woodrig Road Right-of-Way, which has been previously annexed in McLean County, Illinois.

EXHIBIT B**TRACT 1****Zoned B-1****(Highway Business District)**

A part of the Northeast Quarter of Section 21, Township 23 North, Range 2 East of the Third Principal Meridian, Bloomington, McLean County, Illinois, described as follows: Beginning at a Point on the North Line of Lot 3 in Mau, Wang, and Young Subdivision in said City, according to the Plat recorded as Document No. 77-13331 in the McLean County Recorder's Office, lying 406.97 feet west of the Northeast Corner thereof. From said Point of Beginning, thence west 289.21 feet along said North Line and the Westerly extension thereof to the East Right-of-Way Line of F.A. Route 2/U.S. Route 51; thence north 604.83 feet along said East Right-of-Way Line which forms an angle to the left of 94°-27'-26" with the last described course to the Southernmost Corner of a Tract of Land conveyed to the State of Illinois by Deed recorded as Document No. 70-5822 in said Recorder's Office; thence northeast 117.32 feet along the Easterly Line of said Tract which forms an angle to the left of 135°-37'-19" with the last described course to the Northeast Corner of said Tract; thence west 82.26 feet along the North Line of said Tract which forms an angle to the left of 310°-18'-25" with the last described course to the Northwest Corner of said Tract, said Corner being on the East Right-of-Way Line on said F.A. Route 2/U.S. Route 51; thence north 19.27 feet along said East Right-of-Way Line which forms an angle to the left of 94°-04'-13" with the last described course to the North Line of the

Northeast Quarter of said Section 21; thence east 879.16 feet along said North Line which forms an angle to the left of $85^{\circ}-44'-11''$ with the last described course to the Northwest Corner of the East 150 Feet of the North 150 Feet of Five Acres off the West Side of Lot 5 Subdivision of said Northeast Quarter as subdivided by Commissioner's Case of Miller vs. Miller No. 733 Chancery; thence south 150.24 feet along the West Line of the East 150 Feet of the North 150 Feet of said Five Acres which forms an angle to the left of $93^{\circ}-13'-24''$ with the last described course to the Southwest Corner thereof; thence east 150.24 feet along the South Line of the East 150 Feet of the North 150 Feet of said Five Acres which forms an angle to the left of $266^{\circ}-46'-36''$ with the last described course to the Southeast Corner thereof; thence south 485.34 feet along the East Line of said Five Acres off the West Side of said Lot 5 which forms an angle to the left of $93^{\circ}-13'-24''$ with the last described course to the North Line of Tract 1 of a Survey by George L. Farnsworth, Jr., recorded October 5, 1954, as Document No. 29618 in Plat Book 13, page 210, in said Recorder's Office; thence west 321.59 feet along said North Line which forms an angle to the left of $86^{\circ}-46'-36''$ with the last described course to the Northwest Corner of said Tract 1; thence northerly 134.24 feet along the arc of a curve concave to the east with a radius of 2000.00 feet and the 134.22 foot chord of said arc forms an angle to the left of $92^{\circ}-10'-19''$ with the last described course; thence west 460.32 feet along a line which forms an angle to the left of $271^{\circ}-55'-07''$ with the last described chord; thence south 149.78 feet along a line which forms an angle to the left of $270^{\circ}-00'-00''$ with the last described course; thence east 50.00 feet along a line which forms an angle to the left of $270^{\circ}-00'-00''$ with the last described course; thence south 33.75 feet along a line which forms an angle to the left of $90^{\circ}-00'-00''$ with the last described course to the Point of Beginning, containing 13.54 acres, more or less.

