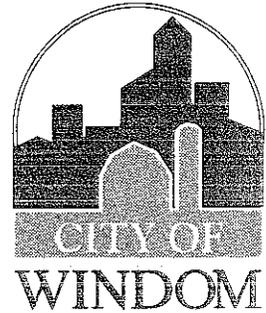


City Council Meeting  
Tuesday, August 4, 2009  
City Council Chambers  
7:30 p.m.



AGENDA

Call to Order  
Pledge of Allegiance

1. Approval of Minutes
  - Council Minutes – July 21, 2009
2. Consent Agenda
  - Minutes
    - Utility Commission– July 22, 2009
    - Community Center Commission – July 27, 2009
    - Planning Commission – July 28, 2009
3. Department Heads
4. License Applications
  - Temporary On-Sale Liquor License – Windom Lions Club
    - August 15, 2009 – Community Center
  - Liquor License Amendment – Phat Pheasant Pub
5. Authorization to Execute Joint Powers Agreement with the Southwest Minnesota Broadband Group
6. Planning Commission Recommendation–Variance Application – 413 & 423 River Bluff Dr.
7. Small Cities Development Program – Housing Rehabilitation Policies
8. 2008-2009 Windom Area Hospital Audit
9. Regular Bills
10. Contractor Payments
  - 2009 Street Improvement Project
    - Hjerpe, Inc. \$401,049.94
  - 2009 Airport Improvement Project
    - Runway – Wick’s Inc. \$63,166.03
    - Taxiway – Wick’s Inc. \$13,991.79
  - Sykora Sanitary Sewer
    - M & R Paving \$38,311.65
11. Unfinished Business
12. New Business
13. Council Concerns



**Council Meeting  
Windom City Hall, Council Chamber  
July 21, 2009  
7:30 p.m.**

1. Call to Order: The meeting was called to order by Mayor Kruse at 7:30 p.m.

2. Roll Call: Mayor: Kirby Kruse  
Council Members: Corey Maricle, Robert Messer and JoAnn Ray  
Council Members Absent: Jean Fast and Bradley Powers  
City Staff Present: Steve Nasby, City Administrator; Dan Olsen, Telecom Manager and Jeremy Rolfes, Telecom  
Public Present: Tom White, Frank Dorpinghaus and Dirk Abraham

3. Pledge of Allegiance

4. Approval of Minutes:

**Motion by Maricle, seconded by Ray, to approve the July 7, 2009 minutes.  
Motion carried 3 – 0.**

5. Consent Agenda:

Kruse said the Consent agenda contained the minutes from the following Boards and/or Commissions:

- Street Committee – July 10, 2009
- Economic Development Authority – July 13, 2009
- Park & Recreation Commission – July 13, 2009
- Library Board – July 14, 2009

**Motion by Messer, seconded by Maricle, to approve the Consent Agenda.  
Motion carried 3 – 0.**

6. Public Comment:

Frank Dorpinghaus discussed federal legislation that he does not feel has received sufficient media coverage. Dorpinghaus highlighted the following topics:

- American Clean Energy and Security Act
- Requesting an audit of the Federal Reserve system

- Matthew Shepard Hate Crimes Prevention Act
- Megan Meier Cyber-Bullying Prevention Act
- HR 2159 & Terrorist Act of 2009
- S. 15 Mandatory flu vaccinations and Project BioShield Act of 2004
- Tax by the Mile possible legislation
- Imprisonment of Congresswoman Cynthia McKinney

7. Department Heads:

Dan Olsen, Telecom Manager, updated the City Council on the SW Minnesota Broadband Group's plans for the submission of a grant application. The project would include approximately 10 cities and the group has been meeting with supporters and groups designated to assist in selecting and implementing these projects. He noted that there could be 1,000 applications nation-wide and the definitions of high speed internet service are 756K. An application is due in early August. The Blandin Group has provided a \$19,100 grant to assist with the required marketing study.

Maricle asked when the group would know about the funding. Olsen said that it would likely be September or October.

Nasby noted that a joint powers agreement would be needed to submit the application. Olsen confirmed that an agreement would be needed and this will be put together by attorneys and would have to come to the City Council at their August 4 meeting.

Messer said that the 756K speed definition could make a lot of projects eligible. Olsen agreed and said it could make some wireless applications possible as well

8. License Applications:

Kruse said that a Temporary On-sale Liquor License application had been received from the Windom Lions Club for the Cottonwood County Fair from August 19 – 22, 2009.

**Motion by Messer, seconded by Maricle, to approve a Temporary On-sale Liquor License application for the Windom Lions Club for the Cottonwood County Fair from August 19 – 22, 2009. Motion carried 3 – 0.**

Kruse said that a Temporary On-sale Liquor License application had been received from the Windom Lions Club for an event at the Windom Community Center on August 22, 2009.

**Motion by Messer, seconded by Maricle, to approve a Temporary On-sale Liquor License application for the Windom Lions Club for an event at the Windom Community Center on August 22, 2009. Motion carried 3 – 0.**

Kruse said that a Municipal Dance License application has been received from Aracely Sifentes for a dance at the Windom Community Center on August 1, 2009.

**Motion by Messer, seconded by Ray, to approve a Municipal Dance License from Aracely Sifentes for a dance at the Windom Community Center on August 1, 2009. Motion carried 3 – 0.**

Kruse said that a business solicitation license application had been received after the Council packets were prepared from Hometown Sanitation Services. Copies were on the Council desk for their review.

**Motion by Messer, seconded by Maricle, to accept the Business Solicitation Permit from Hometown Sanitation Services. Motion carried 3 – 0.**

**Motion by Messer, seconded by Ray, to approve a business solicitation license for Hometown Sanitation Services. Motion carried 3 – 0.**

9. Joint Powers Agreement – Child Sexual Predator Program:

Nasby said that this was an agreement with the State of Minnesota and Windom Police Department and allowed any participation by the Windom Police Department to be reimbursed by the State. Both legal staff and the City's insurance agent have reviewed the agreement.

**Council member Maricle introduced the Resolution No. 2009-29, entitled “AUTHORIZATION TO EXECUTE STATE OF MINNESOTA JOINT POWERS AGREEMENT FOR SEXUAL PREDATOR PROGRAM”. The resolution was seconded by Ray and on roll call vote: Aye: Messer, Maricle and Ray. Nay: None. Absent: Fast and Powers. Resolution passed 3 – 0.**

10. Disposition of Surplus Equipment – Fire Department:

Nasby said that a trailer used by the Fire and Street Departments was no longer needed and the Departments were recommending the disposition of the equipment.

Messer asked about the sale process. Nasby replied that because the estimated value is over \$500 it will be advertised and sealed bids will be solicited. The unit is being sold “as is”.

**Motion by Messer, seconded by Maricle, to approve of the disposition of the equipment. Motion carried 3 – 0.**

11. National Nite to Unite Proclamation:

Kruse read the Proclamation

**Council member Ray introduced the Resolution No. 2009-30, entitled “WINDOM’S NITE TO UNITE PROCLAMATION”. The resolution was seconded by Maricle and on roll call vote: Aye: Maricle, Ray and Messer. Nay: None. Absent: Fast and Powers. Resolution passed 3 – 0.**

12. Regular Bills:

**Motion by Maricle, seconded by Ray, to approve the regular bills. Motion carried 3 – 0.**

13. Unfinished Business:

None.

14. New Business:

None.

15. Council Concerns:

None.

16. Adjourn:

**Kruse adjourned the meeting by unanimous consent.**

Meeting adjourned at 7:55 p.m.

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Kirby Kruse, Mayor

Attest: \_\_\_\_\_  
Steve Nasby, City Administrator

**UTILITY COMMISSION MINUTES**  
**City Hall, Council Chamber**  
**July 22, 2009**

**Call Meeting to Order:** The Utility Commission meeting was called to order at 10:00 a.m., on July 22, 2009 in the City Hall Council Chamber.

**Members Present:** Utility Commission Chairperson: Mike Schwalbach

Members Present: Keith Bloomgren and Chris Johnson

Members Absent: None

City Council Liaison: Jean Fast, Absent

City Staff Present: Brigitte Olson, Assistant City Administrator; Marv Grunig, Electric Utility Manager and Mike Haugen, Water/Wastewater Superintendent

Others Present: None

APPROVE MINUTES

**Motion by Bloomgren, seconded by Johnson to approve the June 17, 2009 minutes as presented. Motion carried 3-0.**

WATER/WASTEWATER ITEMS

*Review Missouri River Water/Wastewater Rate Study* – Haugen said that a rate study was received from Missouri River, and the scope of the service was outlined for both the water and wastewater. The cost for the water rate study will be \$8,000 and the cost for the wastewater rate study will be \$10,000. Haugen said that he felt these costs were high and requested another proposal be prepared by Carl Brown Consulting Service. He will have this proposal for the next meeting and requests that this topic be tabled until further information is obtained. The Utility Commission asked Haugen if he knew how long Missouri River Energy Service would honor the proposal that they have received. Haugen said that he would e-mail Karen Weeden and get that information for them.

*PM Industrial Wastewater Treatment Agreement* – Haugen reviewed the agreement with the Utility Commission. He also directed them to page 6 of the report under #10; this paragraph states that the City shall notify PM of any changes that need to be made such as limitations on discharge etc. He notified the commission that the agreement with PM at the present time requires six (6) month notification, and this agreement expires on December 31, 2009 and a new agreement will need to be approved.

*Wastewater Treatment Permit* – Haugen inform the Utility Commission that he would be applying for the new Wastewater Treatment Permit this week.

*Toxicity Test* – Haugen said that because the City of Windom’s wastewater failed the toxicity test he is doing some investigative work, and then he will receive a determination from Gary Kimball on whether the City of Windom Wastewater Department needs to re-test the water.

