Emails regarding any agenda item are welcomed. Please email contactcouncil@winnetka.org, and your email will be relayed to the Council members. Emails for the Tuesday Council meeting must be received by Monday at 4 p.m. Any email may be subject to disclosure under the Freedom of Information Act.

Winnetka Village Council
REGULAR MEETING
Village Hall
510 Green Bay Road
Tuesday, October 1, 2013
7:00 p.m.

AGENDA

1) Call to Order
2) Pledge of Allegiance
3) Quorum
   a) October 8, 2013 Study Session
   b) October 10, 2013 Budget Meeting
   c) October 14, 2013 Budget Meeting
   d) October 15, 2013 Regular Meeting
   e) October 30, 2013 Budget Meeting
4) Approval of Agenda
5) Consent Agenda
   a) Approval of Village Council Minutes
      i) September 10, 2013 Study Session 3
      ii) September 17, 2013 Regular Meeting 4
   b) Approval of Warrant Lists 1815 and 1816 9
   c) State Bid – Salt Purchase 10
   d) Ordinance M-13-2013: 672 Maple Street Zoning Variation – Adoption 14
   e) Resolution R-29-2013: Second Amendment to New Cingular Cell Site Agreement at 410 Green Bay Road – Adoption 23
6) 2013 Winnetka Preservation Awards 33
7) Stormwater
   a) Stormwater Utility Implementation 35

8) Ordinances and Resolutions

a) Ordinance MC-6-2013: Adding Code Chapter 4.23 – Natural Gas Use Tax – Introduction.....63

9) Public Comment

10) Old Business: None.

11) New Business: None.

12) Appointments

13) Reports

14) Executive Session

15) Adjournment

NOTICE

All agenda materials are available at **villageofwinnetka.org** *(Council > Current Agenda);* the Reference Desk at the Winnetka Library; or in the Manager's Office at Village Hall (2nd floor)**.**

Broadcasts of the Village Council meetings are televised on Channel 10 and AT&T Uverse Channel 99 every night at 7 PM. Webcasts of the meeting may also be viewed on the Internet via a link on the Village's web site: **villageofwinnetka.org**

The Village of Winnetka, in compliance with the Americans with Disabilities Act, requests that all persons with disabilities who require certain accommodations to allow them to observe and/or participate in this meeting or have questions about the accessibility of the meeting or facilities, contact the Village ADA Coordinator – Megan Pierce, at 510 Green Bay Road, Winnetka, Illinois 60093, 847.716.3543; T.D.D. 847.501.6041.

MINUTES
WINNETKA VILLAGE COUNCIL STUDY SESSION

September 10, 2013

(Approved: xx)

A record of a legally convened meeting of the Council of the Village of Winnetka, which was held in the Village Hall Council Chambers on Tuesday, September 10, 2013 at 6:30 p.m.

1) Call to Order. President Greable called the meeting to order at 6:30 p.m. Present: Trustees Joe Adams, Arthur Braun, Jack Buck, Patrick Corrigan, Richard Kates and Stuart McCrary. Absent: None. Also in attendance: Village Manager Robert Bahan, Assistant to the Village Manager Megan Pierce, and approximately 8 persons in the audience.

2) Village Council Strategic Planning Discussion with Village Manager. In preparation for the Village's budgeting process, the Village Council and Village Manager held a strategic planning session, facilitated by John Fontana. During the goal setting session, individual Council members expressed what they hoped to gain from the meeting and then described the top issues they believe Winnetka faces. Ultimately, the group discussed like issues and reached consensus on several priority goals, including: identifying the best usage of key Village-owned sites; revitalizing the Village's three business districts; engaging in more in-depth financial planning; and analyzing elements of the Village's operating structure to ensure efficient, effective service delivery. The Village Council expressed a desire to continue discussing these goals, as well as the Urban Land Institute report recommendations, at upcoming Study Session meetings.

3) Public Comment. None.

4) Adjournment. Trustee Braun, seconded by Trustee Corrigan, moved to adjourn the meeting. By voice vote, the motion carried. The meeting adjourned at 9:35 p.m.

_____
Recording Secretary

MINUTES
WINNETKA VILLAGE COUNCIL
REGULAR MEETING
September 17, 2013

(Approved: xx)

A record of a legally convened meeting of the Council of the Village of Winnetka, which was held in the Council Chambers on Tuesday, September 17, 2013, at 7:00 p.m.

1) Call to Order. President Greable called the meeting to order at 7:00 p.m. Present: Trustees Joe Adams, Arthur Braun, Jack Buck, Patrick Corrigan, Richard Kates, and Stuart McCrary. Absent: None. Also present: Village Manager Robert Bahan, Assistant to the Village Manager Megan Pierce, Village Attorney Katherine Janega, Police Chief Patrick Kreis, Director of Water & Electric Brian Keys, Director of Public Works Steve Saunders, Finance Director Ed McKee, Director of Community Development Mike D'Onofrio, and approximately 3 persons in the audience.

2) Pledge of Allegiance. President Greable led the group in the Pledge of Allegiance.

3) Quorum.

   a) October 1, 2013 Regular Meeting. All of the Council members present indicated that they expected to attend.

   b) October 8, 2013 Study Session. All of the Council members present indicated that they expected to attend.

   c) October 15, 2013 Regular Meeting. All of the Council members present indicated that they expected to attend.

   d) Tentative Budget Dates (Budget Hearing anticipated November 5).

      i) Need 3 dates, plus alternate: October 10, October 14, October 17, October 24, October 30. After polling the Trustees, it was determined that October 10, October 14 and October 30 were the best dates for a majority of the Council.

4) Approval of the Agenda. Trustee McCrary requested that Item 5(f), Purchase of Police Patrol Vehicle, be removed from the Consent Agenda. Trustee Braun, seconded by Trustee McCrary, moved to approve the Agenda as amended. By roll call vote the motion carried. Ayes: Trustees Adams, Braun, Buck, Corrigan, Kates and McCrary. Nays: None. Absent: None.

5) Consent Agenda

   a) Village Council Minutes.

      i) September 3, 2013 Regular Meeting.

   b) Warrant Lists Nos. 1813 and 1814. Approving Warrant List No. 1813 in the amount of $36,784.22, and Warrant List No. 1814 in the amount of $318,386.35.

   c) Ordinance M-14-2013: Disposition of Surplus Vehicles & Equipment – Adoption. An ordinance authorizing the disposal of surplus equipment owned by the Village.

d) 2013 Bond Issuance – Engagement of Bond Counsel. An authorization for the Village Manager to sign an engagement letter with the Village's long-time bond counsel, Chapman and Cutler LLP, for the $18.5 million bond issue, for an estimated fee of $38,500.

e) Change Order for Primary Cable, the Okonite Company. An authorization for the Village Manager to award a $15,508 change order to the Okonite Company to purchase additional copper cable necessary to meet the minimum requirement for a manufacturing run.

f) Purchase of Police Patrol Vehicle. This item was removed from the Consent Agenda and discussed under New Business.

Trustee Braun, seconded by Trustee McCrary, moved to approve the foregoing items on the Consent Agenda, with the exception of Item 5(f), by omnibus vote. By roll call vote, the motion carried. Ayes: Trustees Adams, Braun, Buck, Corrigan, Kates and McCrary. Nays: None. Absent: None.

6) Stormwater.

a) Willow Road Tunnel Engineering RFQ Responses. Village Engineer Steve Saunders reviewed the Village's Request for Qualifications (RFQ) process for the Willow Road Tunnel Engineering project. The RFQ was sent in July to 19 firms; eight of these attended a pre-submittal meeting. Two submittals were received: from MWH Global, and a project team assembled by Christopher B. Burke Engineering. Since the field has been narrowed to two qualified, responding entities during the initial stage, Staff recommends proceeding with detailed scope and fee proposals, followed by interviews.

Responding to questions from the Trustees about the submittal rate for the RFQ, Mr. Saunders said he contacted the firms that did not submit qualifications. Of the 19 firms that received RFQs: (i) four submitted qualifications – one individual firm, and the other three as part of the CBBEL team; (ii) two preferred to pursue the Construction Manager role instead of the engineering work; (iii) five cited lack of experience in one area or another; (iv) and eight firms did not respond to his query. He noted that he is comfortable with the two responses received, as both teams are highly qualified.

The Council concurred with Mr. Saunders' recommendation to proceed with issuance of the Request for Proposals, and Trustee Braun, seconded by Trustee Buck, moved to authorize Village Staff to proceed with issuing a full Request for Proposal to the two firms that submitted qualifications. By roll call vote, the motion carried. Ayes: Trustees Adams, Braun, Buck, Corrigan, Kates and McCrary. Nays: None. Absent: None.

b) Winnetka Avenue Pump Station Improvements: Bid Award. Mr. Saunders reviewed the bid results for the Winnetka Avenue Pump Station, a project to increase pump capacity that was previously approved by the Council. He noted that the low bid of $1,038,300 was slightly over the engineer's original estimate, and added that the project may be completed in spring of 2014.

Trustee Braun, seconded by Trustee Buck, moved to award a contract to Boller Construction Company in the amount of $1,038,300 for the Winnetka Avenue Pump Station improvements. By roll call vote, the motion carried. Ayes: Trustees Adams, Braun, Buck, Corrigan, Kates and McCrary. Nays: None. Absent: None.

7) Ordinances and Resolutions.

a) Ordinance M-13-2013: 672 Maple Street, Zoning Variation – Introduction. Community Development Director Mike D'Onofrio reviewed this request for two zoning variations so that a legally nonconforming garage and front porch at the Subject Property could be replaced. He said the Zoning Board of Appeals voted unanimously to recommend approval of the two requested variations.

Trustee McCrary commented that it is obvious the Council should approve this request, since there is no real change occurring, no impact on neighbors, and it is a case where enforcing the Zoning Ordinance does not serve the good of the community. He added that the Village wants to make it feasible for people to upgrade an older home, rather than tear it down.

Trustee Corrigan, seconded by Trustee Buck, moved to introduce Ordinance M-13-2013. By voice vote, the motion carried.

b) Ordinance MC-5-2013: Establishing an Administrative Hearing Process – Introduction. Attorney Janega explained that the Subject Ordinance was drafted according to Council direction received at the April 16, 2013 Council Meeting. She noted that the scope of the system is limited, and does not include Zoning Ordinance violations, but rather focuses on minor violations that are enforced by the Police Department.

Attorney Janega reviewed the draft Ordinance section by section, following an outline prepared for the Council in her agenda report, and she highlighted the open policy issues.

Police Chief Kreis, responding to questions, explained that the only additional staff required by the process would be the Hearing Officer, as the Village already retains a Village Prosecutor and most of the record-keeping could be done electronically by the Police Department's contractor for parking ticket violations. He added that most of the additional work hours spent supporting the new system would be offset by hours saved from attending court hearings to enforce the violations covered under the administrative adjudication system.

Chief Kreis said the underlying motivation for the creation of an administrative adjudication system is twofold: (i) to provide individuals who are cited an efficient and independent review of Police Department actions, as contesting a ticket now costs $165; and (ii) to save the Village's Community Service officers from having to go to court.

Attorney Janega noted that police officers will still have one day each month in court, as moving violations will not be adjudicated under the new system.

Trustee Kates said the issue of ex-parte communications with the Hearing Officer was raised by a resident and he asked how other communities handle this issue.

Attorney Janega explained that the Police Chief will not have any contact with the Hearing Officer, as prosecutions are not handled by the Chief, but by the Village Prosecutor. She added that the Hearing Officer and Prosecutor are aware of their professional ethics responsibilities.

Chief Kreis, responding to a question about budgeting for the new system, said if a $40 fee is used, his best estimates show that the costs could be covered with net new fines and

hearing fees. He noted that while establishing the new system will require much work, there will be a net improvement in the Police Department's productivity in the end.

Trustee Braun suggested that the Village Manager nominate a Hearing Officer and the Council approve the selection, and he also expressed concern that the new system may be extended beyond the outlined offenses.

Attorney Janega said the offenses covered under the new system are clearly spelled out in the Ordinance and the Council would have to designate any extension of offenses, as staff has no authority to do so. She advised that the question of bias could be raised if the Council appoints the Hearing Officer as well as decides the fine and fee structure.

Manager Bahan commented that there does not seem to be a need to rewrite the appointment structure, as the contract for the Hearing Officer will be brought to the Council for its approval.

Attorney Janega said the remaining open policy issues are: (i) to define the system structure; (ii) enforcement; and (iii) judgments; and that the most expedient way to proceed is to introduce the Ordinance, meet once more to decide the open policy issues; and bring an amended Ordinance back for adoption.

Trustee Adams, seconded by Trustee Buck, moved to introduce Ordinance MC-5-2013. By voice vote, the motion carried.

8) Public Comment and Questions.

9) Old Business. None.

10) New Business.

a) Purchase of Police Patrol Vehicle. [This item was removed from the Consent Agenda for further discussion.]

Police Chief Kreis reviewed the Police Department's policy for buying police patrol vehicles, which are specially designed for police use. He said the Ford Utility Police Interceptor was chosen because it has more passenger room both for the driver and the prisoner containment area, and is an all-wheel drive vehicle.

Trustee McCrary said he was in favor of the Department buying a new vehicle, but he felt the Explorer is a risky option for police officers, as there have been past problems with rollover and tires popping off.

Chief Kreis said he shared those concerns, as the old Expeditions are large and clunky; but that this is a completely new vehicle that is police rated, has been independently tested by State police agencies, and is certified to be a safe police vehicle without the extra risks of rollover associated with a typical SUV.

Trustee Buck, seconded by Trustee Adams, moved to approve the purchase of a 2014 Ford Utility Police vehicle for $26,934. By roll call vote, the motion carried. Ayes: Trustees Adams, Braun, Buck, Corrigan, and Kates. Nays: Trustee McCrary. Absent: None.

11) Appointments. None.

12) Reports.

a) Village President. President Greable encouraged residents to attend one of the Stormwater Town Hall meetings Thursday, September 19 or Wednesday, September 25 at 6:30 PM at the Winnetka Community House.

b) Trustees.

   i) Trustee McCrary reported that the Environmental and Forestry Commission still needs a permanent Chair.

c) Attorney. No report.

d) Manager. No report.

13) Executive Session. None.

14) Adjournment. Trustee Braun, seconded by Trustee Buck, moved to adjourn the meeting. By voice vote, the motion carried. The meeting adjourned at 8:35 p.m.

_____

Recording Secretary

Agenda Item Executive Summary

Title: Warrant Lists Nos. 1815 and 1816

Presenter: Robert M. Bahan, Village Manager

Agenda Date: 10/01/2013

Consent: ☑ YES ☐ NO

☐ Ordinance
☐ Resolution
☐ Bid Authorization/Award
☐ Policy Direction
☑ Informational Only

Item History:

None.

Executive Summary:

Warrant Lists Nos. 1815 and 1816 were emailed to each Village Council member.

Recommendation / Suggested Action:

Consider approving Warrant Lists Nos. 1815 and 1816

Attachments:

None.

Agenda Item Executive Summary

Title: State Bid - Salt Purchase

Presenter: Steven M. Saunders, Director of Public Works/Village Engineer

Agenda Date: 10/01/2013

Consent: ☑ YES ☐ NO

☐ Ordinance
☐ Resolution
☑ Bid Authorization/Award
☐ Policy Direction
☐ Informational Only

Item History:

2013-14 Budget item

Executive Summary:

The Village of Winnetka participates in the purchase of rock salt through the State of Illinois bid. This joint purchasing program provides municipalities the opportunity to use joint purchasing power with the State of Illinois to obtain lower prices for rock salt. The low bid for this year's program of $51.69 per ton was submitted by Morton Salt Company of Chicago, Illinois. This year's price represents a 2% decrease from last year's price of $52.74 per ton. Historical prices varied between $30 and $40 per ton prior to the severe price spike of 2008-2009. Winter years since have seen adequate supplies and steadily decreasing pricing.

Staff estimates that a purchase of 1,200 tons will sufficiently supply the 2013-2014 winter season. 1,200 tons of rock salt would cost $62,028 at this year's unit price. The FY 2013-14 budget contains a total of $83,520 in account 10-30-540-141 for the purchase of rock salt. According to the terms of the joint purchasing contract, the Village is obligated to purchase at minimum 80% ($49,622) of its estimated amount, or may at its discretion procure at maximum 120% of the estimated amount ($74,433) at the bid price.

Recommendation / Suggested Action:

Consider the purchase of rock salt at $51.69 per ton as submitted by Morton Salt, the State of Illinois low bidder, through the State of Illinois Cooperative purchasing program contract #4017548.

Attachments:

State of Illinois Contract Award

ILLINOIS

JOINT PURCHASING REQUISITION

PLEASE RETURN TO:

Illinois Department of
Central Management Services
801 Wm. G. Stratton Building
401 S. Spring Street
Springfield, IL 62706
Fax: (217) 782-5187

_____ No Thank You, But keep on mailing list.

Opt-Out-> Our unit **does not want to participate** in the 2013-2014 Contract Re-procurement.
Notice:-> Please complete and return the Contact information below to remain on the mailing list.