TRACT 2

Zoned S-2

(Public Lands and Institutions District)

A part of the Northeast Quarter of Section 21, Township 23 North, Range 2 East of the Third Principal Meridian, Bloomington, McLean County, Illinois, described as follows: Beginning at the Northeast Corner of Lot 3 in Mau, Wang, and Young Subdivision in said City, according to the Plat recorded as Document No. 77-13331 in the McLean County Recorder's Office. From said Point of Beginning, thence west 406.97 feet along the North Line of said Lot 3; thence north 33.75 feet along a line which forms an angle to the left of $94^{\circ}-17'-00''$ with the last described course; thence west 50.00 feet along a line which forms an angle to the left of $270^{\circ}-00'-00''$ with the last described course; thence north 149.78 feet along a line which forms an angle to the left of $90^{\circ}-00'-00''$ with the last described course; thence east 460.32 feet along a line which forms an angle to the left of $90^{\circ}-00'-00''$ with the last described course; thence southerly 134.24 feet along the arc of a curve concave to the east with a radius of 2000.00 feet and the 134.22 foot chord of said arc forms an angle to the left of $88^{\circ}-04'-53''$ with the last described course to the Northwest Corner of Tract 1 of a Survey by George L. Farnsworth, Jr., recorded October 5, 1954, as Document No. 29618 in Plat Book 13, page 210, in said Recorder's Office; thence east 1174.57 feet along the North Line of said Tract 1 which forms an angle to the left of $267^{\circ}-49'-41''$ with the last described chord; thence southwesterly, southerly and southeasterly 141.10 feet along the arc of a curve concave to the east with a radius of 50.00 feet and the 98.73 foot chord of said arc forms an angle to the left of $97^{\circ}-03'-01''$ with the last described course; thence south

173.21 feet along a line which forms an angle to the left of $177^{\circ}-02'-40''$ with the last described chord; thence west 75.00 feet along a line which forms an angle to the left of $90^{\circ}-00'-00''$ with the last described course to a Point of Curvature; thence southwesterly 329.87 feet along the arc of a curve concave to the southeast with a radius of 210.00 feet and the 296.99 foot chord of said arc forms an angle to the left of $225^{\circ}-00'-00''$ with the last described course to a Point of Tangency; thence south 355.00 feet along a line which forms an angle to the left of $225^{\circ}-00'-00''$ with the last described chord; thence west 705.27 feet along a line which forms an angle to the left of $90^{\circ}-00'-00''$ with the last described course; thence northwesterly 91.14 feet along the arc of a curve concave to the southwest with a radius of 1035.00 feet and the 91.11 foot chord of said arc forms an angle to the left of $103^{\circ}-52'-48''$ with the last described course; thence southwest 171.51 feet along a line which forms an angle to the left of $272^{\circ}-31'-21''$ with the last described chord to a point on the West Line of said Tract 1 lying 800.88 feet south of the Point of Beginning; thence north 800.88 feet along said West Line which forms an angle to the left of $73^{\circ}-35'-51''$ with the last described course to the Point of Beginning, containing 21.94 acres, more or less.

TRACT 3
Zoned R-1C
(High Density Single-Family Residence District)

A part of the East Half of Section 21 and a part of the West Half of Section 22, all in Township 23 North, Range 2 East, of the Third Principal Meridian, McLean County, Illinois, described as follows: Commencing at the Point of Intersection of the West Line of Tract 1 of a survey by George L. Farnsworth, Jr., recorded October 5, 1954, as Document No. 29618 in Plat Book 13, Page 210, in the McLean County Recorder's Office, with the Northerly Right-of-Way Line of F.A.I. Route 05-Section 57-20 (Interstate 74), as said Right-of-Way is shown in Plat Book 14, Page 138, in said Recorder's Office, said Point is also the Northernmost Corner of a parcel of land conveyed to the State of Illinois by Deed recorded October 18, 1963, as Document No. 43464 in said Recorder's Office; thence southeast 109.57 feet along said Northerly Right-of-Way Line, which is also the North Line of said Parcel, to the Easternmost Corner of said Parcel, being a point on the East-West Common Line between said Tract 1 and Tract No. 1 according to the Deed recorded as Document No. 2002-6701 in said Recorder's Office; thence east 208.42 feet along said Common Line, which forms an angle to the right of $160^{\circ}-21'-34''$ with the last described course to the Point of Beginning. From said Point of Beginning, thence north 443.75 feet along a line which is parallel with the West Line of Tract 1 of said Survey by George L. Farnsworth, Jr., and which forms an angle to the right of $90^{\circ}-03'-41''$ with the last described course; thence east 115.00 feet along a line which forms an angle to the left of $90^{\circ}-00'-00''$ with the last described course; thence north 50.00 feet along a line which forms an angle to the left of $270^{\circ}-00'-00''$ with the last described course; thence west 426.66 feet along a line which forms an angle to the left of $270^{\circ}-00'-00''$ with the last described course to a point on the West Line of Tract 1 of said Survey By George L. Farnsworth, Jr., lying 457.26 feet north of the Point of Commencement; thence north 743.01 feet along said West Line which forms an angle to the left of $90^{\circ}-00'-00''$ with the last described course; thence northeast 171.51 feet along a line which forms an angle to the left of $106^{\circ}-24'-09''$ with the last described course; thence Southeasterly 91.14 feet along the arc of a curve concave to the southwest with a radius of 1035.00 feet and the