*Cottonwood County Highway Department* – Haugen said that Cottonwood County would like to put a 9” asphalt overlay onto 6<sup>th</sup> Street from McDonalds Restaurant to Lakeview Avenue. Haugen said that the City has old infrastructure in this area. The sewer main was installed in 1988 and the water main has never been replaced and at the present time it is a four (4) inch water main. He also said that in the past 3 years they have had three (3) or four (4) main breaks in that area. Haugen said that he would like to replace the infrastructure at the time of the overlay. Haugen said that Cottonwood County is willing to wait to do that project until next year so that the City of Windom Utilities can be included in the project. Haugen said that he is going to have the storm sewer and sewer main televised at a cost of \$2,200. At the time of replacement he indicated that a six (6) inch water main would be installed.

*HIGHWAY CONSTRUCTION PROJECT* – Haugen informed the Utility Commission that the State of Minnesota contractors pulled out a curb stop on the highway. In the process of shutting the water off to the curb stop the shut off valve broke. The construction company will absorb all of the costs associated with the curb stop repair and a portion of the shut off valve replacement.

*13th Street and 3<sup>rd</sup> Avenue* – Haugen said that the property owned by Mary Page had damage in her basement from a sewer backup that was caused by tree roots in the City of Windom’s portion of the main. Therefore the City of Windom paid for the cleaning up of that sewer backup.

*'09 Street Improvement Project* - Haugen informed the Commission that the '09 Improvement project was complete on 4<sup>th</sup> Avenue, and they would be starting on Langley today. Grunig said that 4<sup>th</sup> Avenue was open to through traffic today from the highway to 16<sup>th</sup> Street.

*Fire Hydrants* – Haugen said that they will be replacing the last fire hydrant today, and that the 10th hydrant will be replaced next year in the 6<sup>th</sup> Street Project that Cottonwood County is proposing.

*MESERB* – Haugen said that he attended the MESERB meeting on June 25, 2009. The most important thing that he found at this meeting was that the Public Treatment Facilities that have their own labs for testing purposes will need to hire staff with bachelor’s degree in biology as more stringent regulations may be enforced, this in turn may cause the City to have to pay more to Minnesota Valley Testing Laboratories for the testing that they perform for the City of Windom Water and Wastewater.

## ELECTRIC ITEMS

*Projected Cost of Power* – Grunig provided a spread sheet with power costs from Northern States Power (NSP), Utilities Plus and Western Area Power Association (WAPA). Those cost

dated back to 2003 to the present. This information also related to the Power Cost Adjustment on the utility bills. The Utility Commission determined that they would like to wait until October or November when they have almost one full year history of the cost of power and power cost adjustments to determine if a rate change is appropriate.

*Transfer to General Fund* – Grunig reviewed with the Utility Commission that the present transfer to General Fund is \$175,000. Grunig said that in 2008 the reduction of Local Government Aid (LGA) was \$110,110, the reduction in 2009's LGA is \$94,753 and the 2010 reduction will be \$218,631. Because of the economic times of the City of Windom he is proposing a \$78,721.70 increase to the transfer for the General Fund. This amount was arrived by taking the gross revenue for 2008 of \$5,074,434 multiplying it by 5% which is the figure that Grunig said is being used by other cities as in lieu of taxes amount which totals \$253,721.70.

After an extended discussion the following motion was made.

**Motion by Bloomgren, seconded by Johnson, to leave the transfer to the General Fund at \$175,000 and not to decrease the amount as had been decided in previous year's discussion, but to recognize the City of Windom's current financial situation. Motion carried 3-0.**

#### REGULAR BILLS

**Motion by Johnson, seconded by Bloomgren, to pay the invoice to Wenck Associates in the amount of \$476.53. Motion carried 3-0.**

#### OLD BUSINESS

Grunig said that he misinformed the Utility Commission in the June 17, 2009 Utility Commission meeting. He indicated at that meeting that the Big Stone Power Plant future would be decided on September 5, 2009. The decision will be made on September 11, 2009.

#### NEW BUSINESS

Next meeting was set for September 2, 2009 at 10:00 a.m. in the City Hall Council Chambers

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Mike Schwalbach, Chairperson

Attest: \_\_\_\_\_  
Brigitte Olson, Assistant City Adm.

Community Center Commission Minutes  
Monday July 27, 2009

1. Call to Order: The meeting was called to order by V.P. Kelly Woizeschke at 5:39 p.m

2. Roll Call: President: Wayne Maras-Absent  
CC Director: Brad Bussa  
Commission Members: Kelly Woizeschke  
Dick Jeffrey  
Hilary Mathis  
Connie Granstra-Absent  
  
Commission Liaisons: Corey Maricle  
Bruce Caldwell-Absent  
Jo Ann Ray-Absent  
  
EDA Director: Aaron Backman-Absent

3. Approval of Minutes:

**Motion by Dick Jeffrey, seconded by Hilary Mathis to approve the May 18, 2009 Community Center Commission Minutes. Motion carried 3-0**

4. Additions to the agenda:

Update on Employer/Employee Christmas Party

5. Correspondence:

Low/Lund Wedding Survey-comments looked good

6. President's Report:

A. Nothing to Report

7. Director's Report:

- a. Director Brad Bussa stated that freezer in Senior Dining is not working properly. It will cost \$1,200 to fix and already put in \$550 for repairs. Director Brad Bussa reported \$3,500 as an average estimate to buy a new freezer. The Meals with Wheels Board will donate \$1,500 towards a new freezer. Director Brad Bussa reported that the difference from Capital Outlay money from sidewalk repair due to lower bid would cover rest of freezer cost. **Motion by Dick Jeffrey, seconded by Hilary Mathis to purchase new freezer. Motion carried 3-0.**
- b. Director Brad Bussa reported to WCC Commission that MMUA State Coordinator notified WCC that they are to no longer use ladder to reach ceiling due to safety issues. They are to use a scissors lift. A new 1 man lift runs \$8,592

plus shipping, would check into possible funding thru grants from a few groups. Kelly Woizeschke stated a 2 man lift would possibly be a better option which would run \$12,364 to \$12,597 plus shipping. Discussion followed and it was decided to rent a lift until something can be figured out at a later date. Director Brad Bussa will continue to look into options and keep WCC Commission informed.

- c. Employer/Employee Christmas Party- was tabled until next year due to reports from Employers with budget issues not having parties for their employees this year.
- d. Windom Community Center 10 year Anniversary- looking into possibilities of holding with maybe Mayor Medal of Honor. Will continue to look into options.
- e. Budget Review- Director Brad Bussa informed WCC Commission that this is the first of many budget meetings. Brad Bussa reported to Commission that he had made cuts in some areas, but reported increases to promotional and equipment maintenance due to the fact that WCC is in 10 years and equipment is starting to fail more. It was discussed it would be nice to put money into a fund instead of trying to guess what would be needed in Capital Outlay in case of major equipment needs.

8. Resource Management:

Schedule of Events: was reviewed

Income/Expenses: was reviewed

9. Miscellaneous:

10. Open Forum:

11. Next Meeting:

Monday August 24, 2009 @ 5:30 pm. Sub-Committee: will just meet at regular meeting and put under Presidents Report for discussion

**Adjourn:**

**Motion by Dick Jeffrey, seconded by Hilary Mathis, to adjourn the meeting at 6:09 pm. Motion carried 3-0.**

**CITY OF WINDOM  
PLANNING COMMISSION  
SPECIAL MEETING  
MINUTES  
JULY 28, 2009**

1. Call to Order: The meeting was called to order by Chairman Hunter at 7:03 p.m.

2. Roll Call & Guest Introductions:

Planning Commission: Loie Grandprey, Greg Holt, Gary Hunter, Tim Hacker,  
Greg Pfeffer, and Marilyn Wahl

Absent: Renee Giefer, Lindsey Cartwright, Brad Powers (Council  
Liaison)

Also Present: Planning/Zoning Staff-James Kartes (Zoning Administrator)  
EDA Director - Aaron Backman

Public Present: Dallas Smith and Betty Smith

3. Approval of Minutes:

**Motion by Commissioner Grandprey, seconded by Commissioner Wahl, and carried to approve the Planning Commission Minutes for the meeting held on June 9, 2009. Motion carried 6-0.**

4. Public Hearing – 7:05 P.M.: Variance Application – 423 & 413 River Bluff Drive – (Applicants/Owners: Dallas Smith & Betty Smith):

Chairman Hunter opened the public hearing at 7:05 p.m.

Zoning Administrator Jim Kartes advised that Dallas and Betty Smith are requesting a variance for zero lot line side yard setback to allow the construction of a new twin home on Lots 5 and 6, Block 2 of Riverbluff Estates Subdivision. The frontage of the property is 70 feet which would require a side yard setback of 7.0 feet. Because the proposed construction is a twin home, the dividing wall between the two units will be the property line between the two lots. There will be no change in the lot size of either lot. The EDA approved the sale of these two lots to the Smiths for the construction of a twin home. The proposed twin home meets all the guidelines of the ordinance except for the side yard setback between the units. Granting of the variance will allow the sale of each unit individually. No questions or comments from any neighbors have been received by the Zoning Office concerning this variance application.

The Board had received copies of the application and site plan. Information obtained from the Application and from statements made by the Owners Dallas and Betty Smith: They would like to construct a twin home on the lots. Mr. Smith outlined plans for the construction of the twin home. One of the units has been pre-sold and the occupancy date is December, 2009. The second unit will also be offered for sale.

Chairman Hunter asked if there were any other questions or comments from anyone in the audience. All public testimony was completed and Chairman Hunter referred the matter to the Planning Commission for consideration at 7:08 p.m. Commissioner Pfeffer questioned if any objections to the Variance application had been received. Zoning Administrator Kartes

responded that no objections had been received. However, several inquiries were made regarding the application. After further discussion, the following action was taken.