Joint Purchasing #: L6090 - 6090

Date: 3/20/2013

Government Unit: VILLAGE OF WINNETKA

Mailing Address: 1390 WILLOW RD.

City / State / Zip: WINNETKA IL. 60093

County: COOK

Contact Person: MIKE MAHONEY

Telephone Number: 847 716-3263

Fax Number: 847 716-3599

Contact Email: MMAHONEY@WINNETKA.ORG

Delivery Point
<- Please provide Email Address

01710

**************** Participant, Complete Only One - Either "Table-A" or "Table-B" Below ***************

Table A: Complete this table to have the State SOLICIT BIDS for your governmental entity

ITEM DESCRIPTION	QUANTITY	UNIT MEASURE	AMOUNT BUDGETED
AASHTO M143 Road Salt or Equivalent	(Total Tonnage)	(22 – 25 Ton / Truck)	(Local Governmental Use Only)
Rock Salt, Bulk	1200	**Tons**	_____

Please note your Purchase Commitment Percentage for total tonnage quantity stated above (choose one):

OPTION 1 X 80% minimum purchase requirement/120% maximum purchase requirement
OPTION 2 _____ 100% minimum purchase requirement/120% maximum purchase requirement

Morton 109 51.69

************* Participant, Complete Only One - Either "Table-A" Above or "Table-B" Below *************

Table B: Complete this table to have the State RENEW for your governmental entity (ONLY)

ITEM DESCRIPTION	QUANTITY	UNIT MEASURE	AMOUNT BUDGETED
AASHTO M143 Road Salt or Equivalent	(Total Tonnage)	(22 – 25 Ton / Truck)	(Local Governmental Use Only)
Rock Salt, Bulk	_____	**Tons**	_____

Note: Renewal is available ONLY under Contracts PSD 4017275, 4017276, 4017277, 4017278, 4017279, or 4017280 for the CY' 2012-2013 season. Your quantity may not exceed more than a 20% increase of last season's quantity, and price cannot increase more than 5% of last season's price. Other Terms & Conditions of Contract will remain the same as last year.
Check Contract: PSD 4017275 (___) 4017276 (___) 4017277 (___) 4017278 (___) Contract 4017279(___) 4017280(___)

I certify that funds are available for the purchase of the items on this Requisition and that such items are for the sole use of this governmental unit, and not for personal use of any official or individual or re-sale.

In addition, I agree to abide by the Joint Purchasing Procedure established by the Department of Central Management Services.

Steven M. Roth
SIGNATURE OF AUTHORIZED OFFICIAL OR AGENT

ASST. DIRECTOR PUBLIC WORKS
TITLE

Printed on Recycled Paper

CMS
ILLINOIS
Pat Quinn, Governor
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES
Malcolm Weems, Director

September 1, 2013

Dear Joint Purchasing Participant:

Subject: 2013-2014 Rock Salt, Bulk Contract Information

In completing the 2013 – 2014 Rock Salt season contract re-procurement, the State of Illinois did not encounter the types of supply-related issues experienced in previous seasons. We made every effort to secure Road Salt at the best available price for participants in our contract re-procurement, and gladly report that all locations across the State were able to have their supply needs met through the State's procurement efforts.

We again recommend that participating agencies and governmental entities examine their application rates and roadway priorities in order to minimize next season's maintenance program cost while also ensuring the safety of the public.

Enclosed is a copy of the requisition you submitted to us for the purchase of rock salt. The information from the requisition, including purchase commitment, can be used to submit your requirements to this year's contract vendor:

Contract: PSD 4017548
Morton Salt Inc.
123 N. Wacker Drive
Chicago, IL 60606
Order Phone (888) 800-8905

Term: September 2013 – August 2014
FEIN Number: 27-3146174

Contact: Government Services

Your unit is **Contract Line No:** _109_ / **Price per ton** F.O.B. destination, is $. 51.69
Emergency pickup of salt from vendor's warehouse is not made available in this contract.

The additional price per ton to have rock salt delivered in trucks equipped with coal/grain chute openings in the tailgate to permit controlled off-loading of rock salt onto conveyors is **$ 6.00** per ton. Contact vendor for availability in your area and scheduling deliveries.

You are responsible for issuing your own purchase order document to the vendor. Orders may be placed with the vendor via telephone, with a written or fax confirmation to follow immediately. ***You are strongly encouraged to order early and to store as much salt as possible in order to help prevent potential salt shortages this winter.*** Also, you need to make every effort to place orders in full truckload lots (22-25 tons).

801 Stratton Office Building, 401 South Spring Street, Springfield, IL 62706
Printed on Recycled Paper

Deliveries of rock salt containing any foreign material such as mud, rocks, grader teeth, wood, tarpaulins, etc., may be rejected at the delivery site. In the event that any foreign material is discovered in dumped deliveries, the salt and foreign matter may be reloaded onto the cartage hauler's truck by the local governmental unit and returned for credit, or the vendor shall immediately ship a specification compliant load of replacement salt, or issue a refund to the governmental unit consistent with the contract price.

In December 2013, the contract vendor shall have in place stockpile(s) located in or near Illinois covering the tonnage awarded for the northern regions of the State, and in January of 2014 the contract vendor shall have in place stockpile(s) in or near to Illinois covering the total tonnage awarded for all regions of the State. At our discretion, we will inspect the stockpiles to ensure that these stockpiles are in sufficient quantities, and that vendor commitments to the stockpiles are with the users of this contract.

Enhanced Rock Salt 2013 - 2014 season availability:

The Department of Central Management Services surveyed vendors for availability of an enhanced rock salt option in the invitation for bid, and availability was not provided for by this vendor in this season's procurement process.

It is hoped that this information will be beneficial to you in the utilization of this contract. If you have any further questions concerning the rock salt contract, please feel free to contact me at (217) 782-8091.

Sincerely,

Wayne Ilsley, CPPB, Buyer
Bureau of Strategic Sourcing

GovSalt.doc

801 Stratton Office Building, 401 South Spring Street, Springfield, IL 62706
Printed on Recycled Paper

Agenda Item Executive Summary

Title: Ordinance M-13-2013: 672 Maple Street, Zoning Variation

Presenter: Michael D'Onofrio, Director of Community Development

Agenda Date: 10/01/2013

Consent: ☑ YES ☐ NO

☑ Ordinance
☐ Resolution
☐ Bid Authorization/Award
☐ Policy Direction
☐ Informational Only

Item History:

Ordinance M-13-2013 was introduced at the September 17, 2013 Village Council meeting. (See September 17, 2013 Agenda, pp. 52-92).

Executive Summary:

Ordinance M-13-2013 grants variations from Section 17.30.050 [Front and Corner Yard Setbacks] and Section 17.30.110 [Garages] of the Winnetka Zoning Ordinance to permit an addition to the existing nonconforming screened porch that will result in a corner (front) yard setback of 31.33 ft. from Park Ave., whereas a minimum of 41.12 ft. is required, a variation of 9.79 ft. (23.81%) and the replacement of the existing nonconforming detached garage that will result in a south side yard setback of 5.5 ft., whereas a minimum of 12 ft. is required, a variation of 6.5 ft. (54.17%).

The applicants, Tor and Jennifer Solberg, are requesting the corner (front) yard setback variation to allow an addition and work beyond ordinary repair and maintenance to the existing nonconforming screened porch, which encroaches the required setback from Park Avenue. The proposed addition would "square-off" the corner of the polygonal screened porch, adding 70.45 s.f. The screened porch currently provides a corner (front) yard setback of 31.33 ft. from Park Avenue. The proposed porch will provide the same setback and not encroach any further than the existing nonconforming porch.

The second variation request is to replace the existing 415 s.f. detached garage and 110 s.f. garage canopy with a new 459 s.f. detached garage and 107 s.f. open porch on the garage. The proposed garage would provide a south side yard setback of 5.5 ft., whereas a minimum of 12 ft. is required. The existing garage provides a south side yard setback of 5.54 ft. and is therefore considered nonconforming.

At the August 12, 2013 Zoning Board of Appeals (ZBA) meeting, the five ZBA members present voted 5 to 0 to recommend approval of the zoning variations.

Recommendation / Suggested Action:

Consider adoption of Ordinance M-13-2013, granting variations for the corner (front) yard setback to permit the replacement and expansion of the nonconforming screened porch and side yard setback to replace the nonconforming detached garage, which requires the concurrence of a majority of the Council.

Attachments:

-Agenda Report
-Attachment A: Zoning Matrix
-Attachment B: Ordinance M-13-2013
-Attachment C: GIS Map

AGENDA REPORT

TO: Village Council

PREPARED BY: Michael D'Onofrio, Director of Community Development

SUBJECT: 672 Maple St., Ord. M-13-2013
Variations:
(1) Front and Corner Yard Setbacks
(2) Garages

DATE: September 25, 2013

REF: September 17, 2013 Council Mtg. pp. 52-92

Ordinance M-13-2013 grants variations from Section 17.30.050 [Front and Corner Yard Setbacks] and Section 17.30.110 [Garages] of the Winnetka Zoning Ordinance to permit an addition to the existing nonconforming screened porch that will result in a corner (front) yard setback of 31.33 ft. from Park Ave., whereas a minimum of 41.12 ft. is required, a variation of 9.79 ft. (23.81%) and the replacement of the existing nonconforming detached garage that will result in a south side yard setback of 5.5 ft., whereas a minimum of 12 ft. is required, a variation of 6.5 ft. (54.17%).

The lot is located at the southwest corner of Maple St. and Park Ave. with additional Park Ave. street frontage along the northwest property line. Therefore, the lot has three street frontages, requiring three front yard setbacks. The corner (front) yard setback is measured from Park Ave. along the north property line. Front yard setbacks of 50 ft. are required from Maple St. (east property line) and Park Ave. along the northwest property line. The corner (front) yard setback is less than 50 ft. because the zoning ordinance limits the corner setback based on the width of the lot. Pursuant to Section 17.30.050.C.2.a. of the zoning ordinance, the width of the buildable area, as measured from the minimum required side yard, shall not be reduced to less than 60% of the average lot width. In this case, the average lot width is 132.79 ft. and the minimum required side yard setback is 12 ft., which leads to the required corner setback of 41.12 ft.

The applicants, Tor and Jennifer Solberg, are requesting the corner (front) yard setback variation to allow an addition and work beyond ordinary repair and maintenance to the existing nonconforming screened porch, which encroaches the required setback from Park Ave. The proposed addition would “square-off” the corner of the polygonal screened porch, adding 70.45 s.f. The screened porch currently provides a corner (front) yard setback of 31.33 ft. from Park Ave. The proposed porch will provide the same setback and not encroach any further than the existing nonconforming porch.

The second variation request is to replace the existing 415 s.f. detached garage and 110 s.f. garage canopy with a new 459 s.f. detached garage and 107 s.f. open porch on the garage. The proposed garage would provide a south side yard setback of 5.5 ft., whereas a minimum of 12 ft. is

required. The existing garage provides a south side yard setback of 5.54 ft. and is therefore considered nonconforming.

The property is located in the R-2 Single Family Residential District. The residence was built circa 1892. Subsequent building permits were issued in 1931 to construct the existing detached garage, in 1987 to construct an addition and make alterations to the residence, in 1990 to finish the third floor, and in 2007 to build an addition and renovate the residence. The petitioners purchased the property in 2006.

There is one previous zoning case for this property. An ordinance was approved by the Village Council on June 19, 1973 to allow an addition to the existing porch within the required corner (front) yard setback. The approved addition was never built.

Recommendation of Advisory Board

At the ZBA meeting August 12, 2013 the five members present voted 5 to 0 to recommend approval of the zoning variations.

Adoption of the ordinance requires the concurrence of a majority of the Council.

Recommendation

Consider adoption of Ordinance M-13-2013, granting variations for the corner (front) yard setback to permit the replacement and expansion of the nonconforming screened porch and side yard setback to replace the nonconforming detached garage.

Attachments
Attachment A: Zoning Matrix
Attachment B: Ordinance M-13-2013
Attachment C: GIS Map

Attachment A

ZONING MATRIX

ADDRESS: 672 Maple St.
CASE NO: 13-11-V2
ZONING: R-2

ITEM	REQUIREMENT	EXISTING	PROPOSED	TOTAL	STATUS
Min. Lot Size	25,200 SF	36,651 SF	N/A	N/A	OK
Min. Average Lot Width	115 FT	132.79 FT	N/A	N/A	OK
Max. Roofed Lot Coverage	9,162.75 SF (1)	4,827.6 SF	115.79 SF	4,943.39 SF	OK
Max. Gross Floor Area	10,244.73 SF (1)	6,962.8 SF	114.81 SF	7,077.61 SF	OK
Max. Impermeable Lot Coverage	18,325.5 SF (1)	9,153.3 SF	115.79 SF	9,269.09 SF	OK
Min. Front Yard (East)	50 FT	45.98 FT	N/A	N/A	EXISTING NONCONFORMING
Min. Corner (Front) Yard (North)	41.12 FT	31.33 FT	31.33 FT	N/A	**9.79 FT (23.81%) VARIATION**
Min. Third Street (Northwest)	50 FT	(+) 50 FT	(+) 50 FT	N/A	OK
Min. Side Yard (South)	12 FT	5.54 FT (2)	5.5 FT (2)	N/A	**6.5 FT (54.17%) VARIATION**

NOTES:

(1) Based on lot area of 36,651 SF

(2) Setback to detached garage.

ORDINANCE NO. M-13-2013

AN ORDINANCE GRANTING A VARIATION IN THE APPLICATION OF THE ZONING ORDINANCE OF THE VILLAGE OF WINNETKA, COOK COUNTY, ILLINOIS (672 Maple)

WHEREAS, the Village of Winnetka is a home rule municipality in accordance with Article VII, Section 6 of the Constitution of the State of Illinois of 1970, pursuant to which it has the authority, except as limited by said Section 6 of Article VII, to exercise any power and perform any function pertaining to the government and affairs of the Village; and

WHEREAS, the Council of the Village of Winnetka ("Village Council") finds that establishing standards for the use and development of lands and buildings within the Village and establishing and applying criteria for variations from those standards are matters pertaining to the affairs of the Village; and

WHEREAS, the property commonly known as 672 Maple Street, Winnetka, Illinois ("Subject Property"), is legally described as follows:

> Lot 2 in Block 9 in Park Addition to Winnetka in the Southwest Quarter of Section 16, Township 42 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois; and

WHEREAS, the Subject Property is located in the R-2 Zoning District provided in Chapter 17.24 of the Winnetka Zoning Ordinance, Title 17 of the Winnetka Village Code; and

WHEREAS, on July 9, 2013, the owner of the Subject Property filed an application for the following variations from requirements of the Lot, Space, Bulk and Yard Regulations for Single Family Residential Districts established by Chapter 17.30 of the Zoning Ordinance: (a) a variation from the Minimum Corner Setback requirement of Section 17.30.050(B), to permit a corner yard setback of 31.33 feet from the Subject Property's Park Avenue frontage, rather than the minimum required corner setback of 41.12 feet, a variation of 9.79 feet (23.82%), to allow the existing, nonconforming screened porch at the northwest corner of the residence to be replaced; and (b) a variation from the garage setback requirements of Section 17.30.110(E) to permit a south side yard setback of 5.5 feet, rather than the required minimum of 12 feet, a variation of 6.5 feet (54.17%), to allow the replacement of the existing, nonconforming garage; and

WHEREAS, on August 12, 2013, on due notice thereof, the Zoning Board of Appeals conducted a public hearing on the requested variations and, by the unanimous vote of the five members then present, has reported to the Council recommending that the requested variations be granted; and

WHEREAS, there are practical difficulties and particular hardships associated with carrying out the strict application of the Zoning Ordinance with respect to the Subject Property in that: (a) the Subject Property is an irregularly shaped corner lot, located at the southwest corner of Maple Street and Park Avenue; (b) because Park Avenue curves due northwest and then due southwest, it has the effect of creating a third street frontage along the Subject Property's northwest lot line, which imposes an additional 50-foot front setback requirement; (c) the Subject Property is improved with a single family home that was built in 1892, before the enactment of the Zoning

Ordinance and the imposition of setback requirements; (d) the portion of the Subject Property that functions as the rear yard is subject to a 12-foot side yard setback because it adjoins the side lot line of the property at 718 Park Avenue; (e) although the Subject Property has an area of 36,651 square feet, due to the Subject Property's irregular shape, curving northern property line, three street frontages and two side yards, as well as the absence of a true rear yard, the Subject Property's buildable area is severely limited in both size and shape, and the Subject Property does not have a rear quarter in which to build a garage; and (f) constructing a new garage in a conforming location would require moving the garage further back on the Subject Property, which would shift the garage toward the adjoining property to the west, making the garage more visible and reducing the perception of open space in that neighboring property's rear yard; and

WHEREAS, the Subject Property cannot yield a reasonable return if permitted to be used only under the conditions allowed by the Zoning Ordinance, in that: (a) both the existing garage and the existing screened porch are in disrepair and need replacing; (b) the nonconformities cannot be cured without eliminating the screened porch and garage entirely; (c) constructing the screened porch in a conforming location would decrease its functionality and usability; (d) due to the proximity of the existing garage to the house, constructing the garage in a conforming location would require not only shifting the garage toward the center of the Subject Property, but also setting it further back from the front of the property to extend the driveway to allow it to curve around the corner of house; and (e) constructing a new garage in a conforming location as described, would result in the removal of two mature trees and would reduce the amount of useable green space on the Subject Property, obscuring the view of the Subject Property's open space from the wrap-around porch at the rear of the house, and placing the garage wall in close proximity to the stone and brick patio behind the house; and

WHEREAS, the requested variations will not alter the essential character of the neighborhood, because (a) the proposed new garage and screened porch will maintain the established configuration of the Subject Property and will protect two mature trees; and (b) the architectural features of the proposed porch and garage will be consistent with the design of the house and will improve the appearance of the house as seen from the street; and

WHEREAS, the requested variations will not impair an adequate supply of light and air because the garage and screened porch are proposed to be rebuilt in the same locations as before and the Subject Property will comply with all height and bulk limitations; and

WHEREAS, the requested variations will not increase the hazard from fire and other dangers to the Subject Property, as the proposed construction will comply with all applicable building and fire protection codes; and

WHEREAS, the requested variations will not diminish the taxable value of land and buildings throughout the Village, and the taxable value of the Subject Property may be increased because of the proposed improvements; and

WHEREAS, the proposed construction will not contribute to congestion on the public streets, as the property will continue to be used for single family residential purposes; and

WHEREAS, there is no evidence that the requested variations will otherwise impair the public health, safety, comfort, morals, and welfare of the inhabitants of the Village; and

WHEREAS, the requested variations are in harmony with the general purpose and intent of the Winnetka Zoning Ordinance, in that they allow the renovation, restoration and rehabilitation of a

structurally sound existing building while maintaining the existing scale and appearance of the community and protecting established trees and landscaping.