91.11 foot chord of said arc forms an angle to the left of $87^{\circ}-28'-39''$ with the last described course; thence east 705.27 feet along a line which forms an angle to the left of $256^{\circ}-07'-12''$ with the last described chord; thence north 355.00 feet along a line which forms an angle to the left of $270^{\circ}-00'-00''$ with the last described course to a Point of Curvature; thence northeasterly 329.87 feet along the arc of a curve concave to the southeast with a radius of 210.00 feet and the 296.99 foot chord of said arc forms an angle to the left of $135^{\circ}-00'-00''$ with the last described course to a Point of Tangency; thence east 75.00 feet along a line which forms an angle to the left of $135^{\circ}-00'-00''$ with the last described chord; thence north 173.21 feet along a line which forms an angle to the left of $270^{\circ}-00'-00''$ with the last described course; thence northwesterly, northerly, and northeasterly 141.10 feet along the arc of a curve concave to the east with a radius of 50.00 feet and the 98.73 foot chord of said arc forms an angle to the left of $182^{\circ}-57'-20''$ with the last described course to a Point on the North Line of Tract 1 of said Survey by George L. Farnsworth, Jr., lying 1174.57 feet east of the Northwest Corner thereof; thence east 199.50 feet along said North Line which forms an angle to the left of $82^{\circ}-56'-59''$ with the last described chord to a jog in said North Line; thence south 13.86 feet along said jog which forms an angle to the left of $93^{\circ}-09'-52''$ with the last described course; thence east 695.39 feet along said North Line which forms an angle to the left of $266^{\circ}-09'-30''$ with the last described course to the Northeast Corner of Tract 1 of said Survey by George L. Farnsworth, Jr., said Corner being a Point on the East Line of said Section 21 lying 9.975 chains (658.35 feet) south of the Northeast Corner thereof; thence south 196.68 feet along the East Line of said Section 21 which forms an angle to the left of $94^{\circ}-43'-56''$ with the last described course; thence east 214.05 feet along a line which forms an angle to the left of $268^{\circ}-10'-04''$ with the last described course; thence southeast 71.08 feet along a line which forms an angle to the left of $170^{\circ}-00'-58''$ with the last described course; thence southeast 114.46 feet along a line which forms an angle to the left of $153^{\circ}-48'-20''$ with the last described course; thence southeast 121.33 feet along a line which forms an angle to the left of $147^{\circ}-34'-45''$ with the last described course; thence south 407.39 feet along a line which forms an angle to the left of $160^{\circ}-27'-00''$ with the last described course; thence southwest 137.03 feet along a line which forms an angle to the left of $162^{\circ}-28'-27''$ with the last described course; thence southwest 117.88 feet along a line which forms an angle to the left of $146^{\circ}-35'-36''$ with the last described course; thence southwest 79.42 feet along a line which forms an angle to the left of $152^{\circ}-07'-22''$ with the last described course; thence west 156.40 feet along a line which forms an angle to the left of $168^{\circ}-49'-52''$ with the last described course; thence southeast 110.66 feet along a line which forms an angle to the left of $338^{\circ}-49'-59''$ with the last described course; thence southeast 111.64 feet along a line which forms an angle to the left of $148^{\circ}-59'-00''$ with the last described course; thence southeast 78.28 feet along a line which forms an angle to the left of $153^{\circ}-11'-28''$ with the last described course; thence south 411.49 feet along a line which forms an angle to the left of $168^{\circ}-59'-33''$ with the last described course; thence east 89.72 feet along a line which forms an angle to the left of $270^{\circ}-00'-00''$ with the last described course; thence southeast 73.76 feet along a line which forms an angle to the left of $169^{\circ}-38'-07''$ with the last described course; thence southeast 112.57 feet along a line which forms an angle to the left of $153^{\circ}-41'-57''$ with the last described course; thence southeast 112.71 feet along a line which forms an angle to the left of $147^{\circ}-59'-42''$ with the last described course; thence south 169.51 feet along a line which forms an angle to the left of $158^{\circ}-40'-14''$ with the last described course; thence southwest 62.99 feet along a line which forms an angle to the left of $171^{\circ}-09'-43''$ with the last described course; thence southwest 115.85 feet along a line which forms an angle to the