**Motion by Commissioner Grandprey, seconded by Commissioner Wahl, and carried to recommend to the City Council the approval of the application, submitted by Dallas Smith and Betty Smith, requesting a variance for a zero lot line side yard setback to allow construction of a twin home on two adjoining lots on property located at 423 and 413 River Bluff Drive. The property is described as: Lots 5 and 6, Block 2 of Riverbluff Estates Subdivision to the City of Windom, Cottonwood County, Minnesota. (Parcel Nos. 25-688-0250 & 25-688-0260)**

The motion includes that the jurisdictional documents and the findings of fact be made a part of the hearing record.

**Findings of Fact:**

1. As stated in the narrative herein.
2. That the property in question cannot yield a reasonable use if permitted to be used only under conditions allowed by the regulations governing the district in which it is located.
3. That the owner's plight is not caused by the owner and is due to circumstances unique to the property.
4. That the variance, if granted, will not alter the locality's essential character.

**Motion was declared carried 6-0.**

Chairman Hunter advised that these recommendations will now come before the Windom City Council at its meeting next Tuesday night, August 4, 2009; and the Council will make the final decision concerning this application.

5. New Business: None
6. Planning Commission Comments, Concerns, Suggestions: Commissioner Grandprey received a complaint regarding the cost of building permits. The individual questioned why the fees were higher in Windom than surrounding communities. Planning Administrator Kartes explained that the fees are based on the valuation of the work completed and is based on the cost for labor and material.
7. Adjourn: On motion, Chairman Hunter adjourned the meeting at 7:28 p.m.

\_\_\_\_\_  
Gary Hunter, Chairman

Attest: \_\_\_\_\_  
James Kartes, Zoning Administrator



Minnesota Department of Public Safety  
**ALCOHOL AND GAMBLING ENFORCEMENT DIVISION**  
 444 Cedar Street Suite 133, St. Paul MN 55101-5133  
 (651) 201-7507 Fax (651) 297-5259 TTY (651) 282-6555  
 WWW.DPS.STATE.MN.US



APPLICATION AND PERMIT  
 FOR A 1 TO 4 DAY TEMPORARY ON-SALE LIQUOR LICENSE

TYPE OR PRINT INFORMATION

NAME OF ORGANIZATION <i>Windom Lions Club</i>		DATE ORGANIZED <i>7-29-09</i>	TAX EXEMPT NUMBER <i>E 41-6175799</i>	
STREET ADDRESS <i>Po Box 72</i>		CITY <i>Windom</i>	STATE <i>MN</i>	ZIP CODE <i>56101</i>
NAME OF PERSON MAKING APPLICATION <i>Rodney C. Holt</i>		BUSINESS PHONE <i>(507) 831-6925</i>	HOME PHONE <i>(507) 822-2065</i>	
DATES LIQUOR WILL BE SOLD <i>Aug 15, 09</i>		TYPE OF ORGANIZATION CLUB CHARITABLE RELIGIOUS OTHER NONPROFIT		
ORGANIZATION OFFICER'S NAME <i>Dave Carroll - Pres</i>		ADDRESS <i>46380-405<sup>th</sup> st Windom MN 56101</i>		
ORGANIZATION OFFICER'S NAME <i>Steve Nasby - Sec</i>		ADDRESS <i>707 16<sup>th</sup> st Windom MN</i>		
ORGANIZATION OFFICER'S NAME <i>Dave Brockman</i>		ADDRESS <i>837 Des Moines Dr Windom MN</i>		

Location license will be used. If an outdoor area, describe

*Windom Community Center*

Will the applicant contract for intoxicating liquor service? If so, give the name and address of the liquor licensee providing the service.

*NO*

Will the applicant carry liquor liability insurance? If so, please provide the carrier's name and amount of coverage.

*Henrickson Agency, EDEN PARLIE, MN*

**APPROVAL**

APPLICATION MUST BE APPROVED BY CITY OR COUNTY BEFORE SUBMITTING TO ALCOHOL & GAMBLING ENFORCEMENT

CITY/COUNTY \_\_\_\_\_

DATE APPROVED \_\_\_\_\_

CITY FEE AMOUNT \_\_\_\_\_

LICENSE DATES \_\_\_\_\_

DATE FEE PAID \_\_\_\_\_

SIGNATURE CITY CLERK OR COUNTY OFFICIAL \_\_\_\_\_

APPROVED DIRECTOR ALCOHOL AND GAMBLING ENFORCEMENT \_\_\_\_\_

NOTE: Submit this form to the city or county 30 days prior to event. Forward application signed by city and/or county to the address above. If the application is approved the Alcohol and Gambling Enforcement Division will return this application to be used as the License for the event

# APPLICATION FOR LIQUOR LICENSE AMENDMENT

License Period Ending: Dec. 31, 2009  
Licensee Name: Phat Pheasant Pub Inc.  
Licensee Trade Name: Phat Pheasant Bar et al  
Licensed Location Address: 2370 HWY 60 E

Description of Premise (include description of outside areas) Building area and permanent fenced area attached to building.

Insurance coverage (including entire premise) attached.

I, the applicant, state that all statements in this application are true and correct. I hereby acknowledge that I am in receipt of Chapter 5 of the Windom City Code detailing license requirements.

Signed: [Signature]  
Date: 7-30-09

Report of Investigation: \_\_\_\_\_

License Fee - None \$0.00	
<b>Recommends</b>	
<input type="checkbox"/>	<input type="checkbox"/>
Approval	Denial
_____ Police Chief	

Application APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Application DISAPPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
City Administrator

**I am requesting an amendment to my current liquor license to include the fenced in patio that is attached to the bar/restaurant so I can have functions outdoors. We have the Jamie Torkelson Memorial Ride and benefit here on Saturday August 29<sup>th</sup> that helped the family raise \$9800 for the Windom Hockey Association last year. The only way we can make it the BIG event it is, is to have the party outdoors to accommodate all the people. Also I would like to also have some other dances outdoors to try and compete with all the places that can and to have a smoking patio out back for customers when gates are closed like the Eagles have. Also I would like to build 2 volleyball courts and a horseshoe pit and allow drinking in the fenced area also like many establishments in the area do.**

A handwritten signature in black ink, appearing to be 'C. J. G.' with a long horizontal flourish extending to the right.

OWNER / MGR

Phat Pheasant Pub / Jack Slades  
Steakhouse

July 31, 2009

The City Of Windom.  
444 9<sup>th</sup> St.  
Windom, MN 56101

RE: Policy #0048877961

To Whom It May Concern:

For purposes of Liquor Liability coverage the insured premises of 2370 Highway 60 E, Windom, MN 56101 includes parcel numbers 25-752-0011, 25-752-0050, and 25-752-0110 in Tibodeau's Center.

Let me know if you have any questions.

Sincerely,



Ken Hoffmann

IDENTIFICATION SUMMARY

Property Address: North Highway 60  
Windom, MN 56101

Client: United Prairie Bank  
1545 1st Avenue; Windom, Minnesota

Owner: Bradley G. Lathrop

Borrower: Clark Lingbeek

Parking Lot - Parcel #1

Legal Description: Tibodeau's Center E 135' W 195' Blk. 2 Ex Dot  
& Arlington Avenue, Par 207 G

Parcel Number: 25-752-0011

Lot Size: 65' x 135' = 8,775 Sq. Ft.  
Bar Lot Size - 65' x 57' = 3,704 Sq. Ft.

Real Estate Taxes: 2002 - \$58.00 (Delinquent)

Assessments: 2002 - None

Estimated Market Value: 2002 - \$1,800

Building - Parcel #2

Legal Description: Tibodeau's Center Lot 2, 3, 4 & 5, Block 4

Parcel Number: 25-752-0050

Lot Size: 135' x 120' = 19,570 Sq. Ft.  
Bar Lot Size - 135' x 57' = 7,695 Sq. Ft.

Real Estate Taxes 2002 - \$2,692.00 (Delinquent)

Assessments: 2002 - None

Estimated Market Value: 2001 - \$82,100  
2001 - \$3,900 Land; Improvements - \$226,100  
Total - \$230,000

IDENTIFICATION SUMMARY (Continued)

Rear Lot - Parcel #3

Legal Description: Tibodeau's Center Block 6 Lots 2, 3, 4, 7, 8 and 9.

Parcel Number: 25-752-0110

Lot Size: Lot 2,3,4 - 150' x 106' = 15,900 Sq. Ft.  
Lot 7,8 - 100' x 106' = 10,600 Sq. Ft.  
Lot 9 - 40' x 90' = 3,600 Sq. Ft.  
Vacated Bellvue Ave. 30' x 25' = 750 Sq. Ft.  
Bar Lot Size (Split in 1/2) 18,425 Sq. Ft.

Real Estate Taxes: 2002 - \$58.00 (Delinquent)

Assessments: 2002 - None

Estimated Market Value: 2002 - \$1,800

Easements: Utility - No apparent adverse easements or encroachments. With the split of the building an easement should be made for the use of the front and rear entries. Also an agreement should be made for the split in utilities.