WHEREAS, this Ordinance has been placed on the Village Council's agenda and made available for public inspection at Village Hall and on the Village's web site, in accordance with Sections 2.04.040 and 2.16.040 of the Winnetka Village Code and applicable law.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Winnetka, as follows:

SECTION 1: The foregoing recitals are hereby incorporated as the findings of the Council of the Village of Winnetka, as if fully set forth herein.

SECTION 2: Subject to the requirements of Sections 3 and 4, below, **t**he Subject Property, commonly known as 672 Maple and located in the R-2 Single-Family Residential District provided in Chapter 17.24 of the Winnetka Zoning Ordinance, Title 17 of the Winnetka Village Code is hereby granted the following variations from requirements of the Lot, Space, Bulk and Yard Regulations for Single Family Residential Districts established by Chapter 17.30 of the Zoning Ordinance: (a) a variation from the Minimum Corner Setback requirement of Section 17.30.050(B), to permit a corner yard setback of 31.33 feet from the Subject Property's Park Avenue frontage, rather than the minimum required corner setback of 41.12 feet, a variation of 9.79 feet (23.82%), to allow the existing, nonconforming screened porch at the northwest corner of the residence to be replaced; and (b) a variation from the garage setback requirements of Section 17.30.110(E) to permit a south side yard setback of 5.5 feet, rather than the required minimum of 12 feet, a variation of 6.5 feet (54.17%), to allow the construction of a new replacement of the existing, nonconforming garage with a new garage designed to be compatible with the architecture of the residence.

SECTION 3: The screened porch and garage shall be constructed in accordance with the plans and elevations submitted with the application for variations.

SECTION 4: The variations granted herein are conditioned upon the commencement of the proposed construction within 12 months after the effective date of this Ordinance.

[Remainder of this page intentionally left blank.]

SECTION 5: This Ordinance is passed by the Council of the Village of Winnetka in the exercise of its home rule powers pursuant to Section 6 of Article VII of the Illinois Constitution of 1970.

SECTION 6: This Ordinance shall take effect immediately upon its passage, approval and posting as provided by law.

PASSED this ___ day of _____ 2013, pursuant to the following roll call vote:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED this ___ day of _____ 2013.

Signed:

_____

Village President

Countersigned:

_____

Village Clerk

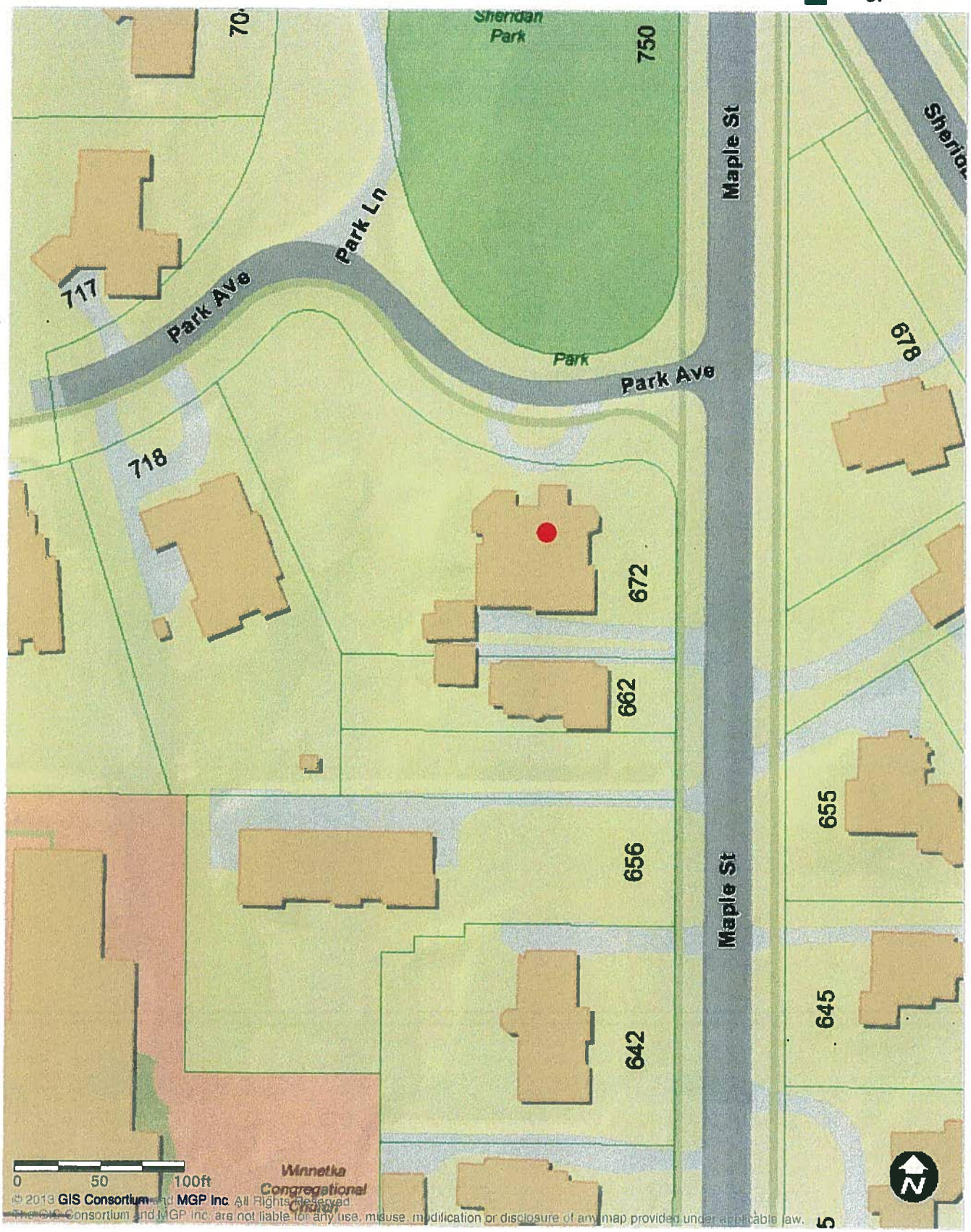
Published by authority of the President and Board of Trustees of the Village of Winnetka, Illinois, this ___ day of _____ 2013.

Introduced: September 17, 2013

Passed and Approved:

GIS consortium MapOffice™ *672 Maple St.*

Created By mgp inc



Agenda Item Executive Summary

Title: Resolution R-29-2013: Second Amendment to New Cingular Cell Site Agreement at 410 Green Bay Road

Presenter: Brian Keys, Director of Water & Electric

Agenda Date: 09/17/2013

Consent: ☑ YES ☐ NO

☐ Ordinance
☑ Resolution
☐ Bid Authorization/Award
☐ Policy Direction
☐ Informational Only

Item History:

August 20, 1996 Resolution R-1345-96 - License Agreement with AT&T Wireless PCS, Inc.: AT&T constructs new police monopole tower at the Police Station; Village grants license for AT&T to use tower and an internal room for a cellular communications site; annual fee of $24,000; annual increase based on CPI+1%.

October 4, 2011 Resolution R-29-2011 - First Amendment: Allows New Cingular Wireless PCS, LLC, successor to AT&T, to upgrade equipment; annual fee increased to $52,500, subject to 4% increase annually.

Executive Summary:

New Cingular Wireless is seeking a second amendment to the license agreement to allow further changes to its cellular equipment located at the Public Safety Building, 410 Green Bay Road, in order to increase the speed and capacity of their mobile telephone network. Village staff and New Cingular Wireless have tentatively agreed to the terms for the Second Amendment. Resolution R-29-2013 approves the Second Amendment substantially in the form presented in Exhibit A to the Resolution.

The proposed modifications include replacing three antennas on the Public Safety Building monopole, and adding new equipment in the interior space already licensed to New Cingular. No changes are planned for the coaxial cable feeding the antennas, and there is no change to the propagation of the signal in this geographic area. The new antennas, which measure 51”x12”x7”, are 21 inches shorter and one inch deeper than the existing antennas, which measure 72”x12”x6”. The width of the antennas will be the same, and the new antennas will be painted the same color as the existing ones. The specific equipment is defined in the technical details submitted to the Village, which are incorporated by reference in the proposed Second Amendment.

The proposed Second Amendment would increase the current annual lease payment of $56,784 by $5,500 this year, and the new total will then be subject to the 4% annual escalation.

Recommendation / Suggested Action:

Consider adopting Resolution R-29-2013, titled “A Resolution Authorizing the Second Amendment to the 1996 License Agreement with New Cingular Wireless PCS, for the Use of the Public Safety Building Monopole.”

Attachments:

- Agenda Report
- R-29-2013 - A Resolution Authorizing the Second Amendment to the 1996 License Agreement with New Cingular Wireless PCS, for the Use of the Public Safety Building Monopole.
- R-29-2013 - Exhibit A - Second Amendment to 1996 License Agreement between the Village of Winnetka and New Cingular Wireless.

AGENDA REPORT

SUBJECT: **Resolution R-29-2013 Authorizing the Second Amendment to the 1996 License Agreement with New Cingular Wireless PCS, for the use of the Public Safety Building Monopole**

PREPARED BY: Brian Keys, Director of Water & Electric
Katherine S. Janega, Village Attorney

REF. October 4, 2011 Village Council Meeting, pp. 17-36

DATE: September 25, 2013

On August 20, 1996, the Village adopted Resolution R-1345-96, a license agreement with AT&T Wireless PCS, Inc., to construct a monopole tower at the Police Station and to lease antenna space on the tower and an internal room from the Village for a cellular communications site. In 2005, the wireless company changed its name to New Cingular Wireless PCS, LLC. In 2011, New Cingular requested changes to the existing cellular site to increase the speed and capacity of their mobile telephone network. The Village Council adopted Resolution R-29-2011, authorizing the first amendment to the agreement for the proposed equipment changes.

New Cingular Wireless is now requesting to make additional changes to the existing cellular equipment located at 410 Green Bay Road. The proposed changes are required to increase the speed and capacity of their mobile telephone network. There is no change to the propagation of the signal in this geographic area.

The proposed modifications include replacement of three existing antennas and additional carrier equipment within the leased room of the Public Safety Building. No changes are planned for the coaxial cable feeding the antennas. The proposed antennas are 51”x12”x7” replacing the existing 72”x12”x6” antennas. The replacement antennas are twenty-one inches shorter in height, equivalent in width, but one inch deeper than the existing antennas. The new antennas will be painted the same color as the existing antennas.

Village staff has reviewed the proposed construction plan and confirmed that the new facilities will not impact the Police Department operations. As part of the submittal, a structural engineer has also evaluated the structural impact of the modified installation. In addition, the Community Development Department has reviewed the proposed change for zoning compliance and has determined that the proposed replacement of antennas does not present a significant, material alteration to the existing facilities and thus does not require a special use permit or other zoning relief in addition to the license amendment.

Village staff and New Cingular Wireless have tentatively agreed to the terms for the installation of the new antennas and carrier equipment, including increased compensation to the Village. The annual license fee for this site is currently $56,784, which escalates 4% annually. New Cingular Wireless has agreed to pay the Village an additional $5,500 in 2013. That amount will then be added to the current annual amount, to become part of the base fee that is subject to the 4% annual increase.

The attached Resolution R-29-2013 approves the Second Amendment to the 1996 License Agreement, substantially in the form attached to the Resolution as Exhibit A.

Recommendation:

Consider adopting Resolution R-29-2013, titled "A Resolution Authorizing the Second Amendment to the 1996 License Agreement with New Cingular Wireless PCS, for the Use of the Public Safety Building Monopole."

Attachments:

R-29-2013	A Resolution Authorizing the Second Amendment to the 1996 License Agreement with New Cingular Wireless PCS for the Use of the Public Safety Building Monopole
R-29-2013	**Exhibit A -** Second Amendment to 1996 License Agreement between the Village of Winnetka and New Cingular Wireless

RESOLUTION NO. R-29-2013

A RESOLUTION
AUTHORIZING THE SECOND AMENDMENT
TO THE 1996 LICENSE AGREEMENT WITH NEW CINGULAR WIRELESS PCS
FOR THE USE OF THE PUBLIC SAFETY BUILDING MONOPOLE

WHEREAS, the Village of Winnetka, Cook County, Illinois (the "Village") is a home rule municipal corporation as provided in Article VII, Section 6 of the 1970 Constitution of the State of Illinois and, pursuant to said constitutional authority, may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and

WHEREAS, on August 20, 1996, the Village adopted Resolution R-1345-96, authorizing an agreement with AT&T Wireless PCS, Inc. for the construction of a monopole tower at the Public Safety Building located at 410 Green Bay Road, and for the use of the monopole and an interior room as a wireless telecommunications antenna site ("License Agreement"); and

WHEREAS, AT&T Wireless PCS, Inc., now operates as New Cingular Wireless PCS, LLC ("New Cingular"), an Illinois limited liability corporation; and

WHEREAS, on October 4, 2011, the Council of the Village of Winnetka ("Village Council") adopted Resolution R-29-2011, authorizing an amendment to the License Agreement to allow New Cingular to upgrade its equipment ("First Amendment") in return for additional compensation to the Village;

WHEREAS, New Cingular has requested approval of a second amendment to the License Agreement, to allow it to replace the existing antennas and related equipment located in the Public Safety Building in order to increase the speed and capacity of its mobile telephone network; and

WHEREAS, the appearance of the proposed replacement antennas will be comparable in size to the existing antennas, and will be painted the same color, so there will be minimal, if any, visible impact from the change; and

WHEREAS, the review of the proposed construction plans by Village staff and a structural engineer confirms that the proposed reconfiguration and replacement of the existing facilities will not impact the operations of the Police Department, have a structural impact on the monopole, or be a significant, material alteration that would require a special use permit or other zoning relief; and

WHEREAS, Village staff and New Cingular have tentatively agreed to the terms for the installation of the new antennas and equipment, including increasing the license fee payable to the Village, with an additional payment of $5,500.00 to the Village in 2013, which will then become part of the total license fee and will be subject to the 4% annual escalation authorized by the First Agreement; and

WHEREAS, pursuant to the negotiations between Village staff and New Cingular, a draft Second Amendment to the License Agreement has been prepared for consideration by the

Village Council, a copy of which is attached hereto as Exhibit A and is incorporated herein by reference, as if set fully set forth herein; and

WHEREAS, the Village Council finds that entering into license agreements for the extended use of Village property is a matter pertaining to the affairs of the Village and that approval of the Second Amendment to the License Agreement, substantially in the form attached, is in the best interests of the Village's health, safety and general welfare.