left of $154^{\circ}-44'-55''$ with the last described course; thence southwest 125.31 feet along a line which forms an angle to the left of $146^{\circ}-01'-31''$ with the last described course; thence west 213.32 feet along a line which forms an angle to the left of $158^{\circ}-03'-51''$ with the last described course; thence south 37.95 feet along a line which forms an angle to the left of $270^{\circ}-00'-00''$ with the last described course to the Northerly Right-of-Way Line of said F.A.I. Route 05-Section 57-20 (Interstate 74); thence northwest 460.83 feet along said Right-of-Way Line which forms an angle to the left of $76^{\circ}-53'-17''$ with the last described course to a point lying 250 feet north of Station 744+00 on Transit Line 11 as shown on the Right-of-Way Plat for said Route; thence northwest 398.79 feet along said Right-of-Way Line being the arc of a curve concave to the southwest with a radius of 11,709.16 feet and the 398.77 foot chord of said arc forms an angle to the left of $183^{\circ}-09'-40''$ with the last described course to the Southeast Corner of Tract No. 1 according to said Deed recorded as Document No. 2002-6701; thence north 358.00 feet along the East Line of said Tract No. 1 and the East Line of Tract No. 3 according to said Deed recorded as Document No. 2002-6701 which lines form an angle to the left of $99^{\circ}-31'-34''$ with the last described chord to the Northeast Corner of said Tract No. 3; thence west 281.14 feet along the North Line of said Tract No. 3 which forms an angle to the left of $270^{\circ}-27'-00''$ with the last described course to the Northwest Corner of said Tract No. 3; thence south 232.82 feet along the West Line of said Tract No. 3 and along the North-South Common Line between Tract No. 1 according to said Deed recorded as Document No. 2002-6701 and Tract 1 of said Survey by George L. Farnsworth, Jr., which lines form an angle to the left of $270^{\circ}-31'-38''$ with the last described course to the East-West Common Line between said Tract 1 and Tract No. 1; thence west 756.58 feet along said East-West Common Line which forms an angle to the left of $89^{\circ}-30'-31''$ with the last described course to the Point of Beginning, containing 91.37 acres, more or less.

TRACT 4
Zoned S-2
(Public Lands and Institutions District)

A part of the West Half of Section 22, Township 23 North, Range 2 East of the Third Principal Meridian, McLean County, Illinois, described as follows: Beginning at the Southwest Corner of Lot 1 in Ben Smith Subdivision in the West Half of the West Half of said Section 22, according to the Plat recorded as Document No. 90-607 in the McLean County Recorder's Office, said Corner being the intersection of the West Right-of-Way Line of the former Illinois Traction System Railroad with the Northerly Right-of-Way Line of F.A.I. Route 05-Section 57-20 (Interstate 74), as said Right-of-Way is shown in Plat Book 14, page 138, in said Recorder's Office. From said Point of Beginning, thence north 2140.2 feet along the West Line of said Lot 1 and along the West Right-of-Way Line of said Railroad; thence west 315.82 feet along a line which forms an angle to the right of $93^{\circ}-24'-44''$ with the last described course; thence southeast 71.08 feet along a line which forms an angle to the right of $09^{\circ}-59'-02''$ with the last described course; thence southeast 114.46 feet along a line which forms an angle to the right of $206^{\circ}-11'-40''$ with the last described course; thence southeast 121.33 feet along a line which forms an angle to the right of $212^{\circ}-25'-15''$ with the last described course; thence south 407.39 feet along a line which forms an angle to the right of $199^{\circ}-33'-00''$ with the last described course; thence southwest 137.03 feet along a line which forms an angle to the right of $197^{\circ}-31'-33''$ with the