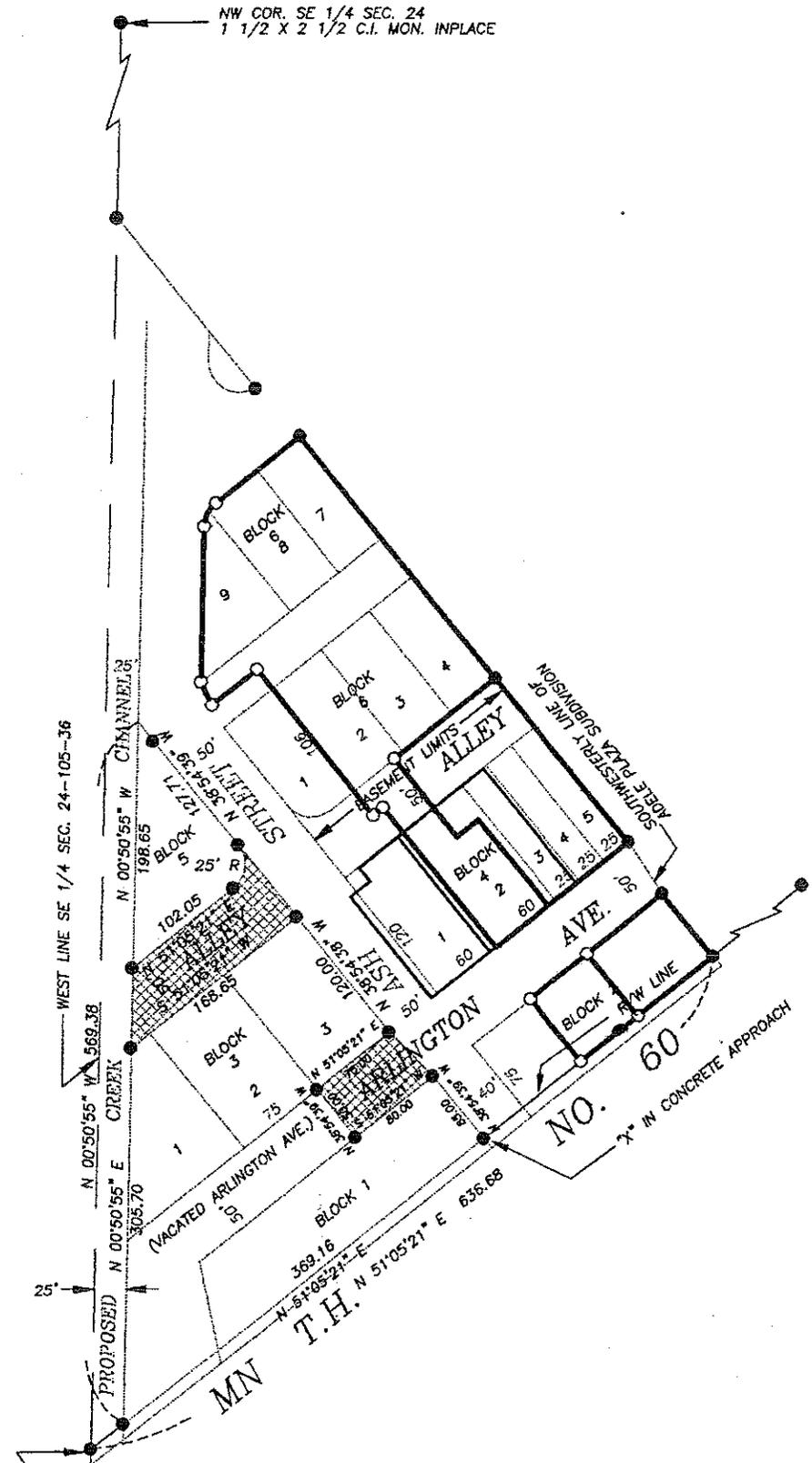
FEMA \*Map / Zone: 270090-0001 C / Zone X

Site Data: The parking lot and building area are separated by Arlington Avenue, although the street is used as part of the parking lot. An additional gravel parking area is to the rear of the building. The site is served by city sewer, water, electricity and natural gas.

Environmental Conditions: There are no know or apparent adverse environmental conditions that would negatively impact on the value of the property.

History Of Ownership: Remodeled by the American Legion Club for a bar restaurant in 1980. Sold to Bonnie Jean Dehmlow in 1996 for Bonnie Jeans Cafe and rented bar lounge to Bradley Lathrap. Bradley Lathrap recently purchased the building and has resold the bar lounge to Clark Lingbeek and the restaurant to Neil Stevens.

NW COR. SE 1/4 SEC. 24  
1 1/2 X 2 1/2 C.I. MON. INPLACE



MN DOT R/W  
MON. B 815

2. **GROSS ANNUAL INCOME:** Income for the purposes of this program shall be defined as gross annual income. Income includes, but is not limited to the following sources:

- a. Salary, commissions, bonuses and tips.
- b. Interest and dividends.
- c. Annuities and pensions.
- d. Rental property income (gross rents received subtracting interest, insurance, taxes, maintenance, and utilities).
- e. Estate or trust income.
- f. Gross annual income from self employment shall be deemed to be the net profit from said self employment, as declared by the applicant in Schedule C, D, or E, Part III, as appropriate, of the United States Internal Revenue Service form 1040, or any other such schedule as may be hereafter promulgated.
- g. Any public assistance including but not limited to GA, AFDC, SSI and Unemployment Compensation for all household residents.
- h. Social Security, including survivor benefits.
- i. Child support payments.
- j. Workers Compensation.
- k. Business income for self employed individuals.
- l. Interest income from lump sum insurance payments or judgments for health, accident, worker's compensation and personal or property losses.
- m. Foster children, live-in aids, children of live-in aids or children being pursued for legal custody or adoption who are not currently living with the household can be counted, but only if these same individuals are counted as residents of the household.

3. **EXCLUDED INCOME:** Temporary, non-recurring or sporadic income shall not be considered as part of a household's annual income. That income will be as defined below:

- a. One Time or sporadic gifts.
- b. Income from children under 18 years of age.
- c. Payments for foster children, unless the foster children are counted as residents of the household.
- d. Medical expense reimbursements.
- e. Educational scholarships used for tuition, fees, or books.
- f. Insurance lump sum payments or judgments for health, accident, worker's compensation and personal or property losses. Any interest income derived from such sources will be viewed as annual income.
- g. Hazard duty pay to a household member in the Armed Forces. (NOT regular pay).
- h. A capital gain.
- i. Reimbursements for expenses.

4. **INCOME VERIFICATION:** All income shall be verified in writing by a third party. The following verification examples listed below are considered acceptable.

- a. An income verification sheet, which is signed by a third party at the source of income.
- b. The previous two years federal tax returns will be used to calculate income for those applicants who are self employed or have variable

incomes. All schedules and attachments are necessary. All tax returns must be signed and dated.

- c. Signed third party verifications from banks, savings and loans, insurance companies, and etc.
- d. Such other written/printed verifications as deemed appropriate by SWMHP.

Income verification information that is more than **90 days** old will not be considered current or valid and must be reverified.

- 5. **ASSETS:** There will be no asset limitation associated with SCDP loans.
- 6. **DATA PRIVACY:** Information on program applicants shall be gathered and released in accordance with the Minnesota Data Practices Act. All information including names, addresses, income and income sources, assets and assets sources, credit reports and financial reports will not be released without prior, written consent of the applicant as specified by the Act. The Data Release Form will be signed by the applicant(s) and will inform the applicant of what information will be released and to whom. Information will only be gathered and released for solely administrative purposes such as eligibility determination, administrative review, coordination and securing of leverage funds. Private information may be released to the following agencies or organizations: City of Windom, SWMHP, WCA, Minnesota Housing Finance Agency, Rural Development, Lending Institutions, MN DEED, and HUD.
- 7. **EVIDENCE OF FRAUD:** Any administering party participating in the Program shall refer evidence of fraud, misrepresentation, collusion or other misconduct on the part of the applicant or contractors in connection with the operation of the Program to the State of Minnesota Attorney General for investigation and possible legal action.

#### **D. CONFLICT OF INTEREST**

- 1. **GENERAL CONDITIONS:** No member of the governing body of the locality and no official, employee, or agent of the local government, SWMHP, Western Community Action, Inc. (WCA) or other persons who exercise policy, decision-making function or responsibilities in connection with the planning and implementation of the Housing Rehabilitation Program shall directly or indirectly benefit from this program. This prohibition shall continue for one year after an individual's relationship with the local government or SWMHP ends. Specific prohibitions are as follows:
  - a. **Program Participation:** No member of the governing body of the locality, no official, employee, or agent of the local unit of government or SWMHP or Western Community Action, Inc. (WCA) as defined above, shall accrue direct or indirect program benefits.
  - b. **Contractual Relationships:** No member of the governing body of the locality, no official, employee, or agent of the local unit of government or SWMHP or Western Community Action, Inc. (WCA) as defined above, shall obtain direct or indirect interest in any contract, subcontract, or agreement in any activity in this program that provides financial compensation for services.

c. **Prohibition Extensions:** This prohibition extends to contracts or direct benefits in which a spouse, minor child or business partner may have personal or financial interest.

2. **DETERMINATION OF CONFLICT OF INTEREST:** When questions arise or a situation is unclear an initial Opinion of Conflict of Interest shall be sought from the City Attorney. That Attorney's Opinion will outline areas that the situation is within or outside applicable Federal Regulations 24 CFR 570, Uniform Administration Requirements and State Statutes 412.311 or 471-87 through 471.89. The Attorney's Opinion shall be forwarded to DEED Staff, and at DEED's discretion, shall be forwarded to the Minnesota Attorney General for the State's Legal Opinion.

## E. ELIGIBLE PROPERTIES

1. **SUBSTANDARD RESIDENTIAL PROPERTY:** Residential dwelling must be determined to meet the following classifications in order to be eligible for assistance under this SCDP Housing Rehabilitation Program.

- a. The residential unit does not meet HUD's Section 8 Housing Quality Standards.
- b. The residential unit does not meet applicable Fire Code, Occupancy Codes, National Electrical Code, Uniform Mechanical and Plumbing Codes.
- c. The residential unit contains health and safety hazards.
- d. The residential unit lacks safe, reliable water supply or sanitary wastewater disposal.
- e. The residential unit does not meet Minnesota Energy Efficiency Standards.
- f. The residential unit fails to provide suitable shelter in some other obvious and apparent manner.

2. **SUITABILITY FOR REHABILITATION:** Residential dwellings must be determined as suitable candidates for rehabilitation in order to receive SCDP funds. That determination shall be based on a number of factors including structural viability/housing deficiencies, historic significance, cost of rehabilitation versus post market value, housing replacement costs and other socioeconomic factors.