NOW, THEREFORE, be it resolved by the Council of the Village of Winnetka as follows:

SECTION 1: The Village Council hereby adopts by reference the foregoing recitals as its findings of fact as if fully set forth herein.

SECTION 2: The Village Council hereby approves the "First Amendment to the 1996 Cellular Antenna Site License Agreement between the Village of Winnetka and New Cingular Wireless PCS," ("First Amendment"), substantially in the form attached hereto as Exhibit A.

SECTION 3: Subject to approval of the final form of the First Amendment by the Village Attorney, the Village President and the Village Clerk are hereby authorized and directed to execute and seal the License Agreement, and to take all such other actions as may be necessary to execute the agreement and effectuate its terms.

SECTION 4: This Resolution is adopted by the Council of the Village of Winnetka in the exercise of its home rule powers pursuant to Section 6 of Article VII of the Illinois Constitution of 1970.

SECTION 5: This Resolution shall take effect immediately upon its adoption.

ADOPTED this ___ day of _____, 2013, pursuant to the following roll call vote:

AYES: _____

NAYS: _____

ABSENT: _____

Signed:

_____
Village President

Countersigned:

_____
Village Clerk

Market: Central Region
Cell Site Number: IL1340
Cell Site Name: Winnetka Fire Station
Fixed Asset Number: 10095256

SECOND AMENDMENT TO 1996 LICENSE AGREEMENT BETWEEN THE VILLAGE OF WINNETKA AND NEW CINGULAR WIRELESS

THIS SECOND AMENDMENT TO WINNETKA LICENSE AGREEMENT ("**Second Amendment**"), dated as of the latter of the signature dates below, is by and between the Village of Winnetka, an Illinois home rule municipality, having a mailing address of 510 Green Bay Road, Winnetka, IL 60093 (hereinafter referred to as "**Licensor**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Dr., 13-F West Tower, Atlanta, GA 30324 ("**Licensee**").

WHEREAS, Licensor and Licensee entered into a Winnetka License Agreement dated August 20, 1996 ("1996 Agreement"), and amended by the First Amendment dated November 1, 2011 ("First Amendment"), whereby Licensor leased to Licensee certain Premises, therein described, that are a portion of the Property located at 410 Green Bay Road, Winnetka, Illinois 60093 (jointly, "**Agreement**"); and

WHEREAS, Licensor and Licensee desire to further amend the Agreement to allow for the installation of additional antennas, associated cables and other communications instruments; and

WHEREAS, Licensor and Licensee desire to adjust the License Fees in conjunction with the modifications to the Agreement contained herein; and

WHEREAS, Licensor and Licensee, in their mutual interest, wish to amend the Agreement as set forth below accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee agree as follows:

1. **Licensee Facilities.** The definition of Licensee Facilities in Section 1 of the License Agreement shall be amended to include the attached Exhibit 1A, as if fully set forth therein. Licensor agrees to grant Licensee the right to replace the three existing antennas on the Existing Tower with three new antennas, each measuring 51''x12''x7'', all as depicted on attached Exhibit 1A, subject to the following conditions:

(a) Licensee shall obtain all necessary permits required pursuant to Title 15 of the Winnetka Village Code, and shall submit final construction plans for review and approval, and for issuance of such permits;

(b) the antennas shall be painted the same color as the existing antennas;

(c) there shall be no additional coaxial cable feeding the antennas; and

(d) the antennas and other equipment permitted by Exhibit B of the 1996 Agreement and Exhibit B-1 of the First Amendment shall be removed and shall not be replaced except by the antennas and related equipment depicted in Exhibit 1A.

2. **License Fee.** Subsection (a) of Section 6, "License Fees," of the Agreement is hereby deleted and replaced with the following:

> (a) On October 1, 2013, or on the date this Second Amendment is executed, whichever is earlier, Licensee shall pay the Licensor Five Thousand Five Hundred Dollars ($5,500.00) ("Additional Fee"), which shall be in addition to the License Fee that was due and payable on the 2013 anniversary of the "Commencement Date" ("2013 License Payment"). The sum of the 2013 License Payment and the Additional Fee shall be the "License Fee," which License Fee shall be subject to further adjustments as provided in the following subsection (b).

3. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Agreement and this Second Amendment, the terms of this Second Amendment shall control. Except as expressly set forth in this Amendment, the Agreement otherwise is unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this Second Amendment.

4. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

5. **Licensee Representations.** Licensee represents that it has taken all steps necessary under law to enter into and be bound by this Second Amendment, and to authorize and empower Licensee's Real Estate & Construction Manager-IL/WI to sign this Second Amendment on Licensee's Behalf.

[Signatures on following page]

(The rest of this page is intentionally blank)

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Amendment on the dates set forth below.

"**LICENSOR**"
Village of Winnetka

By:_____
Name: _____
Title: _____
Date: _____, 2013

"**LICENSEE**"
New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____
Name: _____
Title: _____
Date: _____, 2013

LICENSEE ACKNOWLEDGEMENT

STATE OF _____)
) ss:
COUNTY OF _____)

On the ____ day of _____ in the year 2013 before me, the undersigned, a notary public in and for said state, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that (s)he is authorized to execute the instrument and acknowledged it as the Area Manager of Real Estate and Construction of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument..

_____
Notary Public: _____
My Commission Expires: _____

LICENSOR ACKNOWLEDGEMENT

INDIVIDUAL ACKNOWLEDGEMENT

STATE OF _____)
) ss:
COUNTY OF _____)

BE IT REMEMBERED, that on this _____ day of _____, 2013 before me, the subscriber, a person authorized to take oaths in the State of _____, personally appeared _____ who, being duly sworn on his/her oath, deposed and made proof to my satisfaction that he/she is the person(s) named in the within instrument; and I, having first made known to him/her the contents thereof, he/she did acknowledge that he/she signed, sealed and delivered the same as his/her/their voluntary act and deed for the purposes therein contained.

_____
Notary Public:_____
My Commission Expires: _____

EXHIBIT 1A

See attached exhibit comprised of 9 pages, last revised 6/6/2013, prepared by Apex Engineers, Inc.

NOTE: To avoid the disclosure of proprietary technical and engineering detail, the 9-page exhibit has been intentionally omitted from these agenda materials.

Notes:

1. UPON ISSUANCE OF ALL APPLICABLE PERMITS, THIS EXHIBIT MAY BE REPLACED BY THE FINAL CONSTRUCTION DRAWINGS, AS APPROVED BY THE VILLAGE FOR PERMIT.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.

Agenda Item Executive Summary

Title: 2013 Winnetka Preservation Awards

Presenter: Louise Holland, Chairperson of Landmark Preservation Commission

Agenda Date: 10/01/2013

Consent: ☐ YES ☑ NO

☐ Ordinance
☐ Resolution
☐ Bid Authorization/Award
☐ Policy Direction
☑ Informational Only

Item History:

None.

Executive Summary:

Every spring the Landmark Preservation Commission accepts nominations for the annual Preservation Awards program and conducts an award presentation at a Village Council meeting in the fall. The Preservation Awards program seeks to honor those construction projects in the village that have helped preserve the history and character of the village. There are three award categories: restoration, rehabilitation, and new construction. This year all three award winners are rehabilitation projects. Private, commercial, and public properties are eligible. Nominations may be submitted by anyone, but do require the property owner's consent. To qualify, the project must have been completed within the past five (5) years. Only exterior projects are eligible.

Recommendation / Suggested Action:

Informational only. No action to be taken.

Attachments:

1) Agenda Report

AGENDA REPORT

TO: Village Council

PREPARED BY: Ann Klaassen, Planning Assistant

DATE: September 19, 2013

SUBJECT: 2013 Winnetka Preservation Awards

Every spring the Landmark Preservation Commission accepts nominations for the annual Preservation Awards program and conducts an award presentation at a Village Council meeting in the fall. The Preservation Awards program seeks to honor those construction projects in the village that have helped preserve the history and character of the village. There are three award categories: restoration, rehabilitation, and new construction. This year all three award winners are rehabilitation projects. Private, commercial, and public properties are eligible. Nominations may be submitted by anyone, but do require the property owner's consent. To qualify, the project must have been completed within the past five (5) years. Only exterior projects are eligible.

This year the following three properties are to be presented with awards:

661 Blackthorn Road (Rehabilitation)
Owners: Tom and Georgie Geraghty
Architect: Steven Munson, Munson Architects, Highland Park
General Contractor: Scott Rosett, Scott Lyon & Co., Glencoe

577 Cherry Street (Rehabilitation)
Owners: John and Tory Raith
Architect: Mark Ver Bryck, Ver Bryck Architects, Northfield

823 Humboldt Avenue (Rehabilitation)
Owners: Mark and Melissa Iserloth
Architect: Elissa Morgante, Morgante Wilson Architects, Evanston

<u>Recommendation:</u>

Informational only. No action to be taken.

Agenda Item Executive Summary

Title: Stormwater Utility Implementation – Policy Issue Workshop

Presenter: Steven M. Saunders, Director of Public Works/Village Engineer

Agenda Date: 10/01/2013

Consent: ☐ YES ☑ NO

☐ Ordinance
☐ Resolution
☐ Bid Authorization/Award
☑ Policy Direction
☐ Informational Only

Item History:

May 14, 2013 Study Session
May 21, 2013 Council Meeting

Executive Summary:

At the May 21, 2013 Council Meeting, the Council formally endorsed a Stormwater Improvement Program containing several improvement projects, at an estimated cost of $41.4 million. The program is proposed to be funded with a combination of General Fund reserves and bond funding. Repayment of the bonds is proposed to be accomplished via a stormwater utility.

The Council engaged Municipal & Financial Services Group (MFSG) (which recently completed the Village's Stormwater Utility Feasibility Study) to provide Implementation Assistance, including development of tax-exempt property information packets, and creating an online stormwater bill calculator, which would allow people to estimate the stormwater fee for their particular parcel. The assistance also involves the development of the stormwater database billing file.

The Village will also need to adopt policies and procedures for the stormwater utility, many of which will ultimately be reflected in the utility ordinance. The stormwater feasibility study touched on some of the major policies issues that must be addressed by the Village if a stormwater utility is implemented. These include a billing methodology, appeals process and credits/incentives program. The Council informally provided policy guidance on these issues at the conclusion of the feasibility study. However each issue requires further review prior to formal adoption. MFSG has prepared a report identifying the key policy issues that need to be addressed, and which require policy guidance from the Village Council. This report follows as Attachment #1. MFSG's report presents the policy issues to the Village Council, along with specific recommendations based on their industry expertise, and evaluation of how other stormwater utilities in Illinois have addressed such issues. Many of these policies and procedures impact the billing file development, so these items need to be addressed early on in order to complete the online bill calculator.

MFSG's report outlines in detail the key policy issues which must be addressed to allow for implementation of a stormwater fee within the Village.

Recommendation / Suggested Action:

Review MFSG's report and recommendations and provide policy direction on each of the identified issues.

Attachments:

1. Agenda Report
2. MFSG Policy Issue Report

Agenda Report

Subject: **Stormwater Utility Implementation – Policy Issue Workshop**

Prepared By: Steven M. Saunders, Director of Public Works/Village Engineer

Date: September 25, 2013

At the May 21, 2013 Council Meeting, the Council formally endorsed a Stormwater Improvement Program containing several improvement projects, at an estimated cost of $41.4 million. The program is proposed to be funded with a combination of General Fund reserves and bond funding. Repayment of the bonds is proposed to be accomplished via a stormwater utility.

The Council engaged Municipal & Financial Services Group (MFSG) (which recently completed the Village's Stormwater Utility Feasibility Study) to provide Implementation Assistance, including development of tax-exempt property information packets, and creating an online stormwater bill calculator, which would allow people to estimate the stormwater fee for their particular parcel. The assistance also involves the development of the stormwater database billing file.

The Village will also need to adopt policies and procedures for the stormwater utility, many of which will ultimately be reflected in the utility ordinance. The stormwater feasibility study touched on some of the major policies issues that must be addressed by the Village if a stormwater utility is implemented. These include a billing methodology, appeals process and credits/incentives program. The Council informally provided policy guidance on these issues at the conclusion of the feasibility study. However each issue requires further review prior to formal adoption. MFSG has prepared a report identifying the key policy issues that need to be addressed, and which require policy guidance from the Village Council. This report follows as **Attachment #1**. MFSG's report presents the policy issues to the Village Council, along with specific recommendations based on their industry expertise, and evaluation of how other stormwater utilities in Illinois have addressed such issues. Many of these policies and procedures impact the billing file development, so these items need to be addressed early on in order to complete the online bill calculator.

MFSG's report outlines in detail the key policy issues which must be addressed to allow for implementation of a stormwater fee within the Village. A summary of all of the stormwater utility implementation policy issues discussed in this report and MFSG's recommendations are included in the following table:

Policy Issue	Recommendation
What impervious area features should be included in the development of the master account billing file?	All impervious area features should be captured within the master account billing file.
Should semi-pervious area features be addressed in the Village stormwater billing file?	Semi-pervious features should not be included in the master account billing file.
How should the Village bill stormwater fees for multi-family and commercial properties?	Stormwater fees for all parcels in the Village should be included on the water utility bill.
How should the Village bill properties that do not currently receive a utility bill?	A separate stormwater bill should be established for parcels without utility service.
How should private road impervious area be allocated among parcels within the Village?	Private road impervious area should be allocated based on the amount of impervious area falling within the parcel boundaries.
How should the Village handle the allocation of impervious area for multi-family residential and commercial properties with multiple water service meters?	The Village should equally allocate impervious area for purposes of developing the stormwater bill for those parcels that receive individual water utility bills.
Should the Village exempt any parcels from the stormwater fee?	Only public roads and right-of-ways should be exempt from the stormwater as these properties serve as a key component of the stormwater system.
Should parcels with minimal or no impervious area be assessed a stormwater fee?	Only parcels with impervious area of greater than 170 square feet (a tenth of an ERU rounded down) should be assessed a stormwater fee.
Should the Village offer stormwater fee credits?	The Village should offer a limited credit program for non-residential on-site stormwater management and any parcel that discharges outside the Village system.
Should the Village offer stormwater incentives?	Stormwater incentives should be offered on a first come first served basis beginning in Fiscal Year 2015.

In most cases the actual numbers of parcels that are impact by each policy issue very are limited. The outlined credit program is the one policy issue which potentially has the most significant impact on the amount of the stormwater fee.

Recommendation:
Review MFSG's report and recommendations and provide policy direction on each of the identified issues.

Attachments:
1. MFSG Policy Issue Report

ATTACHMENT #1

MFSG POLICY ISSUE REPORT

Village of Winnetka

Stormwater Utility Implementation Policy Issue Workshop

October 1, 2013

Prepared by

Municipal & Financial Services Group

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The following report presents the documentation for the stormwater utility implementation policy issue workshop to be held with the Winnetka Village Council on October 1st, 2013. The report outlines each of the major policy issues related to the implementation of a stormwater fee. The policy issues are presented to inform the Village Council and solicit policy guidance.

A. BACKGROUND

On May 14, 2013, MFSG participated in the fourth stormwater utility feasibility workshop with the Village Council. At the workshop, MFSG's Stormwater Utility Feasibility Study was presented to the Council with the primary finding being that a stormwater utility is a feasible and preferable means for the Village to fund stormwater system improvements. The Council took the report and public input into consideration and provided policy direction for funding of the Village stormwater system. The specific Council policy direction included the following:

1) The Village should implement a stormwater fee to fund all stormwater expenditures (operating and capital).
2) The Village should fund currently planned capital projects with 30 year bonds.
3) The stormwater fee should be based on impervious area on the individual parcel, equated to an equivalent runoff unit (ERU). One ERU should equal 3,400 square feet of impervious area on the parcel, rounded to the nearest tenth.
4) The stormwater fee should be billed and collected on the Village utility bill.
5) The Village should not offer credits or incentives for on-site stormwater management.
6) The Village should allow customer appeals.

Since the final workshop meeting, the Village has moved forward with further development of the financing of stormwater capital improvement projects. Specifically, the Village plans to bring forward a bond ordinance authorizing the issuance of debt in October for Council approval.

The primary focus of this report workshop is to discuss the specific policy issues related to recommendations 3 through 6 that must be addressed prior to implementation of the stormwater fee. The following sections of the report are structured to outline the policy issues, options for how to address the issues, and our recommendations for Village consideration. It should be noted that the first section, the development of the master account billing file, is of highest importance from a scheduling perspective. The development of the billing file will require a significant amount of time, as it is necessary to develop stormwater bills for all parcel owners in the Village. The policy direction provided by the Village Council will assist with implementation of the stormwater utility and will be documented within the stormwater utility ordinance.

B. MASTER ACCOUNT BILLING FILE DEVELOPMENT

To successfully fund the Village's stormwater system improvements with a stormwater fee, a master account billing file will need to be developed. The data file will need to include, for each individual parcel in the Village, the number of ERUs on the parcel, the resulting stormwater bill and who is responsible for the bill. Developing the billing file will require addressing several policy issues, as discussed below.