last described course; thence southwest 117.88 feet along a line which forms an angle to the right of $213^{\circ}-24'-24''$ with the last described course; thence southwest 79.42 feet along a line which forms an angle to the right of $207^{\circ}-52'-38''$ with the last described course; thence west 156.40 feet along a line which forms an angle to the right of $191^{\circ}-10'-08''$ with the last described course; thence southeast 110.66 feet along a line which forms an angle to the right of $21^{\circ}-10'-01''$ with the last described course; thence southeast 111.64 feet along a line which forms an angle to the right of $211^{\circ}-01'-00''$ with the last described course; thence southeast 78.28 feet along a line which forms an angle to the right of $206^{\circ}-48'-32''$ with the last described course; thence south 411.49 feet along a line which forms an angle to the right of $191^{\circ}-00'-27''$ with the last described course; thence east 89.72 feet along a line which forms an angle to the right of $90^{\circ}-00'-00''$ with the last described course; thence southeast 73.76 feet along a line which forms an angle to the right of $190^{\circ}-21'-53''$ with the last described course; thence southeast 112.57 feet along a line which forms an angle to the right of $206^{\circ}-18'-03''$ with the last described course; thence southeast 112.71 feet along a line which forms an angle to the right of $212^{\circ}-00'-18''$ with the last described course; thence south 169.51 feet along a line which forms an angle to the right of $201^{\circ}-19'-46''$ with the last described course; thence southwest 62.99 feet along a line which forms an angle to the right of $188^{\circ}-50'-17''$ with the last described course; thence southwest 115.85 feet along a line which forms an angle to the right of $205^{\circ}-15'-05''$ with the last described course; thence southwest 125.31 feet along a line which forms an angle to the right of $213^{\circ}-58'-29''$ with the last described course; thence west 213.32 feet along a line which forms an angle to the right of $201^{\circ}-56'-09''$ with the last described course; thence south 37.95 feet along a line which forms an angle to the right of $90^{\circ}-00'-00''$ with the last described course to the Northerly Right-of-Way Line of said F.A.I. Route 05-Section 57-20 (Interstate 74); thence southeast 476.65 feet along said Right-of-Way Line which forms an angle to the right of $103^{\circ}-06'-43''$ with the last described course to the Point of Beginning, containing 9.81 acres, more or less.

TRACT 5

Zoned S-2

(Public Lands and Institutions District)

A part of Tract 1 of a survey by George L. Farnsworth Jr., being a part of the East Half of Section 21, Township 23 North, Range 2 East, of the Third Principal Meridian, McLean County, Illinois, recorded October 5, 1954, as Document No. 29618 in Plat Book 13, Page 210, in the McLean County Recorder's Office, described as follows: Beginning at the Point of Intersection of the West Line of said Tract 1 with the Northerly Right-of-Way Line of F.A.I. Route 05-Section 57-20 (Interstate 74), as said Right-of-Way is shown in Plat Book 14, Page 138, in said Recorder's Office, said Point is also the Northernmost Corner of a parcel of land conveyed to the State of Illinois by Deed recorded October 18, 1963, as Document No. 43464 in said Recorder's Office. From said Point of Beginning, thence southeast 109.57 feet along said Northerly Right-of-Way Line, which is also the North Line of said Parcel, to the Easternmost Corner of said Parcel, being a point on the East-West Common Line between said Tract 1 and Tract No. 1, according to the Deed recorded as Document No. 2002-6701 in said Recorder's Office; thence east 208.42 feet along said Common Line, which forms an angle to the right of $160^{\circ}-21'-34''$ with the last described course; thence north 443.75 feet along a line which is parallel with the West Line of Tract 1 of said Survey by George L. Farnsworth, Jr., and which forms an angle to

the right of 90°-03'-41" with the last described course; thence east 115.00 feet along a line which forms an angle to the right of 270°-00'-00" with the last described course; thence north 50.00 feet along a line which forms an angle to the right of 90°-00'-00" with the last described course; thence west 426.66 feet along a line which forms an angle to the right of 90°-00'-00" with the last described course to a point on the West Line of said Tract 1, lying 457.26 feet north of the Point of Beginning; thence south 457.26 feet along said West Line which forms an angle to the right of 90°-00'-00" with the last described course to the Point of Beginning, containing 3.62 acres, more or less.