- a. **Structural Viability/Housing Deficiencies:** Will be determined by the number and severity of structural damage and house system deficiencies existing in the home to be rehabilitated candidate. Sufficient funding from SCDP and Leverage Funds sources must be available to address all existing structural deficiencies.
- b. **Historic Significance:** Residential units that possess historic significance will be reviewed outside of normal market value economic considerations.

- c. **After Rehabilitation Market Value:** If the type and number of housing repairs needed to bring the home into compliance with the adopted housing standards exceeds **150%** of the after rehabilitation market value of the unit, the unit shall be declared as not suitable for rehabilitation. **After Rehabilitation Market Value is defined as:**

$$(\text{Total Cost of Rehabilitation} \times 50\%) + \text{Current EMV} =$$

- d. **Housing Replacement Costs/Socioeconomic Factors:** When a residential unit has been determined to be unsuitable for rehabilitation, housing replacement costs or socioeconomic factors **must** be considered in the final determination of unsuitability. These factors include:

- 1) Lack of Housing Alternatives.
- 2) Cost of Relocation.
- 3) Expense of Housing Alternatives.
- 4) Abnormal Low Market Values due to depressed market.
- 5) Physical condition and age of resident.

If the Field Administrator and Applicant choose to invoke one of the Factors above and proceed with the rehabilitation, the Field Administrator must present the documentation to the governing body and request a waiver.

- e. **Disclosure of Loan To Value:** Should the total cost of rehabilitation exceed 150% of the after rehabilitation market value, the Field Administrator must disclose to the applicant the loan to value position they will be in when undertaking the SCDP loan. The disclosure must also be provided to the applicant in writing.

3. **DECLARATION OF UNSUITABLE FOR REHABILITATION:** When a residential unit has been determined as not suitable for rehabilitation by the governing body, the Field Administrator must document the file with written documentation and present such information to the governing body. The documentation shall consist of the following:

- a. Inspection Report.
- b. Estimated Cost of Repairs.
- c. Zoning/Location.
- d. Historic Review (SHPO).
- e. Socioeconomic Factors Review.

4. **ELIGIBLE STRUCTURES:** The property must be a residential structure occupied by the owner. The following structures will be eligible to receive assistance through this housing rehabilitation program:

- a. Owner occupied single-family detached homes.
- b. Owner occupied attached homes.
- c. Owner occupied mobile homes. Mobile homes must be mechanically affixed to permanent foundation on a frost footing.

5. **TARGET AREA:** See attached target area map.

6. **OWNERSHIP REQUIREMENTS:** The following requirements must be met relating to ownership and the execution of the repayment agreement:
- a. **Fee Simple Absolute:** All owners named by deed, and if applicable their spouses, must execute the repayment agreement prior to the commencement of work.
  - b. **Contract for Deed:** All Contract for Deed Vendors, and if applicable their spouses, must execute the repayment agreement, including all Contract for Deed Vendees, and if applicable their spouses, must execute the repayment agreement prior to the commencement of work.
  - c. **Life Estate:** All Life Estate Tenants, and if applicable their spouses, must execute the repayment agreement, including all the remaindermen, and if applicable their spouses, must execute the repayment agreement prior to the commencement of work.
  - d. **Other Estates:** Other ownership relationships will be determined on a case by case basis.

Properties held in trust are generally not eligible and must be transferred into another ownership type above that is eligible. The Field Administrator must review the document prior to eligibility determination.

7. **PRIOR SCDP FUNDING RECIPIENTS:** Properties that have been rehabilitated with SCDP funds prior to the current application may only be eligible for additional SCDP funds under the following conditions:
- a. Ten full years have lapsed since the completion of the last rehabilitation project under the SCDP Program.
  - b. The property currently contains a very serious health and safety deficiency (e.g. failing furnace, mold, structural damage). This deficiency must be verified prior to application by a qualified third party (e.g. City's Building Official).
8. **OCCUPANCY STANDARDS:** The property to be rehabilitated shall be the principal place of residence of the applicant defined as being occupied by the applicant for more than 6 months consecutively. Failure to meet occupancy standards will result in denial of application or repayment of the unforgiven portion of the SCDP loan.
9. **HOMEOWNER'S INSURANCE:** The applicant must carry current homeowner's hazard insurance both at the time of the application and through the term of loan with a minimum coverage equal to all liens held against the property. Where the applicant does not have said insurance at the time of application, the applicant will be issued a Temporary Denial and the application will be placed on hold until insurance can be secured.
10. **TAX DELINQUENCY:** Applicants receiving rehabilitation assistance must be current with property tax payments and assessments. Verification must be provided in the file. Where payments are not current, at the time of application, the applicant will be issued a Temporary Denial and the application will be placed on hold until payments are paid current. No SCDP funds will be held for the applicant while payments are delinquent.

11. **DEFAULT AND BANKRUPTCY:** Applicants shall not be eligible to receive SCDP funding if the property to be rehabilitated is in default under its current home mortgage, contract for deed or comparable real estate obligation. An applicant will be ineligible to receive assistance through this rehabilitation program if the applicant is currently involved in bankruptcy proceedings.
12. **FLOOD PLAIN:** The City of Windom Target Area does encompass an area located within a flood plain. Each housing unit will be individually assessed to determine if the house is located in a 100 year flood plain. If a house is determined to be within a flood plain the first step is a determination of housing value (appraisal) and then a determination of the housing rehabilitation cost. If the cost of rehabilitation is less than 50% of the value of the rehabilitated housing unit, the following actions are necessary and must be documented in the file. The location must be documented, the unit must be covered by flood insurance, and finally rehabilitation is conducted within the FEMA Flood Plain Rehabilitation Guidelines. Housing units that require rehabilitation in excess of 50% of the value will not be eligible and the City may not issue a waiver on this. Finally a flood plain checklist must be completed for any homes located within a flood plain where housing rehab activities are proposed.

**F. PROJECT FUNDING**

1. **OWNER OCCUPIED PROGRAM DESIGN:** The SCDP project shall have a funding based on income. The following table details 80% Area Median Income:

**HUD Section 8 Income Guidelines Effective March 2009**

HOUSEHOLD SIZE	Gross Income limits Cottonwood County <b>Cities of Windom &amp; Mountain Lake</b>
1	\$32,950
2	\$37,700
3	\$42,400
4	\$47,100
5	\$50,850
6	\$54,650
7	\$58,400
8	\$62,150

2. **MAXIMUM FINANCING:** The maximum SCDP loan amount extended to any applicant shall **not exceed \$18,000** per dwelling unit. While **\$18,000** is the maximum SCDP loan, the average SCDP loan of **\$15,600 per unit** will be maintained. If the total cost of repairs exceeds the maximum SCDP loan limits, the applicant will be responsible to secure additional financing beyond the required matching leverage amount for the applicant's income. Western Community Action, Inc. (WCA) will assist the applicant to secure leverage funding. If the applicant is unable to secure the necessary funding, then the scope of the project will be reduced in a manner that is consistent with funding regulations and adopted housing standards.
3. **OWNER OCCUPIED ATTACHED HOUSING:** Where SCDP loans are granted for rehabilitation of owner occupied attached homes, funds may only be used for 1) rehabilitation of the structural components of the eligible unit and 2) the internal components of the eligible unit. Funds may not be used for the rehabilitation of the internal/external components of the non-owner occupied unit within the attached units.

4. **OWNER OCCUPIED COMMERCIAL HOUSING UNIT:** Where SCDP loans are granted for rehabilitation of owner occupied units within commercial structures, funds may only be used for 1) rehabilitation of the structural components of the eligible unit and 2) the internal components of the eligible unit portion of the commercial building. Funds may not be used for the rehabilitation on the internal/external components of the non-owner occupied unit within the commercial property.
5. **FINANCING TERMS:** The City of Windom Small Cities Development Program (SCDP) Housing Rehabilitation Program will have different financing categories based on applicant income. The financing will consist of:
  - a. **Deferred Loans:** A 0% deferred loan will be defined as a loan without interest or periodic payments which must be repaid in the event the improved property is sold, transferred, conveyed or ceases to be the borrower's principal place of residence. This loan is forgiven 10% per full year and fully forgiven after 10 full years of the date of the document. The Deferred Loan must only be used for SCDP eligible repairs as determined by the Field Administrator and SCDP Housing Rehabilitation Program. The Deferred Loan will only be applied **toward 60%** of SCDP eligible repairs. The Deferred Loan is Non-Assumable.
  - b. **Leverage Funds:** Shall be any funds used to provide for rehabilitation activities performed at an eligible applicant's dwelling unit other than the funds provided by the Small Cities Development Program. Leverage sources will be determined by income, homeowner debt and debt carrying capacity, homeowner credit worthiness and property eligibility. Leverage funds must only be used for repairs determined eligible by the Field Administrator and leverage fund Programs. The leverage funds will only be applied **toward 40%** of the total cost of rehabilitation and for eligible rehabilitation costs.

**Very Low Income Applicants** will not be excluded from participation in the Housing Rehabilitation Program due to the lack of leverage funds.

6. **Leverage Fund Sources:** The following fund sources **may be** accessed based on applicant income eligibility:
  - a. **Very Low Income:** Deferred loans and grants. These may be provided by the following programs and sources: Minnesota Housing Deferred Loan Program, D.O.E. Weatherization, Energy Assistance Repair Program, Farmers Home Administration's 504 Rural Housing Grant Program, Rural Development Housing Preservation Program, Federal Home Loan Bank Affordable Housing Program and the Greater MN Housing Fund. And where applicable, client contributions or other available financing sources.
  - b. **Lower Income:** Amortized loans, deferred loans and grants. These loans will be provided by the following programs and sources: Minnesota Housing Community Fix Up Fund or Fix Up Fund Loans, Farmer's Home Administration's 504 Rural Housing Loan Program; Local Bank Loans, Federal Home Loan Bank Affordable Housing Program and the Greater MN Housing Fund and where applicable, client contributions and other available financing sources.