1.0 - Impervious Area

Background

The Stormwater Utility Feasibility Study recommends using the impervious area on any given parcel of property in the Village as the preferred method for determining the basis for charging the stormwater fee. This is by far the most common approach used by communities, as the amount of impervious area on a property has been shown to be the single greatest contributing factor related to the runoff generated by the property. Impervious area is generally defined as any surface which prevents or significantly impedes the infiltration of stormwater into the soil. This would include roads, driveways, rooftops (including overhangs and eaves), walkways (paved, brick or pavers), swimming pools, decks, patios, compacted gravel and dirt and other non-porous areas. While all of these land features are considered to be impervious area, not all are always included in the development of a community's stormwater fees for two key reasons. First, data on the smaller impervious areas (such as sidewalks or decks) often is not readily available. Second, some communities determine that they only want to focus only on the largest features of impervious area, such as rooftops and driveways.

As part of the Feasibility Study, the impervious area was determined for all of the impervious area features that were available in the Village's geographical information system (GIS) database. This currently includes rooftops, driveways, decks, patios and private roadways. The existing database does not identify sidewalks, pools, tennis/basketball courts or any of these smaller features. Based on discussions with the Village staff, it would be possible to identify these features prior to the implementation of the stormwater fee.

Policy Issue

What impervious area features should be included in the development of the master account billing file?

Recommendation

Given the recommended stormwater fee structure, which is based on the actual impervious area for each parcel in the Village, rounded to the 10th of an ERU, we recommend that the Village consider capturing all impervious area features within the master account billing file.

2.0 - Semi-Pervious Area

Background

Certain types of land development will result in semi-pervious features as well impervious areas. These include such features as un-compacted gravel, dirt or stone. These features would typically be a walkway or decorative landscaping and are not compacted by vehicular traffic. These features may limit the infiltration of stormwater into soil, but not to the level demonstrated by true impervious cover. These semi-pervious areas are currently not identified in the Village's GIS database, and it is unclear as to whether it is feasible to identify them. In most communities these areas are typically not included within the development of a stormwater billing file. Communities that have attempted to capture semi-pervious features have typically included an ERU reduction factor for these areas to reflect the fact that the area is semi-pervious. This approach adds an additional layer of administrative complexity.

Policy Issue

Should semi-pervious area features be addressed in the Village stormwater billing file?

Recommendation

Given the uncertainty of the availability of the data and based on the recommended approach of using impervious surfaces as the basis for the stormwater fee determination, we recommend that semi-pervious features not be included in the master account billing file.

3.0 - Stormwater Utility Billing

The Village plans to include the stormwater fee on the utility bills the Village currently generates for utility services. In light of this approach to billing the stormwater fee, the key policy issues related to stormwater utility billing include how multi-family and commercial properties are billed, and how properties that currently do not receive a utility bill are issued a stormwater bill.

Multi-Family and Commercial Billing

Background

The utility bills generated by the Village include charges for water service, electric service or both, depending on the specifics of the water and electric metering at each property. Multi-family and commercial properties that have a single water meter receive a single utility bill for water service (sent to the property manager or owner), with individual utility bills issued for electric service for each unit on the property that has an electric meter. In other words, the utility services and bill generation for multi-family and commercial properties follows the water and electric metering. Given this billing methodology, it is necessary to consider how stormwater charges will be assessed for multi-family and commercial properties. There are two primary options for the Village to consider. One, the Village could include the stormwater fee on the water utility bill so that unless a property was sub-metered they would receive a single stormwater fee. Second, the Village could include the stormwater fee on the electric utility bill.

For those communities that use the utility bill for assessing stormwater fees, the most common approach is to include the stormwater fee on water utility bill. There are a number of reasons why this approach is most common.

- The vast majority of municipalities do not provide electric service.
- It provides the municipality with the ability to enforce payment for stormwater services with the ability to shut off the water service for non-payment.
- It removes the municipality from the process of subdividing impervious area, which often requires manual determinations.

The primary disadvantage of using the water service to determine who receives the stormwater fee bill is that it places the onus on the property owner to fully fund the fee. As a result, if this approach is taken, we recommend that the Village provide multi-family and commercial properties with estimates of their stormwater bills well in advance of the actual billing to allow for budgeting, specifically in the case of condo associations and similar properties.

Policy Issue
How should the Village bill stormwater fees for multi-family and commercial properties?

Recommendation
We recommend that the stormwater fees for all parcels in the Village be included on the water utility bill.

Properties without Utility Service

Background
There are parcels within the Village that do not receive utility service from the Village but contain impervious area. This is often one of the key shortcomings of using the utility bill as the billing method for stormwater fees. While this is not a common occurrence within the Village, there are a handful of these properties including those bordering the edge of the Village and properties that do not require water service. The most common approach to addressing this issue would be to generate a separate stormwater bill for these parcels.

Policy Issue
How should the Village bill properties that do not currently receive a utility bill?

Recommendation
We recommend that the Village develop separate stormwater bills for parcels without utility service.

4.0 - Allocation of Impervious Area

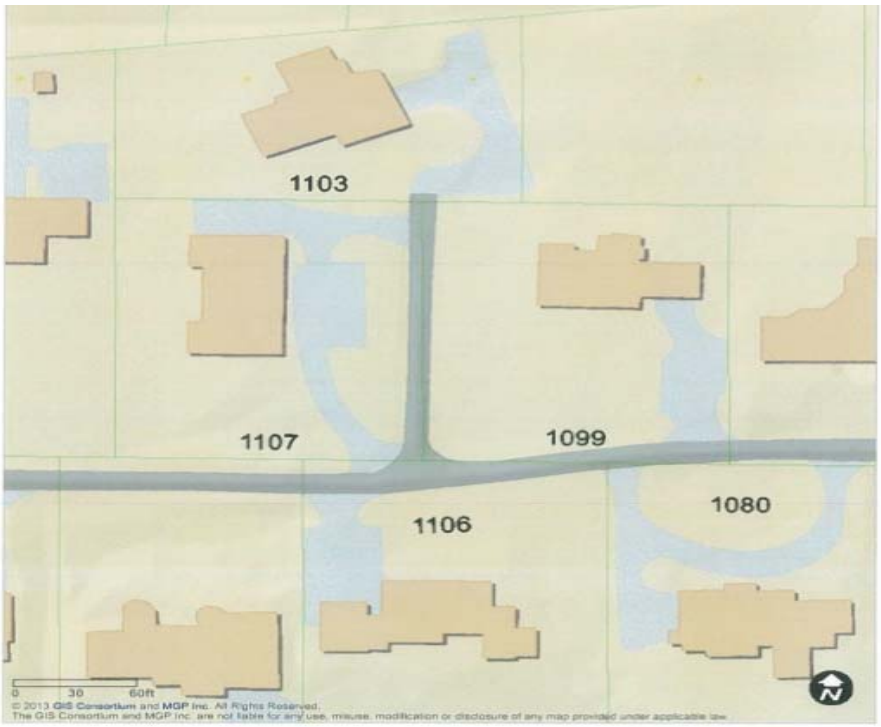
For the vast majority of parcels in the Village, the impervious area on a parcel can be tied directly to a single property owner (e.g. a single family residence). There are circumstances however, where impervious area is related to or serves multiple parcels (e.g. private roads) and where multiple property owners are located on the same parcel (e.g. residential condominiums and mixed-use commercial development). These situations are discussed in the following section.

Private Roads

Background

There are a number of private roads within the Village that, by definition, are located on privately owned parcels. In many instances, the private roads fall within the property lines of each parcel owner in a manner that each owner receives a proportional share of the impervious area. However, in other instances, an individual parcel may be served by a private road and yet have a limited portion (if any) of the private road on its parcel. Figure 1 below demonstrates this situation for parcel 1103.

Figure 1 - Private Road Example



The allocation of private road impervious area is an issue that all stormwater utilities have to address. The most common approach is to simply allocate the impervious area based on how much of it is located within each parcel. Alternatively, to address situations like the private road shown in Figure 1, the private road can be equally divided among the parcels utilizing the

road. Or the private road impervious area could be allocated proportionately based on the total impervious area on each parcel utilizing the road. However, these approaches can be problematic because they require a manual review and calculation for each private road.

Policy Issue

How should private road impervious area be allocated among parcels within the Village?

Recommendation

We recommend that private road impervious area be allocated based on the amount of impervious area falling within the parcel boundaries. It is our opinion that the administrative complexity and potential issues resulting from a manual allocation of the roads significantly outweigh the increases in equity. It should be noted that the impervious area analysis completed as part of the Stormwater Utility Feasibility Study assumed this recommended approach, allocating impervious area in this manner.

Multi-family, Residential and Commercial Properties

Background

Another circumstance where impervious area may need to be allocated is in the case of multi-family residential and commercial properties that have multiple water meters within the property. While the vast majority of properties in the Village consist of a single water service, there are properties that have multiple meters serving each unit / building. The issue is how to handle the allocation of impervious area for these properties so that the stormwater fee can be placed on the utility bill.

There are a number of approaches that the Village could consider. The most common approach is to take the total impervious area of the parcel and equally subdivide it among the number of water services on the property. This approach is administratively simplistic and generally results in an equitable allocation of impervious area. A less common approach would be to allocate impervious area based on another proxy, such as size of condo unit (e.g. those with three bedroom condos receive a greater portion of the impervious area compared to those with one bedroom). Another proxy, in the case of commercial development, would be to allocate the impervious area proportionately based on the percentage of total impervious area contributed by each unit / building. This approach would require a significant amount of data to implement and may or may not result in increased equity as compared to an equal split.

Policy Issue

How should the Village handle the allocation of impervious area for multi-family residential and commercial properties with multiple water service meters?

Recommendation

We recommend that the Village equally allocate impervious area for purposes of developing the stormwater fee for those parcels that receive individual utility bills. For example, if a condominium has 40 units, each receiving a water utility bill, the stormwater fee should be

divided by 40 and placed on each condo units' utility bill. The same equal allocation should be applied to commercial development with multiple meters.

5.0 - Exemptions and Parcels with Minimal or No Impervious Area

The next section of policy issues relates to whether or not the Village exempts any properties from the stormwater fee and how parcels with minimal or no impervious area are handled in regards to the determination of a stormwater fee.

Exemptions

Background

The Village has the opportunity to consider whether specific types of properties within the Village should be exempt from the stormwater fee. The vast majority of stormwater utilities around the country include all property types, with the exception of public roads and rights-of-way. Public roads and rights-of-way are typically exempt because they serve as a key component of the stormwater conveyance system. There are communities that have decided to exempt government owned properties but these are few and far between. It should be noted that the impervious area analysis completed for the Stormwater Utility Feasibility Study excluded public roads and rights-of-ways but included all Village-owned property.

Policy Issue

Should the Village exempt any parcels from the stormwater fee?

Recommendation

We recommend that the Village exempt only public roads (State and county) and rights-of-way (including public alleys) from the stormwater utility fee, as these properties serve as a key component of the stormwater system. All other parcels, including Village properties, should be assessed the stormwater fee to ensure an equitable allocation of stormwater expenditures among all property owners in the Village.

Parcels with Minimal or No Impervious Area

Background

There are parcels within the Village that have a very limited amount of impervious area or are vacant and contain no impervious area. These types of parcels are very limited in the Village and include parcels such as pocket parks. However, the existence of these parcels, raises the question as to whether there should be a minimum stormwater fee. Some communities assess a minimum stormwater fee for parcels with limited impervious area or vacant lots based on the premise that proper stormwater management is a general benefit to all property owners. The primary problem with this approach is that it undermines the basis for assessing the fee, impervious area. If vacant properties are assessed a fee, the linkage between the runoff generated on a property and the amount of the stormwater fee is compromised. Additionally,

the concept of a general benefit is typically related to a tax rather than a user fee, where a property owner pays for the use of a service.

Policy Issue
Should parcels with minimal or no impervious area be assessed a stormwater fee?

Recommendation
Because the Village will be using a stormwater fee that is linked directly to actual impervious area on each parcel, we recommend that parcels with no impervious area not be assessed a stormwater fee. For parcels with minimal impervious area, we recommend that only parcels with an impervious area of greater than 170 square feet (a tenth of an ERU rounded down) be assessed a stormwater fee. This approach would maintain the integrity of the Village's stormwater fee methodology.

6.0 - Summary of Master Account Billing File Recommendations

Table 1 presents a summary of each of the aforementioned key policy issues related to the development of the master account billing file.

Table 1 – Master Account Billing File Policy Issues and Recommendations

Policy Issue	Recommendation
What impervious area features should be included in the development of the master account billing file?	All impervious area features should be captured within the master account billing file.
Should semi-pervious area features be addressed in the Village stormwater billing file?	Semi-pervious features should not be included in the master account billing file.
How should the Village bill stormwater fees for multi-family and commercial properties?	Stormwater fees for all parcels in the Village should be included on the water utility bill.
How should the Village bill properties that do not currently receive a utility bill?	A separate stormwater bill should be established for parcels without utility service.
How should private road impervious area be allocated among parcels within the Village?	Private road impervious area should be allocated based on the amount of impervious area falling within the parcel boundaries.
How should the Village handle the allocation of impervious area for multi-family residential and commercial properties with multiple water service meters?	The Village should equally allocate impervious area for purposes of developing the stormwater bill for those parcels that receive individual water utility bills.
Should the Village exempt any parcels from the stormwater fee?	Only public roads and right-of-ways should be exempt from the stormwater as these properties serve as a key component of the stormwater system.
Should parcels with minimal or no impervious area be assessed a stormwater fee?	Only parcels with impervious area of greater than 170 square feet (a tenth of an ERU rounded down) should be assessed a stormwater fee.

C. CREDITS

As part of the Stormwater Utility Feasibility Study, the Village Council was presented with the concept of stormwater fee credits. As mentioned previously, the Council provided policy guidance that stormwater credits should not be included as part of the stormwater utility. However, based on our experience, we are recommending that the Council continue to explore the idea of credits as part of the stormwater utility. Specifically, based on our experience, not offering credits limits the ability for parcel owners to reduce their stormwater fee, which is a key feature of many stormwater utilities, and a goal of the utility structure. In light of these concerns, the concept of a credit program is further reviewed below.

1.0 - Overview

A stormwater fee credit is an on-going reduction in the stormwater fee applicable to a given property in recognition of qualifying on-site or off-site systems, facilities, measures, or other actions taken by property owners to reduce or mitigate the impact of their property(s) stormwater contribution. Credits are typically offered to those properties that demonstrate the continuing performance of the stormwater management control(s).

The majority of communities across the country that have implemented stormwater utilities include some form of a credit program. Some utilities maintain very simple programs to limit the administrative burden in managing a credit program and others maintain extremely complex programs that provide very specific credits. However, in any credit program, several key considerations must be addressed, including:

- Who is eligible to receive a stormwater fee credit, all property owners or just non-residential parcels?
- What stormwater management control facilities / activities qualify for credits?
- Do properties that *meet* local stormwater standards get credits, or only properties that *exceed* standards?
- How much of a fee reduction is offered with each control activity?
- Is there a maximum credit that is offered?

The way in which each of these considerations are addressed is largely dependent on local policies. As there is no one-size fits all credit program, each program is going to reflect the unique nature of each municipality. The components of a typical credit program are provided below.

Credit Eligibility

The majority of credit programs around the country focus on non-residential land uses only. The primary reason for this focus is that the economic benefits (reduction in fees) are outweighed by the requirements (time, effort and cost) associated with applying for and qualifying for the credits. In general, the costs associated with the credit application and maintenance requirements are typically significantly greater than the reduction in the stormwater fee that a residential parcel owner would experience. For example, it is not uncommon for a community to require that the credit application be completed by a registered professional engineer and a credit application fee be assessed. As a result, a parcel owner may need to spend up to $700 to achieve an annual reduction in the stormwater fee of $36 (10% of $360). The other primary reason why credits are typically not offered to residential parcels is that the administrative burden of managing the credit program imposes costs on the utility that are otherwise avoidable.

There are utilities however, that offer credits to residential parcels to ensure that all parcels are treated the same. In these cases, since it is typically difficult for a residential parcel owner to significantly reduce their impact on the stormwater system (due to property size limitations), the credits that are most often available to residential parcel owners are fairly limited in magnitude (size of the reduction in the fee) to match the limited ability of these parcels to reduce their stormwater contributions. The primary exception to this is for properties that directly discharge stormwater outside of the stormwater system. For utilities that do not offer credits to residential parcels, a number have implemented incentive programs to provide funds to residential parcel owners to incentivize the installation of stormwater management activities. Incentives are discussed later in this section.