Motion by Alderman Schmidt, seconded by Alderman Purcell that the Petitions be approved and the Ordinance passed.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Crawford, Huette, Schmidt, Finnegan, Gibson, Hanson and Purcell.

Nays: None.

Motion carried.

The following was presented:

To: Honorable Mayor and Members of the City Council

From: Staff

Subject: Petition submitted by Robert Neiryck requesting approval of a Special Use Permit at 707 East Empire Street to allow a three unit multiple family dwelling in an R-2, Mixed Residence District. (Case SP-10-06) (Ward # 7)

BACKGROUND INFORMATION:

Adjacent Zoning

north: R-1C, High Density Single Family Residence District
south: R-3A, Medium Density Multiple Family Residence District
east: R-2, Mixed Residence District
west: R-2, Mixed Residence District

Adjacent Land Uses

north: single family dwelling
south: nursing home
east: single family dwelling
west: three-unit apartment building

Current Land Use: Three-Unit Multiple Family Dwelling.

Comprehensive Plan: Low to Medium Density Residential is recommended.

The property in question is a 50' x 185' (9,250 sq. ft.) lot that is the site of an existing multiple family dwelling that has contained three apartment units since prior to 1944, when the petitioner's parents purchased this property. It has recently lost its "grandfathered" authorized Special Use Permit status for three (3) apartments because it had been vacant for more than six (6) months. Now the petitioner seeks to re-establish the Special Use status for a three (3) unit multiple family dwelling in the R-2, Mixed Residence District.

The Zoning Code stipulates the following standards and conditions for multiple family dwellings as a Special Use:

1. Minimum Fencing/Screening Required: Parking lots shall be screened from adjacent single-family dwellings and two-family dwellings in accordance with Section 4.73(a) of the Zoning Code.

2. Minimum Lot Area:

(a) Efficiency Unit: One Thousand Five Hundred (1,500) square feet per dwelling unit.

(b) One Bedroom Dwelling Unit: Two Thousand (2,000) square feet per dwelling unit.

(c) Two Bedroom Dwelling Unit: Two Thousand Five Hundred (2,500) square feet per dwelling unit.

(d) Three or more Bedroom Dwelling Unit: Three Thousand (3,000) square feet per dwelling unit.

3. Minimum Yard Requirements: Same requirements as in the zoning district in which the proposed special use is proposed to be located. For the R-2 Mixed Residence District the setback requirements are as follows:

Front Yard - 25 feet or the average for the block frontage;

Side Yard - 6 feet; and

Rear Yard - 25 feet

4. Maximum Height: Thirty-five (35) feet or two and a half stories whichever is lower.

5. Additional Requirements: Parking requirements shall be in accordance with Section 7.22 of the Zoning Code, (two parking spaces per dwelling unit).

The existing development can comply with these conditions except for the west side yard setback which is three (3) feet instead of the required six (6) feet. A three (3) foot variance has been requested (Case Z-36-06). The parking requirement can be met by adding four (4) rear yard spaces accessible from the alley to the south.

BOARD OF ZONING APPEALS' PUBLIC HEARING:

The Zoning of Board Appeals held a public hearing on this petition on Wednesday, December 6, 2006. Mrs. Joyce A. Neirnyck, 1513 E. Grove St., the petitioner's spouse, presented testimony in favor of this petition. She testified that there are two (2) apartments on the first floor (consisting of a one person "efficiency" unit and a one (1) bedroom apartment) and a two (2) bedroom apartment on the second floor. She stated that her husband's mother had resided in the second floor apartment and rented out the two (2) first floor apartments until suffering a back injury in 2003.