7. **OTHER LEVERAGE SOURCES:** Leverage may be provided from sources other than private, public or non-profit Lenders as follows:

- a. **Liquid Assets:** In some cases homeowners may wish to use liquid assets for leverage funds. When this occurs, homeowners will be required to turn the funds over to Western Community Action, Inc. (WCA) before any Notice to Proceed is sent to a contractor. These funds will be deposited in an escrow account and will be released only after the homeowner has signed a completion certificate.
- b. **Project Equity:** Project Equity is defined as rehabilitation work being performed by an applicant. Applicants may only be allowed to perform this work when they can provide written verification, by third party, that they currently are employed or are directly retired from employment from a construction trade in which they wish to work on their property (i.e., a Plumber may work on plumbing but not roofing). If the applicant performs work on their home, they shall be reimbursed for the materials they put into the property, however, they will not be reimbursed for time or tools purchased for the project. All reimbursements for materials must include a bona fide receipt from a vendor. If the applicant is employed by a contractor that wishes to bid on the applicant's project, the contractor may do so as long as the applicant does not have any ownership interest in the company.
- c. **Prior Improvements:** No improvement shall be allowed to be counted toward the project or matching funds prior to the date of the inspection made by the Field Administrator.
- d. **Escrow Fund Policy:** Proceeds will be held in escrow accounts from all sources, except where prohibited by other lending sources, until the improvement has been completed to the satisfaction of the applicant and the project manager. The escrow will be held in a special account labeled as "leverage funds" and cannot be released until the applicant has signed a completion certificate, indicating that they are releasing the funds to the contractor. The applicant will not earn interest on the escrowed funds.

G. **ELIGIBLE IMPROVEMENTS**

- 1. **GENERAL CONDITIONS:** It is the goal of this housing rehabilitation program to rehabilitate substandard housing to the HUD Housing Quality Standards, Minnesota Energy Efficiency Standards, and where applicable to the State and local Building Code. It will be the primary focus of this rehabilitation program to eliminate health, safety, energy and structural deficiencies in the dwelling units within the residential areas of target area. In all cases those types of housing deficiencies will be addressed before any other improvement can be considered. There will be no work funded through the Small Cities Development Program for strictly cosmetic purpose.
- 2. **ELIGIBLE IMPROVEMENTS:** The deficiencies identified and the improvements called out for by the Housing Inspector during the inspection process will meet the following tests:
  - a. Only permanent improvements: Permanent improvements shall be those that include, but are not limited to, conversions, alterations, renovations, or repairs upon and in connection with existing dwelling units, which

correct defects and deficiencies in those units, which affect the safety, habitability, structural integrity or energy efficiency of the property.

- b. The improvements shall only address HUD's Housing Quality Standards, Minnesota Energy Efficiency Standards and applicable Building Code.
- c. The structure shall be livable, safe, structurally sound and habitable.
- d. All improvements shall meet all governing applicable codes and shall not be governed solely by the City of Windom Rehabilitation Standards. However, existing situations may be "grandfathered in" if the code violation is not one that is associated with any health, safety, energy or structural violations.

3. **PRIORITY IMPROVEMENTS:** Shall be defined as improvements that are mandatory and must be completed before other types of repairs are considered. Applicants who own properties with priority improvements will be given priority over other applicants. Those repairs include, but are not limited to the following:

- a. Fire Code, National Electrical Code, Uniform Plumbing Code and Mechanical Code violations affecting health and safety.
- b. Elimination of environmental hazards (e.g. Lead Based Paint, Asbestos, Mold, Radon etc.)
- c. Repairs affecting the structural integrity of the building.
- d. Modifications to make the home accessible to handicapped members of the household (Section 504). Handicaps must be medically documented.
- e. Those structures where overcrowding exists shall be prioritized. The building design and the number and sex of the occupants shall determine overcrowding.
- f. Violations of HUD's Housing Quality Standards.
- g. Violations of the Minnesota Energy and Efficiency Standards.
- h. SHPO mandated repairs are priority. If the Minnesota Historical Society has determined the structure historically significant, the Minnesota Historical Society must review plans for exterior improvements to the structure.

4. **FUNDING PROHIBITIONS:** Improvements that are largely cosmetic or do not improve housing systems are generally ineligible. Specifically, the following activities are examples of some ineligible repairs:

- a. Household appliances, saunas, whirlpool baths, decorative cabinetry, detached garages, decks (not related to a main point of entry), patios, landscaping (unless if undertaken due to repairs resulting from eligible activities), wood burning heating systems, fireplaces, fencing, water softener, window air conditioners, or central air. (Central air conditioning may be allowable with documented medical justification).
- b. Small Cities Development Program funds shall not be used in whole or in part to finance or to satisfy an existing debt.

- c. Small Cities Development Program funds shall not be used for the payment, in whole or partly for the satisfaction of assessments for public improvements. However SCDP funds can be used to fund improvements that may be a portion of city improvements as long as those improvements are located on or under an eligible applicant's property. Such improvements must be documented as to location of improvement and reason for assessment.
- d. Additions are generally ineligible unless the work is being undertaken to address overcrowding or accessibility issues. Documentation of such conditions is required in the file.

**5. WAIVER OF PROGRAM REQUIREMENTS:** Western Community Action, Inc. (WCA), as the Field Administrator, may request a waiver of program requirements on behalf of an applicant that meets basic SCDP Program eligibility.

Waivers may be requested to address the following housing deficiencies:

- a. Repairs that address code violations that effect health and safety.
- b. Repairs that affect the elimination of Lead Based Paint and Asbestos.
- c. Repairs affecting structural integrity.
- d. Modifications to make the home handicapped accessible in cases where a medically documented need exists.
- e. Modifications to address overcrowding conditions.
- f. SHPO mandated repairs, etc.

Waivers may be requested that involve the following program area:

- a. Eligibility requirements relating to property tax/assessment payments or current leverage requirements.

In order to request a waiver of Program Requirements, Western Community Action, Inc. (WCA) shall present a request in writing containing the following documentation to the governing body:

- a. Identification of necessary repairs and modifications.
- b. Identification of financial, repair cost, or debt carry issues that make the waiver necessary.
- c. Income/ownership eligibility status of applicant.
- d. Submitted bid amounts and selection of approved bid.
- e. Proposed financing package.

A determination shall be made by the approving entity. Western Community Action, Inc. (WCA) shall inform the applicant of the approving entity's decision.

**H. LEAD BASED PAINT**

**1. GENERAL CONDITIONS:** The elimination of lead based paint is a priority of this Small Cities Development Program. The following procedures shall apply to the housing rehabilitation activities:

- a. All housing units built prior to 1978 with a child six or younger or a pregnant female living in the home will include a lead assessment.
- b. The Risk Assessment Report will be part of the rehabilitation project file.

- c. All applicants shall receive, review and sign, "Renovate Right" brochure. Rehabilitation files must indicate that owner has received a copy of the brochure. This document shall be part of the applicant file.
- d. Homeowners must receive the HUD Notice "Summary Risk Assessment Notice" and the file must show receipt of the Notice.
- e. Work write ups/specifications will incorporate the required lead hazard reduction options from the Risk Assessment Report and include language on required lead safe work practices, site preparation, prohibited practices and clearance.
- f. Owner-Contractor language will include prohibition of use of lead based paint, requirement for trained workers/supervisors and conducting work in accordance with lead safe work practices.
- g. Licensed workers and supervisor must carry out lead hazard reduction work.
- h. A clearance examination where lead hazard reduction was carried out. Trained Sampling Technicians will conduct clearance examinations. Copy of the clearance report will be kept in the project file.

## I. RELOCATION PROCEDURES

In the case of extensive lead hazard abatement, the applicant will be advised that the work will proceed only with temporary relocation of the applicant and all residents in the dwelling. It will be the responsibility of the applicant to voluntarily relocate during the abatement work and the applicant will assume all costs associated with the relocation. The applicant must attempt to relocate with families and friends first. If this is demonstrated as not possible, the City of Windom will provide a maximum of \$330 per applicant household of documented hotel expenses first, and related out of pocket expenses, second. All expenses must be verified by receipt through a third party and approved by the Field Administrator.

## J. HISTORICAL SOCIETY REVIEW

1. **SHPO REVIEW:** All properties that are older than 50 years will be reviewed by the Minnesota Historical Society to determine if the structure is historically significant **before** bids are let and any rehabilitation occurs. The file must contain documentation of approval from SHPO to proceed with rehabilitation.
2. **HISTORIC PROCEDURE:** After the Housing Inspector has completed the initial property inspection; the following will be submitted to the Minnesota Historical Society Officer (SHPO):
  - a. A summary of the work to be done at the property.
  - b. Photographs of the structure.
  - c. Property description.
  - d. Any other information request by the SHPO.

Prior to the issuance of the "Notice to Proceed", a response from SHPO must be in the file indicating approval of proposed work and/or required amendments to the proposed work. If the project is considered historically significant, any changes in the scope of the project required by the SHPO must be initiated.