Stormwater Management Control Facilities / Activities

The key factors that influence the cost of operating stormwater systems include the quantity of runoff (both total volume and peak rate) and the quality of the runoff (what the stormwater runoff is carrying to local waterways). Therefore, on-site stormwater management control facilities and activities that qualify for a credit must address one or both of these factors. The credits available in a credit program are generally grouped into four categories, as shown in Table 2.

Table 2 - Stormwater Management Control Facilities and Activities

Control Activity	Examples
Peak Rate Reduction	Private Detention Basins, On-site Storage
Volume Reduction	Retention Basins, Rain Harvesting, Green Roofs, Permeable Pavement, Rain Gardens
Water Quality Control	Rain Gardens, Permeable Pavement, Best Management Practices
Direct Discharge	Property or portion of property directly discharges outside the Village stormwater system

Once the stormwater management control facilities and activities are identified, a community has to decide if credits are available to all parcels with stormwater management controls which are required to *meet* local standards, or only those with controls that *exceed* the local standards. This is a very important distinction, as it has a significant impact on defining the scope of the credit program and identifying owners that would be eligible for credits. In most communities with credit programs, only parcels that exceed the local standards are eligible for credits.

To qualify for a credit under any of the categories listed in Table 2, the parcel owners are typically required to demonstrate that the stormwater control activity is installed and operating as specified by the Village. The parcel owner is also responsible for the ongoing maintenance of the facility to remain eligible. Most utilities require some form of periodic reporting from the property owner to demonstrate ongoing eligibility. Many often require the owner to reapply after a 3 to 5 year period.

Lastly, some communities offer credits to entities that form partnerships with the utility to manage stormwater. This credit could be offered under the unique circumstance that an entity provides land necessary for stormwater control activities or makes some other significant financial contribution to the Village to assist in the ongoing management of stormwater. These credits are typically evaluated on a case-by-case basis.

Level of Credits

Once the control activities are defined, it is necessary to determine the appropriate level of the fee reduction or credit for each activity. Because fee credits are usually shown as a percentage of the full fee, it is important to set the level of the credit to be consistent with the actual ability of the control activity to reduce the runoff and or improve the quality of the runoff. Table 3 presents a sampling of a typical range of credits that, based on our experience, are offered for different types of control activities. It should be noted that both the control activity and the credit percentages are provided purely as examples.

Table 3 - Stormwater Fee Credits

Control Activity	Sample Stormwater Fee Credits
Peak Rate Reduction	Up to 25%
Volume Reduction	Up to 25%
Water Quality Control	Up to 10%
Direct Discharge	Up to 50%
Partnership	Up to 100%

The approach that is typically used to assess the credits for the control activities listed in Table 3 would include an evaluation of the portion of the impervious area on the property that drains to the control facility. For example, if 100% of impervious area drains to on-site detention basin(s), then the credit would be 10% (*i.e.*, the stormwater bill would be reduced by 10%). Alternatively, if 50% of impervious area drains to on-site detention, then the credit would be 50% of 10%, resulting in a 5% credit (*i.e.*, the stormwater bill would be reduced by 5%).

Several administrative concerns should be considered in setting the amount and availability of stormwater fee credits. First, it is important to determine the maximum credit that will be offered. Making the credit available to all parcel owners recognizes that all parcel owners can provide some sort of control activity. At the same time, setting a maximum recognizes that all parcel owners benefit from the Village's stormwater management program and therefore contribute in some way to funding the stormwater system. Second, it is important to recognize that any reduction in revenues via a stormwater fee credit will result in less revenue being generated for the utility and/or an increase in the necessary base stormwater fee for all property owners.

2.0 - Comparison

There are currently nineteen communities within Illinois that have established a dedicated funding source for stormwater management. Approximately half of these communities have established full-blown stormwater utilities, which assess stormwater fees based on impervious area. The remaining communities use some other proxy for generating stormwater revenues such as water consumption, zoning, assessed value or they simply charge a flat fee per parcel. Of those communities with full-blown stormwater utilities, the majority provide for credits and incentives. To provide a benchmarking comparison of stormwater utility credit programs, we have selected seven communities within Illinois that have stormwater utilities structured in a similar manner to the one recommended for the Village. The credit programs for each community are discussed briefly in the section below, followed by a summary comparison in Table 4. The information presented is based on correspondence with each community and review of credits manuals and or Municipal Codes.

City of Moline

The City of Moline established its stormwater utility in 2001. The City maintains the most simplistic credit program of those included in the comparison. The City only offers credits for those properties that retain stormwater on their property. The reduction in the stormwater fee is based on the percentage of the impervious area draining to the retention area (i.e., if 50% of the impervious area drains to a retention basin the parcel receives a 50% credit). The City mentioned that they do not offer credits for detention because they still have to manage detained runoff within the stormwater system. Additionally, they do not offer a water quality credit because they don't believe this can be realistically measured. The City does not currently track those property owners receiving credits.

City of Bloomington

The City of Bloomington established its stormwater utility in 2000. The City also offers a fairly limited credit program. The program consists of only two credits. Property owners who discharge all of their runoff outside the City system may receive a credit of up to 100% of the fee. Property owners who reduce the peak rate of stormwater runoff may receive a credit of up to 50% of the fee (50% for peak rate reduction of a 100-year design storm down to a 3-year pre-developed level, 25% for peak rate reduction of a 50-year design storm down to the 3-year level). The City currently provides credits to 633 parcel owners.

City of Highland Park

The City of Highland park established its stormwater utility in 2006. The City's credit program consists of two credits. A credit of up to 50% is offered to property owners who directly discharge their stormwater runoff outside the City's stormwater system. A credit of up to 25% is offered to property owners whose properties drain to a private detention basin. The amount of the credit is based on the amount of the property draining to the detention basin, with a minimum requirement of at least 50% of the property draining to the basins to qualify for the credit. The City has received 72 applications for credits since it established the utility. The breakdown of the applications include; 5 public utility companies, 9 commercial properties, 25 from the Park and School District and 33 residential properties.

City of Champaign

The City of Champaign established its stormwater utility in 2012. The City's credit program is more complex than those implemented by the other communities mentioned above. The program is offered to all property owners (residential and non-residential), although the credits available to residential parcels are limited. The program can be broken down into three categories; credits for stormwater management activities, credits for direct discharge and credits for education. Non-residential property owners essentially have a "menu" of credits to pick from with a maximum of a 50% credit. The City offers an education credit for each student taught in public or private schools within the City.

City of Urbana

The City of Urbana established its stormwater utility in 2012. The City's credit program is almost identical to the City of Champaign. The minor differences include that the City does not

offer credits to residential properties that drain to private detention basins. Additionally, the range of credits offered for each type of stormwater management activity vary compared to Champaign.

Village of Downers Grove

The Village of Downers established its stormwater utility in 2012 and began billing a stormwater fee in January of 2013. The Village offers a credit program that is similar to the Cities of Champaign and Urbana. All property owners may apply for credits. The program includes credits for stormwater management activities, direct discharge and education. However, it also includes a credit for property owners who partner with the Village to manage stormwater. This "partnership" credit is offered to property owners who contribute land to the Village for the specific purpose of managing stormwater. The Village's Park District is the only property owner who has applied and qualified for this credit. The Park District has partnered with the Village to develop a number of stormwater facilities on Park-owned property. Based on discussions with the Village, through August of this year, the Village has provided credits to ten properties. Eight of the properties have received water quantity credits and two schools have received the education credit. The Village has not and does not anticipate receiving a credit application from a residential property owner in the Village. The Village believes that there is no economic incentive for a residential property owner to apply due to the cost of the application ($300 plus certification by a professional engineer) and maintenance of the facilities in light of the fact that a typical residential property owner pays just over $100 per year in stormwater fees.

City of Rock Island

The City of Rock Island established its stormwater utility in 2002. The City's credit program is offered to all property owners in the City. The program includes a credit for direct discharge and credits for stormwater quality and quantity improvements. The program also includes an annual credit of $200 for properties which obtain/maintain a National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit. The City also offers a fairly unique credit that the City has branded as "Rain gardens for Rock Island." The City credits property owners for the installation and maintenance of qualifying rain gardens. The credit is provided at $4 per square foot of garden installed per year against the parcels stormwater fees. Of all the credits offered by the City, the rain garden credit has been the most popular. The first year the City offered the rain garden program in 2005, it reimbursed property owners for a total of $52,000. 2006 was the year in which the program peaked at $65,000 and has since dropped to the point that last year the City provided $34,000 in rain garden credits against stormwater fees.

Table 4 presents a summary of the stormwater programs included in the comparison.

Table 4 - Comparison Credit Programs

Community	Eligibility	Types Available	Range	Maximum	Term
Bloomington	Non-Residential	Peak Rate Reduction	0 - 50%	50% of SW Fees	Reapplication Every 5 Years
		Direct Discharge	0 - 100%	100% of SW Fees	
Champaign	Residential	Private Detention Basin	0 - 15%	15% of SW Fees	Reapplication Every 5 Years
	Non-Residential	Private Detention Basin, Rate Reduction, Volume Reduction, Water Quality	0 - 15% Each	50% of SW Fees	
		Direct Discharge	0 - 50%		
		Education	$5/student		
Downers Grove	All Properties	Runoff Rate Reduction	0 - 20%	50% of SW Fees	Reapplication Every 5 Years
		Volume Reduction	0 - 20%		
		Water Quality	0 - 10%		
		Direct Discharge	0 - 50%		
		Education	$3/Student	100% of SW Fees	
		Partnership	0 - 100%		
Rock Island	All Properties	Direct Discharge	0 - 100%	100% of SW Fees	Reapplication Only If Property is Redeveloped
		Quality	0 - 10%	10% of SW Fees	Reapplication Every Year
		NPDES Permit	$200	$200	
		Quantity Reduction	0 - 40%	40% of SW Fees	Not Defined
		Rain Gardens	$4 per sq ft	No Maximum	Not Defined
Highland Park	All Properties	Direct Discharge	0 - 50%	50% of SW Fees	Not Defined
		Detention & Cleaning	0 - 25%	25% of SW Fees	
Moline	All Properties	Stormwater Retention	0 - 100%	100% of SW Fees	Not Defined
Urbana	Non-Residential	Runoff Rate Reduction	0 - 20%	50% of SW Fees	Not Defined
		Volume Reduction	0 - 20%		
		Water Quality	0 - 10%		
		Direct Discharge	0 - 50%		
		Education	$5/student		

Table 4 demonstrates that there is a general consistency among the credit programs offered by the utilities in Illinois. All of the utilities link the credit to a specific type of stormwater management (runoff detention, retention, quality). A range of credits are offered based on the ability of the stormwater management activities to reduce impact on the stormwater system. The characteristics of the stormwater credit programs shown in Table 4 are not unique to the State of Illinois. The vast majority of credit programs around the United States share the same components with differences in the programs based on the level of complexity included in the program (e.g., how many different types of credits are offered).

As demonstrated in Table 4, two of the seven communities limit credits to non-residential properties. The remaining five communities offer credits to all property owners, however in the case of Champaign, the residential credits are very limited, applying only to properties

draining to private detention basins. Based on our discussions with the communities that offer credits to residential property owners, the consistent theme was that these property owners do not apply for credits because they would not realize any economic benefit. Essentially the cost of applying for the credit and maintaining the stormwater management feature would be more costly than the reduction in the stormwater fee. Most communities mention that the overall participation rate in the credits program is very limited, with generally less than 5% of the total parcels participating. The common themes, as to why participation is low, include:

- The property developer is not the long-term property owner and will not receive any economic benefit
- Retrofitting a property for a credit is rarely cost effective
- The property is managed by a property company located elsewhere (not in the community) and is not aware of availability of credits
- Application process considerations (burdensome, costly, require professional assistance)
- Credit programs require ongoing maintenance of stormwater controls (ongoing maintenance costs)

(It should be noted that a number of the reasons for the limited participation are due to economic considerations which relate to how much the community is charging in stormwater fees.) To provide context for the comparison of the various credit programs, the annual stormwater fees, stormwater revenues and amount of credits provided by the comparable communities are shown in Table 5.

Table 5 - Stormwater Fees, Total Stormwater Revenues and Credits

Community	Annual Stormwater Fee Per ERU	Annual Stormwater Fee Revenues	Reduction Due to Credits
Bloomington	$52.20	$2,700,000	$153,000
Champaign	$62.28	$2,400,000	$20,000
Downers Grove	$100.80	$3,400,000	(1)$200,000
Rock Island	$45.96	$1,600,000	(2)$35,100
Highland Park	$60.00	$1,245,000	$3,100
Moline	$45.00	$1,000,000	(3)$50,000
Urbana	$59.28	$1,500,000	$50,000

(1) Budget estimate, tracking based on 9 months of operation
(2) Rain garden credits account for $34,000 of total credits
(3) Estimate, the City does not track credit amounts

As demonstrated in Table 5, the annual stormwater fees assessed by the comparison communities are significantly less than those considered by the Village. If the Village offers a credit program, the economic benefits to the property owner may be greater in the Village than in the comparison communities, potentially resulting in a higher rate of participation.

3.0 - Financial Impact

To estimate the potential fiscal impact of a credit program it was assumed that the Village would offer a program that consists of two components, including:

- Credits for on-site stormwater management activities, on non-residential parcels, that exceed current standards, with a maximum credit of 25%.
- Credits for any parcel that directly discharges outside the Village system, with a maximum credit of 50%.

To estimate the fiscal impact of this credit program, it was assumed that 30% of non-residential parcels would apply and qualify for the credit and that each parcel would receive the maximum credit of 25% of their stormwater fee. Additionally, it was assumed that all of the parcels abutting Lake Michigan, within the Village (111 parcels), would apply and qualify for the direct discharge credit, receiving a 50% reduction in their stormwater fee. The financial impact is documented in Table 6.

Table 6 - Credit Program Fiscal Impact Estimate

	FY14	FY15	FY16
Stormwater Fee without Credits	$262	$356	$358
Stormwater Fee Revenues without Credits	$1,739,382	$2,363,435	$2,376,712
Revenue Reduction Due to Non-Residential Credits	($26,894)	($36,543)	($36,749)
Revenue Reduction Due to Direct Discharge	($41,514)	($56,408)	($56,725)
Stormwater Fee Revenues with Credits	$1,670,974	$2,270,483	$2,283,239
Stormwater Fee Required to Maintain Original Funding	**$272**	**$370**	**$372**

Table 6 demonstrates that the impact of the credit program would not be insignificant. In order to generate the revenues necessary to fund the planned capital improvements within the system, the stormwater fee would need to be increased. It should be noted that the analysis was completed for a fairly limited credit program and that an expanded program would result in a more significant fiscal impact. However, we believe that the assumptions regarding the participation and qualification rates provided in the estimate are conservative.

4.0 - Policy Consideration

Policy Issue

Should the Village offer credits to parcel owners within the Village that provide on-site stormwater management?

Recommendation

We recommend that the Village offer credits with the specific considerations:

- Credits should be made available to non-residential parcels that provide on-site stormwater management that *exceeds* the current Village standards.
- Credits should only be made available for on-site stormwater management that provides for peak runoff rate reduction (on-site detention) and reduction in the total runoff quantity (on-site retention).
- Credits should be made available for any parcel that discharges directly outside the Village stormwater system.

D. INCENTIVES

For the same reasons explained in the introduction to the discussion on credits, above, we are presenting the concept of incentives for further review, although the Village Council's initial policy direction indicated that it would not offer an incentive program.

1.0 - Overview

Stormwater incentives are typically offered to all property owners on a first come, first served basis, with the annual budget for the stormwater utility setting the maximum amount available for incentives in any given year. Unlike credits, incentives are not renewable on an annual basis. Instead, they are offered as a one-time rebate against the cost of buying and installing stormwater management controls. Property owners who receive stormwater fee credits are typically excluded from the incentive program. Similarly, stormwater controls that are required to meet local standards are also typically not eligible for reimbursements.

All property owners within the Village could be eligible to receive a stormwater incentive for the purchase, construction and installation of qualifying stormwater facilities. Property owners would be required to submit a stormwater incentive application, along with proof of purchase and installation of the stormwater facility. The Village would reserve the right to inspect the installed facility prior to approving the application. It should be noted that typically the application process and requirements for incentives are less rigorous than those required for the credit program.

Like the stormwater management facilities and activities discussed with the stormwater fee credit, the incentive program would offer rebates or reimbursements for activities that control the various aspects of stormwater runoff (quantity, peak rate and quality). The two most common stormwater control activities available to residential property owners include rain barrels and rain gardens. Other activities that are often incentivized would include the use of green methods, such as installing pervious pavement or green roofs, or the installation of best management practices that improve water quality.

Some sample stormwater incentives are presented in Table 7.