Due to her mother-in-law's declining health, the leases on the two (2) apartments were not renewed when the tenants moved out because she would have been unable to manage the apartments. Mrs. Niernyck testified that her mother-in-law suffered a stroke in April, 2004, and passed away in May, 2004. After conducting an estate sale of personal property in 2005, the subject property was put up for sale in August, 2006. She stated that they had received a letter from the City in October, 2006, stating that since the apartments had been vacant for more than six (6) months the subject property had lost its "grandfathered" Special Use as a multiple family dwelling. Her husband applied for this Special Use permit in order to regain the multiple family status that this property had maintained for more than 70 years.

Mr. Bernard Deany, 711 E. Empire St., presented testimony expressing concerns about this case. He stated that he was present to voice his concerns rather than to make strong arguments in opposition to this special use permit petition. He testified that he had lived in the area for twenty (20) years and noted that families were moving back into the neighborhood, and that there was a significant amount of multiple family homes. The neighborhood would like to monitor all zoning changes and look at overcrowding and density. He also expressed concern over the shared driveway with the single family home next door. He testified that the neighborhood lost one historic house at the northwest corner of E. Walnut St. and Elder St. a few years prior when the Heritage Manor Nursing Home expanded. He also noted that there were a lot of apartments in the neighborhood that generate a considerable amount of vehicular traffic.

Mr. Deany stated that he saw a trend of increasing multiple family homes and would prefer lower density in the area. None of the neighbors he had spoken with seemed concerned about the building being used as a duplex, however, he believed that fifty percent (50%) of the neighbors were concerned with the building being used as a three (3) unit.

Ms. Marty Seigel, 615 East Chestnut St., submitted a letter expressing her preference for two (2) apartment units instead of three (3) in this building and offered the opinion that the granting of these petitions would permit dramatic change in the character of the block and discourage further improvement in the neighborhood.

BOARD OF ZONING APPEALS' RECOMMENDATION:

After having given due consideration to the testimony presented, the Zoning Board of Appeals, granted the three (3) foot side yard setback variance that was requested by a vote of 6 to 0 for Case Z-36-06.

After having given due consideration to Case SP-10-06 and the testimony presented, the Zoning Board of Appeals, passed a motion by a vote of 6 to 0, to recommend Council approval of this petition for a Special Use Permit to allow to allow a three (3) unit multiple family dwelling at 707 East Empire Street.

STAFF RECOMMENDATION:

Staff concurs with the Zoning Board of Appeals and recommends Council approval of this petition in Case SP-10-06.

Respectfully,

Kenneth Emmons
City Planner

Tom Hamilton
City Manager

Alderman Schmidt noted that this item involved a Special Use Petition at 707 E. Empire. The Zoning Board of Appeals (ZBA) lack a quorum at their November meeting. The hearing was rescheduled to the ZBA's December meeting. Citizens were unaware of the schedule change. She had spoken to the Petitioner who agreed to appear at the Council's January 8, 2007 meeting.

Motion by Alderman Schmidt, seconded by Alderman Crawford that the item be laid over until the January 8, 2007 City Council meeting.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Crawford, Huette, Schmidt, Finnegan, Gibson, Hanson and Purcell.

Nays: None.

Motion carried.

MAYOR'S DISCUSSION: Mayor Stockton wished all present a happy New Year.

CITY MANAGER'S DISCUSSION: Brian Brakebill, Deputy City Manager, informed the Council that there would be a Work Session regarding nuisance abatement on Monday, January 8, 2007 at 6:00 p.m.

He informed the Council that each of them had received the City holiday gift, (umbrella).

ALDERMEN'S DISCUSSION: Alderman Purcell expressed his hopes that all had a Merry Christmas. He wished all a safe and happy New Year.

Alderman Schmidt addressed the notice process for the Zoning Board of Appeals when an item is rescheduled for the next regular meeting. She suggested sandwich boards. She questioned if the hearing could be opened up for citizen comments and/or concerns. She suggested that this idea be considered as a pilot. She realized that there might be arguments against same.

Mayor Stockton believed that the City could find better ways to communicate.

Alderman Schmidt noted that there was interest in Work Session to address a possible noise ordinance.

Motion by Alderman Huette, seconded by Alderman Schmidt, that the meeting be adjourned. Time: 7:49 p.m.

Motion carried.

**Tracey Covert
City Clerk**