## **K. MARKETING**

1. **GENERAL MARKETING:** Western Community Action, Inc. (WCA), on behalf of the City of Windom, will conduct outreach in the target area and will solicit applications should the initial pool of pre-applicants become exhausted. Western Community Action, Inc. (WCA) will find new applicants in the following ways:
  - a. Conduct community meeting(s) to inform City of Windom and Mountain Lake residents of the availability of and application process for the Program.
  - b. Issue press releases advertising community meetings and/or information on SCDP grant application both to local newspapers and to local radio stations.
  - c. Make direct mailing of program information to the homeowners in the community if necessary to generate additional applicants.
  - d. Develop posters and post them in prominent areas in the communities as well as distributing brochures at commodity distribution sites, where applicable.
  - e. Work with local employers to provide information to employees at the worksite.
2. **FAIR HOUSING/AFFIRMATIVE ACTION:** It is the policy of the City of Windom to work affirmatively to ensure that all persons regardless of race, creed, national origin, sex, marital status, age, handicap or reliance on public assistance shall be treated equally and fairly for purposes of this SCDP Housing Rehabilitation Program.
  - a. Program promotion conducted by Western Community Action, Inc. (WCA) and/or the City of Windom shall be inclusive and will exercise care to avoid promotion methods that exclude eligible applicants.
  - b. Western Community Action, Inc. (WCA) will provide all applicants with printed information on Fair Housing at the time of application.
  - c. A translator will be made available upon request for the public meetings.
  - d. The applicant will be asked to provide a translator in all phases of the rehabilitation process.

## **L. APPLICATION AND APPLICANT SELECTION PROCEDURES**

1. **APPLICATION PROCEDURES:** The application process will be opened to anyone living in the target area. The allocation of funds will be on a first come first serve basis. All applications received from individual living in the Plan B target area will be placed on a waiting list until the target area opens up to the Plan B target area.
  - a. **Announcement:** A letter will be mailed to all the pre-applicants and a notice will be published inviting all potential applicants to a meeting which will provide them with more information about the full application process and a chance to ask questions. If the applicant cannot attend, the letter includes the list of documentation necessary to continue with the application process and information on how and where to send the information.

**b. Initial Screening:** All applicants must turn in the initial documentation for screening which include:

1. Full application
2. Proof of ownership
- 3) Proof of insurance
- 4) Income information

**c. Ranking:** Funds are allocated only on a first come, first serve basis from the date a complete application package is received by the field administrator. The field administrator will review the applicant's submitted information to ensure that the application meets program eligibility requirements. Once that process is complete, the applicant will be notified in writing of their eligibility status. The average loan amount will be reserved for the eligible household at that time (allocation).

**d.** Eligible applicants will have their file turned over to the Housing Inspector who will proceed with the home inspection and work write up process.

**2. HOUSING INSPECTION:** Once an applicant has been determined eligible for a SCDP loan, a Housing Inspector will conduct an inspection of the property. The Housing Inspector will determine what work is necessary to bring the property into compliance with the Housing Standards. The Housing Inspector will determine the priority level of the necessary repairs. The Housing Inspector will then prepare a Bid Package (work write up), which will rectify any violations to the Housing Standards, local codes and other eligible repairs. The Bid Package shall be considered a binding contract between the applicant and the contractor performing work at the applicant's property.

**3. BID PACKAGE:** Shall contain the following project and contractual documents:

- a. Instructions to the bidder.
- b. Bid Proposal.
- c. Program Warranties.
- d. General Conditions.
- e. Specifications categorized by trade.
- f. Diagrams and Layouts.

## **M. CONTRACTING PROCEDURES**

**1. PARTICIPATING CONTRACTORS:** All contractors participating in the Small Cities Development Program must have a Contractor's Application on file at the Western Community Action, Inc. (WCA) office. The application must contain proof of insurance coverage via a Certificate of Insurance Coverage and builder's license number. The contractors will be responsible for securing insurance of the amounts specified on the application form. All Contractors are required to follow all State and Federal laws.

**2. BID SOLICITATION:** The applicant will be provided a list of contractors recognized by Field Administrator by virtue of the contractor's filed application at Western Community Action, Inc. (WCA). However, an applicant is free to solicit bids from any contractor they wish. In order for a contractor who is not on file at the Western Community Action, Inc. (WCA) office to be awarded a bid, the contractor must furnish Western Community Action, Inc. (WCA) with a Certificate of Insurance, license number and must complete a Contractor Application. Upon doing so the contractor may be awarded the bid.

3. **BIDDING:** Contractors will be allowed to bid on any and all rehabilitation projects. However, no single contractor will be allowed to work on more than three rehabilitation projects at one time. When lead certification is required, contractors must verify such certification in the bidding process.
4. **BID AWARDS:** The Contract shall be awarded to the lowest base bid, unless one of the following circumstances occurs:
  - a. The contractor has failed to follow the procedures as outlined in the Instructions to the Bidders, see Bid Package.
  - b. The contractor fails to bid according to the specifications and it proves impossible to compare that contractor's bid with the other contractors.
  - c. The bid is determined to be unrealistically low by the Housing Inspector and the contractor agrees to withdraw the bid.
  - d. The applicant does not want the low contractor to perform the work and agrees to pay the difference between the lowest bid and the preferred contractor's bid.
  - e. All bids in a trade category are determined to be unrealistically high or non-competitive, in which case all bids in the questionable trade category will be thrown out and different contractors solicited for bids.
5. **PROJECT PACKAGING:** Upon acceptance of the bid by the applicant and the Housing Inspector, the Housing Inspector will package the project according to the eligibility of the homeowner to the various leverage sources and the Small Cities Development Program. The package is then reviewed by the Field Administrator to ensure completeness and accuracy.
6. **PROJECT APPROVAL PROCEDURE:** The Housing Inspector will then present the project package to the governing body for review and approval. The following information shall be provided to the governing body on the project approval form:
  - a. Location of Home to be rehabilitated.
  - b. Income/ownership eligibility status of applicant.
  - c. Proposed rehabilitation to be completed.
  - d. Proposed Financing Package.
  - e. Miscellaneous information pertinent to the approval and completion of the project.

The governing body will approve or deny the proposed work to be completed and the amount of the SCDP loan. Upon approval by the governing body, the Repayment Agreement is drawn up by Western Community Action, Inc. (WCA) and returned to the Housing Inspector for closing with the applicant.

7. **CONTRACTOR NOTIFICATION:** Upon closing the Housing Inspector issues a **Notice to Proceed** to the accepted contractors. The Notice to Proceed will allow the contractor 90 calendar days in which to complete the awarded contract. Ninety days will be the allotted amount of time except under the following conditions:
  - a. The work is weather dependent and weather conditions have not allowed the completion of the work.

- b. The Notice to Proceed is issued too late in the building season to allow weather dependent work to be completed on time.
  - c. Unforeseen difficulties develop with the approved work and force a delay.
8. **CONTRACTOR CONTRACT:** Each selected contractor will enter into a contract with the applicant. The contract will outline the terms for completion of the rehabilitation on the home and will include, but is not limited to, the following:
- a. Project Start Date.
  - b. Project Completion Date.
  - c. General Conditions.
  - d. Warranties.
  - e. Payment Terms.
  - f. Termination Procedures.
  - g. Specifies that the contract is between the applicant and the contractor.
9. **FAILURE TO START/COMPLETE PROJECT:** Upon receipt of the Notice to Proceed a contractor will have 90 calendar days in which to complete the contracted work. Failure to begin work within the first 60 calendar days will be grounds to terminate the contract.

The 90 day time period shall not be exceeded except through the issuance of a change order. In the absence of a change order, a contractor who violates the time period shall be penalized 5% of the unpaid balance for each week that the contractor is in violation.

10. **INTERIM INSPECTIONS:** After work begins, interim inspections will be scheduled by the Housing Inspector during the active construction period to monitor work progress and work quality. If a dispute arises between an applicant and a contractor the Housing Inspector will attempt to find a means of resolving the conflict, but the Housing Inspector is not responsible for the final outcome.
11. **PAYMENT PROCEDURES:** All payments to contractors will be restricted as follows:
- a. No pre-payments are allowable for any reason.
  - b. Lien Waivers are required for all contractors/sub-contractors before payment will be made.
  - c. Partial payments are made proportional with the work completed and all work is completed according to the specifications contained within the Bid Package and when the work meets with the approval of both the applicant and the Housing Inspector. No payments will be made for work that has not yet been completed.
  - d. No retainage will be held for partial payments.
  - e. Partial payments are limited to a maximum of 85% of the total due on the completed portions of the project for that contractor.
  - f. In order for all contractors to be paid in full, a signed Completion Certificate must be presented at the time of payment. The applicant, the Housing Inspector and the contractor must sign the Completion Certificate.

- g. Payments will be made only upon presentation of the following documents to SWMHP:
  - 1) Cover Form with Instructions.
  - 2) Billing Statement.
  - 3) Lien Waiver.
  - 4) Sworn Contractors Statement.
  - 5) Completion Certificate.

**12. CHANGE ORDERS:** Changes made to the contract require the signature of the applicant, the contractor, the Housing Inspector, and the Housing Coordinator on a Change Order. Change Orders will be allowed only for the following reasons:

- a. Changes made to the contract to rectify hidden deficiencies that are discovered once the work has begun.
- b. To change a specification due to unforeseen difficulties arising after work has begun.
- c. To address a deficiency that was inadvertently dropped from the project during project packaging.
- d. To approve changes in the contract time period.

**13. TERMINATION OF CONTRACT:** A contractor's contract can be terminated under the following procedures:

- a. Poor work performance on the job site and the demonstrated inability to rectify the poor workmanship. The cost of repairing poor workmanship and the higher costs of awarding the bid to the next lowest bidder shall be deducted from any amount owed to the initial contractor for work completed. In all cases a good faith effort will be made to allow the contractor the opportunity to rectify the problem before removal procedures are instituted. The Housing Inspector shall institute the following procedures when negotiating a workmanship problem:
  - 1) Shall set up a meeting at the job site with the contractor and applicant to attempt to come to a consensus.
  - 2) Shall contact the contractor the second time by certified mail notifying the contractor that the workmanship is still poor and specifying the areas that need to be addressed to satisfy the contract, giving the contractor a fifteen (15) day time limit in which to make the required repairs.
- b. Causing undue damages to an applicant's property and the inability or unwillingness to correct the damages. The cost of repairing damages will be deducted from any money owed the contractor for work already completed. If the amount owed is insufficient to cover the costs of the damages then Western Community Action, Inc. (WCA) will assist the applicant, if necessary, to reclaim damages by legal means.
- c. Where collusion or fraud has been determined to exist on the part of the contractor.
- d. Lack of sufficient insurance coverage.