Table 7 - Sample Stormwater Incentives

Control Activity	Incentive Amount	Requirements	Maximum Incentive
Rain Barrels	$1 per gallon of capacity	Minimum of 50 gallons	$50
Rain Gardens	$5 per square feet of garden	Minimum of 50 square foot of garden	$500
Other Facilities (green roofs, permeable pavement, cistern)	30% of cost of materials, construction and installation		$1,000

The incentives detailed in Table 7 outline the most common stormwater management control activities, although the Village may offer incentives for other activities, as available stormwater control activities change over time. The maximum incentives are based on the overall magnitude of the cost of each type of activity and are not intended to fully fund the cost of the control activity. These reimbursements should only be offered to property owners who not only provide proof of purchase, but also prove the actual cost of installation and construction.

2.0 - Comparison

Three of the communities included in the credit program comparison offer incentive programs. A brief description of each incentive program is provided below.

Champaign

The City of Champaign offers incentives to properties not participating in the credit program. The incentives are offered as rebates for the cost of constructing qualifying stormwater management features up to a maximum incentive of $1,000 per property owner. Once the maximum incentive is reached, the property can no longer receive additional incentives regardless of ownership. The City also offers a rebate of $25 per rain barrel installed with no limit.

Downers Grove

The Village of Downers Grove offers incentives to properties not participating in the credit program. Similar to Champaign, the incentives are provided for the installation of stormwater management features based on the type of activity. The Village offered incentives to property owners who had installed management features prior to the formation of the utility. The Village began offering the incentives in January of this year and has provided them to 157 properties at a total cost of approximately $10,000. The amount provided to date is half of the total budget the Village set aside for the incentive program.

Urbana

The City of Urbana offers incentives to properties not participating in the credit program. The incentives program is very similar to the City of Champaign with the only differences being the amounts of the incentives offered. The City limits the maximum incentive to $300 per property. However, the property may apply for the incentive every ten years. The City maintains a budget of $32,500 for the program.

Table 8 presents a comparison of the incentive programs offered by these communities.

Table 8 - Comparison Incentive Programs

Community	Eligibility	Types Available	Range	Maximum	Annual Incentive Budget
Champaign	All properties not receiving credits	Rain Garden, Runoff Rate Reduction, Runoff Volume Reduction, Runoff Water Quality	$250 per stormwater management feature	$1,000	$10,000
		Rain Barrel	$25 per Barrel	None	
Downers Grove	All properties not receiving credits	Rain Barrel	$25 per Barrel	$25	$20,000
		Rain Garden	$250 per Garden	$250	
		Permeable Pavement	$0 - $300 per Property	$300	
		Other Facilities (cisterns, etc.)	$0 - $300 per Property	$300	
Urbana	All properties not receiving credits	Rain Barrel	$50 per Barrel	$50	$32,500
		Rain Garden	$250	$300	
		Rate Reduction	$250		
		Volume Reduction	$250		
		Water Quality	25% of construction		

The incentive programs are fairly consistent among each of the communities, with the primary differences being the level of complexity of the program and the amount of incentives offered.

3.0 - Financial Impact

The fiscal impact of the incentive program is easy to estimate assuming an annual budgetary limit is set for the program. Based on our experience we have seen communities budget as little as $5,000 and as much as $200,000. Based on the size of the Village, we recommend that the Village initially set a budget of $15,000 for the incentive program. To fund a budget of this level, the Village would need to increase the annual stormwater fee per ERU by approximately $2.25.

4.0 - Policy Consideration

Policy Issue

Should the Village offer incentives to parcel owners who install on-site stormwater management facilities?

Recommendation

We recommend that the Village implement an incentive program for parcel owners within the Village on a first come, first served basis, subject to setting the amount available for incentives in the annual budget beginning in Fiscal Year 2015.

E. CONCLUSIONS

This report outlines the key policy issues which must be addressed to allow for implementation of a stormwater fee within the Village. In most cases the actual numbers of parcels that are impact by each policy issue very are limited. The potential credit program is the one policy issue which potentially has the most significant impact on the stormwater fee. A summary of all of the stormwater utility implementation policy issues discussed in this report and our recommendations are included in Table 9 on the following page.

Table 9 - Implementation Policy Issues and Recommendations

Policy Issue	Recommendation
What impervious area features should be included in the development of the master account billing file?	All impervious area features should be captured within the master account billing file.
Should semi-pervious area features be addressed in the Village stormwater billing file?	Semi-pervious features should not be included in the master account billing file.
How should the Village bill stormwater fees for multi-family and commercial properties?	Stormwater fees for all parcels in the Village should be included on the water utility bill.
How should the Village bill properties that do not currently receive a utility bill?	A separate stormwater bill should be established for parcels without utility service.
How should private road impervious area be allocated among parcels within the Village?	Private road impervious area should be allocated based on the amount of impervious area falling within the parcel boundaries.
How should the Village handle the allocation of impervious area for multi-family residential and commercial properties with multiple water service meters?	The Village should equally allocate impervious area for purposes of developing the stormwater bill for those parcels that receive individual water utility bills.
Should the Village exempt any parcels from the stormwater fee?	Only public roads and right-of-ways should be exempt from the stormwater as these properties serve as a key component of the stormwater system.
Should parcels with minimal or no impervious area be assessed a stormwater fee?	Only parcels with impervious area of greater than 170 square feet (a tenth of an ERU rounded down) should be assessed a stormwater fee.
Should the Village offer stormwater fee credits?	The Village should offer a limited credit program for non-residential on-site stormwater management and any parcel that discharges outside the Village system.
Should the Village offer stormwater incentives?	Stormwater incentives should be offered on a first come first served basis beginning in Fiscal Year 2015.

Agenda Item Executive Summary

Title: MC-6-2013 - Adding Code Chapter 4.23 - Natural Gas Use Tax (Introduction)

Presenter: Edward F. McKee, Jr., Finance Director

Agenda Date: 10/01/2013

Consent: ☐ YES ☑ NO

☑ Ordinance
☐ Resolution
☐ Bid Authorization/Award
☐ Policy Direction
☐ Informational Only

Item History:

March 18, 2003 The Village Council passed Ordinance MC-3-2003, titled "An Ordinance Adding Chapter 4.22 to Title 4 of the Winnetka Village Code to Establish a Gas Distribution Occupation Tax," which established a 5% gross receipts tax on the sale of natural gas in the Village.

April 12, 2012 Pursuant to Council authorization, Winnetka joined other north shore communities in a joint contract with Azavar Audit Solutions ("Azavar") to have the firm audit select Village revenues.

Executive Summary:

When the Village implemented the 5% natural gas tax in 2003, most natural gas customers received their natural gas from the local gas utility. The tax was based on the utility's gross receipts and generated annual revenues of around $500,000 when the tax was first implemented.

The Village has noticed a drop off in natural gas revenues over the last few years, with the total amount for the 3/31/2013 fiscal year being only $295,395. While some of this decline is due to lower natural gas prices, Azavar's recent report showed that more natural gas users are purchasing natural gas from out-of-state sources, due to deregulation of the natural gas industry. Because the Village cannot tax interstate commerce, customers who buy natural gas from an out-of-state supplier do not pay the gross receipts tax.

Staff believes it is appropriate to eliminate the tax differential by implementing a natural gas use tax so that persons who buy natural gas from suppliers out-of-state pay taxes similar to those paid by customers that buy their natural gas from local suppliers. Azavar is recommending that the Village implement a $0.05 per therm tax on the use of gas purchased through interstate natural gas purchases, thereby closing the loophole that now allows interstate natural gas purchasers to avoid the Village's local natural gas tax. Azavar estimates that the new gas use tax would generate about $55,000 for the Village on an annual basis, net of Azavar's contractual 45% commission for the first 33 months.

Ordinance MC-6-2013 adds Chapter 4.23 to the Village Code, implementing a new $0.05 per therm gas use tax. Chapter 4.23 is based on a model ordinance that has been implemented in other communities, but has been restructured to correspond to the Village's gas occupation tax provisions in Chapter 4.22 of the Village Code. Section 4.23.020(D) clearly avoids the possibility of requiring a consumer to pay both the gas use tax and the gas occupation tax. Section 4.23.040 provides for the gas utility that pays the gross receipts tax to collect the use tax, since it also bills all customers in the Village that use natural gas service. The Village and gas utility will enter into a contract for that purpose. To leave sufficient time for the Council to consider the final contract, the new tax would be effective on December 1, 2013. Finally, Section 4.23.060 addresses the effect of Village's Taxpayers Rights and Responsibilities Ordinance. An identical provision is also in Chapter 4.22.

Recommendation / Suggested Action:

Consider a motion to introduce Ordinance MC-6-2013, titled "An Ordinance Amending Title 4 of the Winnetka Village Code to Establish a Tax on the Use of Natural Gas in the Village of Winnetka."

Attachments:

1) MC-6-2013 "An Ordinance Amending Title 4 of the Winnetka Village Code to Establish a Tax on the Use of Natural Gas in the Village of Winnetka"

2) April 11, 2012 Staff Agenda Report, Azavar Tax and Revenue Audit

ORDINANCE NO. MC-6-2013

AN ORDINANCE
AMENDING TITLE 4 OF THE WINNETKA VILLAGE CODE
TO ESTABLISH A TAX ON THE USE OF NATURAL GAS
IN THE VILLAGE OF WINNETKA

WHEREAS, the Village of Winnetka ("Village") is a home rule municipality in accordance with Article VII, Section 6 of the Constitution of the State of Illinois of 1970 and, pursuant thereto, has the authority, except as limited by said Section 6 of Article VII, to exercise any power and perform any function pertaining to the government and affairs of the Village, including the power to regulate for the protection of the public health, safety and welfare, and the power to tax; and

WHEREAS, on March 18, 2003, pursuant to Section 8-11-2 of the Illinois Municipal Code, 65 ILCS 5/8-11-2, the Council of the Village of Winnetka ("Village Council") passed Ordinance MC-4-2003, which added Chapter 4.22 to the Winnetka Village Code, titled "Gas Distribution Occupation Tax," to authorize a 5% tax on the gross receipts received by persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of the Village of Winnetka; and

WHEREAS, the Gas Distribution Occupation Tax applies to persons engaged in the business of distributing, supplying, furnishing or selling gas for use or consumption within the Village, but not for resale; and

WHEREAS, revenues from the Gas Distribution Occupation Tax have been in decline due to an increase in gas purchases from businesses that distribute, supply, furnish or sell gas from outside the Village, which are not subject to Gas Distribution Occupation Tax; and

WHEREAS, in furtherance of its home rule powers, the Village Council finds and determines that it is necessary and desirable for the Village Council to amend the Village Code regarding taxation by creating a municipal gas use tax; and

WHEREAS, this Ordinance has been placed on the Village Council's agenda and made available for public inspection at Village Hall and on the Village's web site, in accordance with Sections 2.04.040 and 2.16.040 of the Winnetka Village Code and applicable law.

NOW, THEREFORE, Be it ordained by the President and Board of Trustees of the Village of Winnetka, as follows:

SECTION 1: The foregoing recitals are hereby incorporated as the findings of the Council of the Village of Winnetka, as if fully set forth herein.

SECTION 2: Title 4 of the Winnetka Village Code, "Revenue and Finance," is hereby amended by adding a new Chapter 4.23, which shall be titled ""Gas Use Tax," and shall provide as follows:

[Remainder of this page intentionally left blank.]

Chapter 4.23

Municipal Gas Use Tax

Sections:

4.23.010 Definitions.
4.23.020 Use tax.
4.23.030 Collection of tax by public utility.
4.23.040 Effective date of tax.
4.23.050 Taxpayer's books and records.
4.23.060 Effect of Local Taxpayers' Rights and Responsibilities Ordinance.

Section 4.23.010 Definitions.

As used in this Chapter, the following terms, words and phrases shall have the meaning given in this section:

"Person" means any individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, municipal corporation or political subdivision of this state, or a receiver, trustee, conservator or other representative appointed by order of any court.

"Public Utility" means a public utility as defined in Section 3-105 of the Public Utilities Act.

"Public Utilities Act" means the Public Utilities Act as amended, from time to time (220 ILCS 5/1-101 *et seq*.).

"Retail Purchaser" means any Person who purchases gas in a Sale at Retail.

"Sale at Retail" means any sale of gas by a gas retailer to a Person for use or consumption, and not for resale. For this purpose, the term "retailer" means any Person engaged in the business of distributing, supplying, furnishing or selling gas.

"Use Tax" means the tax established pursuant to this Chapter and imposed on Retail Purchasers who purchase gas for use or consumption within the corporate limits of the Village.

Section 4.23.020 Use tax.

A. Use tax imposed. Except as otherwise provided by this Chapter, a tax is imposed on the privilege of using or consuming gas in the Village that is purchased in a Sale at Retail at the rate of five cents ($0.05) per therm.

B. Applicability of use tax. The ultimate incidence of and liability for payment of the tax is on the Retail Purchaser, and nothing in this Chapter shall be construed to impose a tax on the occupation of distributing, supplying, furnishing, selling or transporting gas.

C. Payment of use tax.

1. The Retail Purchaser shall pay the tax, measured by therms of gas delivered to the Retail Purchaser's premises, to the Public Utility designated to collect the tax pursuant to Section 4.23.040 of this Chapter on or before the payment due date of the Public Utility's bill first reflecting the tax, or directly to the Village Treasurer on or before the fifteenth day of the second month following the month in which the gas is delivered to the Retail Purchaser if no Public Utility has been designated to collect the tax pursuant to Section 4.23.040 or if the gas is delivered by a person other than a Public Utility so designated.

2. A Person who purchases gas for resale and therefore does not pay the tax imposed by this Chapter with respect to the use or consumption of the gas, but who later uses or consumes part or all of the gas, shall pay the tax directly to the Village Treasurer on or before the fifteenth day of the second month following the month in which the gas is used or consumed.

D. Limitation of use tax.

1. Nothing in this Chapter shall be construed to impose a tax upon any person, business or activity which, under the constitutions of the United States or State of Illinois, may not be made the subject of taxation by the Village.

2. To prevent multiple taxation, the use of gas in the Village by a Retail Purchaser shall be exempt from the tax imposed by this Chapter if the gross receipts from the Sale at Retail of such gas to the Retail Purchaser are properly subject to a tax imposed upon the seller of such gas pursuant to the Village's gas distribution occupation tax, as provided in Chapter 4.22 of this Code.

Section 4.23.030 Effective date of tax.

The use tax shall apply to gas for which the delivery to the Retail Purchaser is billed by a Public Utility on or after December 1, 2013.

Section 4.23.040 Collection of tax by Public Utility.

A. Contract with Public Utility. The Village President, Village Manager and Village Finance Director are each authorized to enter into a contract for collection of the tax imposed by this Chapter with any Public Utility providing gas service in the Village.

B. Content of contract. The contract shall include and substantially conform with the following provisions:

1. the Public Utility will collect the tax from Retail Purchasers as an independent contractor;

2. the Public Utility will remit collected taxes to the Village Treasurer no more often than once each month;

3. the Public Utility will be entitled to withhold from tax collections a service fee equal to three per cent (3%) of the amounts collected and timely remitted to the Village Treasurer;

4. the Public Utility shall not be responsible to the Village for any tax not actually collected from a Retail Purchaser; and

5. such additional terms as the parties may agree upon.

Section 4.23.050 Taxpayer's books and records.

Every taxpayer shall keep accurate books and records, including original source documents and books of entry, denoting the activities or transactions that gave rise, or may have given rise to any tax liability or exemption under this Chapter. All such books and records shall, at all times during business hours, be subject to and available for inspection by the Village.

Section 4.22.060 Effect of Local Taxpayers' Rights and Responsibilities Ordinance.

The tax imposed by this Chapter is a locally imposed and administered tax as defined in the Local Taxpayers' Rights and Responsibilities Ordinance, Chapter 4.44 of this Code, which provides for the collection, enforcement and administration of locally imposed and administered taxes and establishes uniform rights and responsibilities of the taxpayers subject to those taxes. To the extent that the provisions of this Chapter conflict with Chapter 4.44, the provisions of Chapter 4.44 shall prevail.

SECTION 3: All ordinances or parts of ordinances thereof in conflict with this Ordinance are hereby repealed to the extent of any such conflict.

SECTION 4: Any Section or provision of this Ordinance that is construed to be invalid or void shall not affect the remaining Sections or provisions which shall remain in full force and effect thereafter.

SECTION 5: This Ordinance is passed by the Council of the Village of Winnetka in the exercise of its home rule powers pursuant to Section 6 of Article VII of the Illinois Constitution of 1970.

SECTION 6: This Ordinance shall take effect immediately upon its passage, approval and posting as provided by law.

PASSED this ___ day of _____, 2013, pursuant to the following roll call vote:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED this ___ day of _____, 2013.

Signed:

_____

Village President

Countersigned:

_____

Village Clerk

AGENDA REPORT

Subject: Tax and Revenue Audit

Prepared by: Ed McKee, Finance Director

Date: April 11, 2012

Reference: None

PURPOSE

Staff requests authority to execute a contingent fee professional services agreement with Azavar Audit Solutions, Inc. ("Azavar") of Chicago, IL to complete a tax and revenue audit. This would help ensure that the natural gas companies, telecommunications providers, cable TV provider, and others who remit revenue to the Village are including all of their customers within our municipal boundaries in the amount they remit to us. There is no minimum fee and the compensation for Azavar is a percentage of the net new revenue generated for the Village of Winnetka.

BACKGROUND

A tax and revenue audit investigates whether Village service providers are properly charging fees and collecting revenue in compliance with our municipal ordinances, contracts and franchise agreements. The audit seeks to ensure that service providers are collecting the proper amounts from a complete and accurate customer population within the Village as well as to verify that the Village is not being charged incorrectly on its accounts.

The Village of Glenview has offered several other municipalities (Buffalo Grove, Glencoe, Northfield, Winnetka) the opportunity to piggy back on their contract. The Villages electing to participate will pay a 40% commission rate for 33 months. The industry rate for this type of project, if done on a stand alone basis, is 45% to 50% for 36 months.

In terms of Glenview's process, two firms were interviewed regarding their tax and utility audit services, AmAudit and Azavar. Both provided proposals for the scope of work. AmAudit has a solid municipal client list, no up-front fees or costs, and proposed a fee based on a 50/50 share between the Village and their firm for any credits or new revenue found for a three-year period. Azavar also has a solid municipal client list, robust data analysis tools, no up-front fees or costs, and proposed a revenue sharing fee of 45% for newly remitted funds (per account) over a 24-month period and 45% of the total for any retroactive funds or refund/credits that are issued over the same 24-month period.

After conducting a reference check, Azavar was approved to commence the audit and bring the results before the Board for review and approval. Attachment 1 is an example of Azavar's recovery results for some of their municipal clients and more detail on their municipal revenue, utility and telecom, and compliance audit methods.

DISCUSSION

Municipal Partnering

A number of surrounding municipalities have expressed interest and were either in negotiation with or have received a proposal from Azavar to conduct a tax and utility audit. Through Glenview's Municipal Partnering efforts, a volume discount is being extended to Winnetka. Azavar submitted more favorable terms to the Village of Buffalo Grove, the Village of Glenview, the Village of Northfield, and the Village of Winnetka. Azavar will provide revenue sharing terms for both the utility and tax audits for Glenview at 40% (for 24 months) based on the commitment of all four communities by May 16, 2012. The other participating municipalities would share the 40% fee for 33 months. The normal fee for this work is 45% for 36 months.

I discussed with the Azavar representative the difference in pricing between the lead agency, Glenview, and the other municipalities considering participation in this agreement. The Village of Glenview is much larger community and has experienced significant growth so Azavar believes there is a much greater opportunity to offset their costs and make a profit over a 24 month time frame. The remaining communities due not offer that same potential, and therefore, they are only willing to offer a 33 month contingency fee time frame.

If all the communities do not participate, Azavar will provide Glenview revenue sharing terms at 45% for 24 months**.** The remaining communities would share 45% of the revenue for 33 months. All communities have committed to bring an agreement before their respective Boards for consideration by mid-April. For all communities, the commission would be payable based on net new revenue.

Azavar will collect information from various data sources to perform the audit, including customer databases from North Shore Gas, NICOR, Comcast, and the Village of Winnetka's utility billing system. They will then use their proprietary programs and processes to identify instances where errors may be occurring. They will then investigate those potential errors and then manage the correction process so that the vendors accounts within the Village of Winnetka corporate limits are remitting revenues to the Village of Winnetka.

Azavar will only be compensated for actual recovered funds at the cost sharing rate and term identified in the Agreement once the account corrections are complete.

RECOMMENDATION

Authorize the Village Manger to execute a contingent fee professional services agreement with Azavar of Chicago, IL to conduct a tax and revenue audit, in substantial conformance with the attached draft agreement, subject to Village Attorney review.

CONTINGENT FEE PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is made and entered into by and between Azavar Audit Solutions, Incorporated, an Illinois corporation having its principal place of business at 234 South Wabash Avenue, Sixth Floor, Chicago, Illinois 60604 ("Azavar"), and the Village of Winnetka, an Illinois municipal corporation having its principal place of business at 510 Green Bay Road, Winnetka, Illinois 60093 ("Customer").

1. **SCOPE OF SERVICES**

1.1 Subject to the following terms and conditions, Azavar shall provide professional computer, data audit, compliance management, and management consulting services ("Services") in accordance with the below statement of work. Azavar will render the services provided under this Agreement in a workmanlike manner in accordance with industry standards. The services and work provided shall be provided in substantial accordance with the below statements:

(a) Azavar shall undertake a Municipal Audit Program on behalf of the Customer. As part of the Municipal Audit Program Azavar shall, on behalf of the Customer, separately audit each utility tax, taxpayer, franchise fee, and utility service fee and expense imposed by or upon the Customer within the Customer's corporate boundaries ("Audits") including, but not limited to Electric, Gas, Cable, and Telecommunications providers ("Providers") on behalf of the Customer. Azavar shall also audit during the course of its work for the Customer addresses and databases relating to local sales/use taxes. Where applicable Azavar shall audit water service, expense, and taxes and hotel/motel occupancy taxes.

(b) The purpose of each audit is to determine past, present, and future taxes, franchise fees, service fees, or any other refunds, monies or revenue owed to the Customer that were not properly attributed to the Customer or were not properly paid or collected and to determine future taxes, franchise fees, and other monies owed to the Customer not previously counted so that Customer can collect these past, present, and future monies. Federal and Illinois state law, the Customer's own local ordinances and databases, and the franchise agreements and contracts or bills between Customer and Providers are used by Azavar to conduct the Audits and Azavar will present to Customer in writing during the course of the Audits findings of monies due or potentially due to the Customer for review by the Customer ("Findings").

(c) Customer hereby represents that it is not engaged in any Audits as contemplated under this Agreement and shall therefore pay Azavar the fees set forth in this Agreement for any Findings made by Azavar. Customer agrees that it shall not initiate or engage in any Audits contemplated under this Agreement without Azavar's written consent.

(d) In order to perform the audits, Azavar will require full access to Customer records and Provider records. Customer will use its authority as necessary to assist in acquiring information and procure data from Providers; Customer agrees to cooperate with Azavar, provide any necessary documentation, and will engage in necessary meetings with Providers;

(e) During the course of each audit, Azavar may find that rather than being owed past due funds, the Customer owes funds erroneously paid to the Customer. In this case, Azavar will immediately terminate its participation for that specific Provider audit at no cost to the Customer and will document the error and provide the Customer with information necessary to correct the error. Azavar shall have no liability to Customer for these errors or actions arising from Azavar's or Customer's knowledge thereof.

(f) Customer acknowledges that each Provider is a separate entity that is not controlled by Azavar and therefore Azavar cannot predict all the steps or actions that a Provider will take to limit its responsibility or liability during the audit.

(g) The first audit start date is expected to be within no later than thirty (30) days from the date of this Agreement unless changed and approved by the Customer's Audit Primary Contact and Liaison;

(h) Each audit is expected to last at least six (6) months. Each subsequent audit will begin after payment terms and obligations have been met from previously completed audits however overlapping audit work may take place at the discretion of Azavar. Audit timelines are set at the discretion of Azavar;

(i) Audit status updates/meetings will be held regularly via phone, email, or in person throughout the course of the Audits between Azavar and the Customer's Audit Primary Contact and Liaison and will occur approximately every month;

(j) Jason Perry, Azavar Municipal Audit Program Manager, and Azavar specialists will be Auditors under this agreement. All Azavar staff shall be supervised by the Azavar Program Manager.

1.2 Customer agrees to provide reasonable facilities, space, desks, chairs, telephone and reasonably necessary office supplies for Consultants working on Customer's premises as may be reasonably required for the performance of the Services set forth in this Agreement and in any Exhibit hereto. Customer will assign and designate an employee to be

the Audit Primary Contact and Liaison. The Customer's Audit Primary Contact and Liaison will be the final decision maker for the Customer as it relates to this audit and will meet with Azavar staff on a regular basis as necessary. Lack of participation of Customer staff, especially at critical milestones during an audit, will adversely affect the audit timeline and successful recovery of funds. While Azavar strives to provide turn-key audit programs that require little Customer staff time, it is important that the Customer's staff be available for meetings and participation with Providers to properly verify records and recover funds.

2. **INDEPENDENT CONTRACTOR**. Azavar acknowledges and agrees that the relationship of the parties hereunder shall be that of independent contractor and that neither Azavar nor its employees shall be deemed to be an employee of Customer for any reason whatsoever. Neither Azavar nor Azavar's employees shall be entitled to any Customer employment rights or benefits whatsoever. Customer shall designate Jason Perry and assigned auditors as authorized employees for the sole and limited purposes of reviewing data provided by the Illinois Department of Revenue when necessary.

3. **PAYMENT TERMS**.

3.1 Customer shall compensate Azavar the fees set forth in this agreement on a contingency basis. If applicable, Azavar shall submit an invoice to Customer on a monthly basis detailing the amounts charged to Customer pursuant to the terms of this Agreement. Customer shall remit payment to Azavar in accordance with the Local Government Prompt Payment Act. Contingency payment terms are outlined below. If Customer negotiates, abates, cancels, amends, or waives, without Azavar's written consent, any tax determination or Findings that were identified by Azavar or by its Audits where such findings were allowed under the law at the time the tax determination or Findings were made, Customer shall pay to Azavar applicable contingency fees for the total said tax determination or Findings at the rates set forth below and for the following thirty-three (33) months. If Customer later implements during the subsequent thirty-three (33) months any Findings Customer initially declined based on Azavar programs or recommendations, including overall utility audits included herein, Azavar will be entitled to its portion of the savings and/or recoveries over the following thirty-three (33) months at the contingency fee rates set forth below.

3.2 Customer shall pay Azavar an amount equal to forty-five (45) percent of any new revenues or prospective funds recovered per account or per Provider for thirty-three (33) months following when funds begin to be properly remitted to the Customer. In the event Azavar is able to recover any retroactive funds, any additional savings or revenue increases for any time period, or any credits at any time, Customer will pay Azavar an amount equal to forty-five (45) percent of any retroactive funds, savings, and fair market value for any other special consideration or compensation recovered for and/or by the Customer from any audited Provider. All contingency fees paid to Azavar are based on determinations of recovery by Azavar based on Provider data and regulatory filings and agreed to by the Customer. All revenue after the subsequent thirty-three (33) month period for each account individually will accrue to the sole benefit of the Customer.

3.3 As it pertains to Customer utility service bill and cost audits, Customer shall pay Azavar an amount equal to forty-five (45) percent of prospective savings approved by Customer for thirty-three (33) months following the date savings per Provider is implemented by Azavar or Customer. In the event Azavar is able to recover any refunds or any credits at any time, Customer will pay Azavar an amount equal to forty-five (45) percent of said refunds or credits. All contingency fees paid to Azavar are based on determinations of savings by Azavar. All savings after the subsequent thirty-three (33) month period for each service provider individually will accrue to the sole benefit of the Customer.

3.4 The Glenview Audit Consortium Discount. The Glenview Municipal Audit Consortium will consist of the at least four members ("Members") including the Village of Glenview, the Customer, and at least two other municipalities local to the Village of Glenview. For the Glenview Municipal Audit Consortium to be considered formed, all Members must submit an executed Azavar Contingent Fee Professional Services Agreement to Azavar no later than May 16, 2012. Upon the formation of the Glenview Municipal Audit Consortium, which must occur no later than May 16, 2012, Azavar will discount the contingent fee specified in Section 3.2 and Section 3.3 above of forty-five percent (45%) to forty percent (40%). In the event the Glenview Municipal Audit Consortium is not formed by May 16, 2012, Azavar's contingent fee shall remain at forty-five percent (45%) for the Client.

4. **CONFIDENTIAL INFORMATION**

4.1 Each party acknowledges that in the performance of its obligations hereunder, either party may have access to information belonging to the other which is proprietary, private and highly confidential ("Confidential Information"). Each party, on behalf of itself and its employees, agrees not to disclose to any third party any Confidential Information to which it may have access while performing its obligations hereunder without the written consent of the disclosing party which shall be executed by an officer of such disclosing party. Confidential Information does not include: (i) written information legally acquired by either party prior to the negotiation of this Agreement, (ii) information

which is or becomes a matter of public knowledge, (iii) information which is or becomes available to the recipient party from third parties where such third parties have no confidentiality obligations to the disclosing party; and (iv) information subject to disclosure under Illinois' Freedom of Information Act (5 ILCS 140/1 *et seq.*).

4.2 Azavar agrees that any work product or any other data or information that is provided by Customer in connection with the Services shall remain the property of Customer, and shall be returned promptly upon demand by Customer, or if not earlier demanded, upon expiration of the Services provided under the Statement of Work hereto.

5. **INTELLECTUAL PROPERTY**

5.1 No work performed by Azavar or any Consultant with respect to the Services or any supporting or related documentation therefor shall be considered to be a Work Made for Hire (as defined under U.S. copyright law) and, as such, shall be owned by and for the benefit of Azavar. In the event that it should be determined that any of such Services or supporting documentation qualifies as a "Work Made for Hire" under U.S. copyright law, then Customer will and hereby does assign to Azavar, for no additional consideration, all right, title, and interest that it may possess in such Services and related documentation including, but not limited to, all copyright and proprietary rights relating thereto. Upon request, Customer will take such steps as are reasonably necessary to enable Azavar to record such assignment. Customer will sign, upon request, any documents needed to confirm that the Services or any portion thereof is not a Work Made for Hire and/or to effectuate the assignment of its rights to Azavar.

5.2 Under no circumstance shall Customer have the right to distribute any software containing, or based upon, Confidential Information of Azavar to any third party without the prior written consent of Azavar which must be executed by a senior officer of Azavar.

6. DISCLAIMER

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, AZAVAR DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES RENDERED UNDER THIS AGREEMENT OR THE RESULTS OBTAINED FROM AZAVAR'S WORK, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL AZAVAR BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR INDIRECT DAMAGES, OR FOR ACTS OF NEGLIGENCE THAT ARE NOT INTENTIONAL OR RECKLESS IN NATURE, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER AGREES THAT AZAVAR'S LIABILITY HEREUNDER FOR DAMAGES, REGARDLESS OF THE FORM OF ACTION, SHALL NOT EXCEED THE TOTAL AMOUNT PAID FOR THE SERVICES GIVING RISE TO THE DAMAGES UNDER THE APPLICABLE ESTIMATE OR IN THE AUTHORIZATION FOR THE PARTICULAR SERVICE IF NO ESTIMATE IS PROVIDED.

7. **TERMINATION**

7.1 Unless earlier terminated in accordance with Section 7.2 below, this Agreement shall be effective from the date first written above and shall continue thereafter until terminated upon 90 days written notice by Customer or Azavar.

7.2 Termination for any cause or under any provision of this Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.

7.3 The provisions set forth above in Section 3 (Payment Terms), Section 4 (Confidential Information), and Section 5 (Intellectual Property) and below in Section 9 (Assignment), and Section 10 (Use of Customer Name) shall survive termination of this Agreement.

8. **NOTICES**. Any notice made in accordance with this Agreement shall be sent by certified mail or by overnight express mail:

If to Azavar	If to Customer
General Counsel Azavar Audit Solutions, Inc. 234 South Wabash Avenue, Sixth Floor Chicago, Illinois 60604	Village Attorney Village of Winnetka 510 Green Bay Road Winnetka, Illinois 60093

9. **ASSIGNMENT**. Neither party may assign this Agreement or any of its rights hereunder without the prior written consent of the other party hereto, except Azavar shall be entitled to assign its rights and obligations under this Agreement in connection with a sale of all or substantially all of Azavar's assets.

10. **USE OF CUSTOMER NAME**. Customer hereby consents to Azavar's use of Customer's name in Azavar's marketing materials; provided, however, that Customer's name shall not be so used in such a fashion that could reasonably be deemed to be an endorsement by Customer of Azavar unless such an endorsement is provided by customer.

11. **COMPLETE AGREEMENT**. This Agreement, along with each Statement of Work attached hereto from time to time, contains the entire Agreement between the parties hereto with respect to the matters specified herein. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof. This Agreement shall not be amended except by a written amendment executed by the parties hereto. No delay, neglect or forbearance on the part of either party in enforcing against the other any term or condition of this Agreement shall either be, or be deemed to be, a waiver or in any way prejudice any right of that party under this Agreement. This Agreement shall be construed in accordance with the laws of the State of Illinois and the parties hereby consent to the jurisdiction of the courts of the State of Illinois.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate originals by their duly authorized representatives as of the date set forth below.

AZAVAR AUDIT SOLUTIONS, INC.	CUSTOMER VILLAGE OF WINNETKA, ILLINOIS
By _____	By _____
Title _____	Title _____
Date _____	Date _____