- e. The inability of the contractor to perform the work within the allotted time.
- f. Irreconcilable and irresolvable differences between the contractor and the applicant.
- g. The contractor requests to be removed from the contract. There will be no penalty associated with this request as long as the request is made within sixty days of receiving the Notice to Proceed.
- h. Contractors who are removed from a contract shall be removed from the Approved Contractors List and shall be prohibited from being awarded any contract with Western Community Action, Inc. (WCA).

## **N. LOAN PACKAGES**

1. **LOAN FILES:** Western Community Action, Inc. (WCA), as the Field Administrator, shall maintain files on each applicant throughout the duration of the program. Each applicant's file shall include, but is not limited to, the following:
  - a. **Work Progression Chart:** This form allows easy monitoring of the file and enables those working with it to see at a glance just what stage the project is at. This form will be attached to the inside cover of the file.
  - b. **SCDP Loan Application:** This form will provide information relative to family size and composition, employment information, household income and assets, applicant affordability, and monthly expenses. The form will also provide data on the property to be improved as well as other pertinent lending data as required by the Western Community Action, Inc. (WCA). The Lead Paint Warning and Data Privacy Statement will be included in the application. The Lead Paint Warning will be signed by the applicant attesting that they have read and understand the dangers associated with lead based paint.
  - c. **Third Party Income Verification:** This form provides third party verification of an applicant's income. A representative from the source of income shall sign these forms.
  - d. **Income Tax Statements:** Copies of the applicant's signed federal income tax returns for the two preceding years, including all Schedules, if the applicant is self employed or have variable incomes.
  - e. **Proof of Ownership:** Copies of a deed, contract for deed, life estate or any other valid proof of ownership.
  - f. **Proof of Insurance Coverage:** Copies of an insurance binder or certificate that ensures that proper hazard insurance is binding on the property.
  - g. **Property Inspection Form:** The Inspection Report shall be prepared by the Housing Inspector. The Inspection Report is designed to include a specific account of the condition of the property and all corrective actions necessary.
  - h. **SHPO Response:** A letter from SHPO indicating their approval or requirements for the project, if the property is over 50 years old.

- i. **Bid Package:** The Bid Package is the contract between the applicant and contractor and specifies the exact work which will be performed at the eligible household's property.
- j. **Repayment Agreement:** This form is the legal mechanism by which a Lien is placed against the improved property until the loan is repaid, with no interest, at the time of property ownership transfer.
- k. **List of Improvements:** This form lists all the work that is to be completed during the project, stipulates which funding source and contractor is responsible for each portion of the work and includes the recording and taxes associated with the funding sources.
- l. **Rehabilitation Documents:** The Notice to Proceed, Billing Statement, Sworn Construction Statement, Completion Certificate, Lien Waiver, Proof of Payment, Change Orders.
- m. **Close-Out Packet:** A letter is sent to the homeowner informing them of completion and contains copies of the Repayment Agreement and Completion Certificates.
- n. **Other Pertinent Information:** Other information important to the approval and completion of the project.

**O. LOAN REPAYMENT & PROGRAM INCOME**

1. **LOAN REPAYMENT:** The City of Windom Small Cities Development Program consists of repayment terms for owner occupied projects. Deferred loan funds secured by repayment agreement will be repaid under the following terms:

a. **City of Windom Small Cities Development Program Deferred Loan:** A 0% deferred loan will be defined as a loan without interest or periodic payments which must be repaid in the event the improved property is sold, transferred, conveyed or ceases to be the borrower's principal place of residence. This loan is forgiven 10% per full year and fully forgiven after 10 full years of the date of the document.

2. **GENERATED INCOME/PROGRAM INCOME:**

a. **Definition:** Generated Income is define as any funds returned from deferred loans through loan repayments, interest earned on the fund themselves in an account, or fines assessed on SCDP funded contracts while the Grant is open.

Program Income is define as any funds returned from deferred loans through loan repayments, or interest earned on the funds themselves in an account after the Grant has been closed.

b. **Reporting:** SWMHP is responsible for reporting to DEED on all Generated Income. The City of Windom is responsible for reporting to DEED annually on all Program Income.

c. **Earnings:** All earnings of Generated Income and Program Income must follow SCDP Federal Requirements.

- d. **Open Grant:** Generated Income earned while the grant is open must be used to fund approved activities and reduce current draws.
- e. **Closed Grant:** Program Income must be utilized only on activities approved in the grant when the project was open. The Program Income must be used within two federal fiscal years after the reporting period in which it was collected. Unspent funds will be returned to DEED.

**P. LOAN SUBORDINATION, ASSUMPTION AND SATISFACTION PROCEDURE**

- 1. **AUTHORIZED LOAN SUBORDINATION:** Without further approval, the City of Windom will authorize the subordination of its SCDP deferred loan under the following circumstances:
  - a. The Borrower wishes to borrow funds for housing debt only (i.e. home repair) or straight mortgage refinance, as evidenced by loan documents from a lender.
  - b. The applicant will be charged a Processing Fee of \$50 by the City of Windom. The applicant is responsible for the cost of all filing fees associated with the recording of subordination documents.
- 2. **LOAN ASSUMPTIONS:** The Deferred Loan is Non-Assumable.
- 3. **AUTHORIZED DEFERRED LOAN SATISFACTIONS:** Without further approval, the City of Windom will authorize the satisfaction of its SCDP deferred loan under the following circumstances:
  - a. Upon the fulfillment of the full term of the SCDP loan.
  - b. Upon payment of the remaining debt on SCDP loan.
  - c. As otherwise determined satisfied by the City of Windom

The City of Windom will prepare and provide to the applicant a Satisfaction of Mortgage. The applicant is responsible for the recording fees associated with the recording of satisfaction documents.

**Q. APPEALS PROCEDURES**

- 1. **APPLICANT DENIAL PROCEDURE:** If an applicant is denied for any reason, the Field Administrator will send a letter of denial to the applicant owner within 20 working days. The denial letter will clearly outline the reason for denial and inform the applicant that an appeals procedure is available.
- 2. **APPLICANT APPEAL PROCEDURE:** If an applicant is dissatisfied with the level of assistance they have received, and where an applicant complaint cannot be resolved with the conduct of the administration, the Field Administrator will notify the applicant in writing that a written procedure for appeal is available. The appeals procedure is as follows:

- a. The applicant who wishes to make an appeal must submit such an appeal **in writing** to the City of Windom. The appeal must specifically state the complaint and how the applicant wishes the complaint to be resolved. The applicant will need to notify the City in writing within 30 days of the date of their notification of denial of financing.
- b. SWMHP will forward the complaint to the City of Windom for the Windom City Council to review at a regularly scheduled meeting within 30 days of the receipt of the written complaint.
- c. The Windom City Council will review the complaint and will make a determination concerning the complaint. The SWMHP will notify the applicant of the Windom City Council's decision regarding the appeal. Notification will be in writing and must be made within 10 working days of the decision.
- d. After an appeal action has been initiated, SWMHP will send the following information to the Minnesota Department of Employment and Economic Development, and the City of Windom.
  - 1) A copy of the written complaint and request for satisfaction under the appeals process.
  - 2) A copy of all correspondence between SWMHP and the appealing client concerning the appeal disposition.
  - 3) The final appeal disposition.

**R. AMENDMENTS, DIRECTIVES**

These procedural guidelines may be amended or supplemented by SWMHP in coordination with the City of Windom.

**S. ADOPTION**

These procedural guidelines governing the administration of the City of Windom SCDP Owner Occupied Rehabilitation Program have been adopted by action of the Windom City Council.

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

**Witnessed:** \_\_\_\_\_

**Date:** \_\_\_\_\_

(Recording Information Only)

CITY OF WINDOM  
SMALL CITIES DEVELOPMENT PROGRAM

*OWNER-OCCUPIED REHABILITATION PROGRAM*

COMBINATION SECURITY AGREEMENT, NOTE,  
REPAYMENT AGREEMENT AND LIEN

**THIS COMBINATION SECURITY AGREEMENT, NOTE, REPAYMENT AGREEMENT AND LIEN**, (hereinafter "the Agreement") made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_ and \_\_\_\_\_ between \_\_\_\_\_, (hereinafter the "OWNERS"), and the **CITY OF WINDOM**, a municipal corporation under the laws of the State of Minnesota, having its principal office at 444 9<sup>th</sup> Street, P.O. Box 38, Windom, Minnesota, 56101, (hereinafter the "CITY").

**WITNESSETH :**

**WHEREAS**, on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, (hereinafter the "Effective Date") the CITY made a loan (hereafter the "Loan") to the OWNERS in the amount of \_\_\_\_\_ Dollars and no/00 (\$ \_\_\_\_\_) to rehabilitate the **owner occupied** real estate, "property", hereinafter described; and,

**WHEREAS**, said Loan is made on the condition that the OWNERS execute this Agreement; and,

**WHEREAS**, said OWNERS declare that they are currently occupants of the Property and the Property is utilized as their **primary residence** as defined in the Small Cities Development Program Procedural Guidelines; and,

WHEREAS, said OWNERS state that they currently meet all criteria, unless waived by the CITY, under the Small Cities Development Program Procedural Guidelines and will continue to do so throughout the rehabilitation process; and,

NOW, THEREFORE, in consideration of the making of the Loan by the CITY to the OWNERS, the OWNERS do hereby agree as follows:

1. Security:

This Agreement secures to the CITY: (a) The repayment of the debt evidenced by this Agreement, without interest, and all renewals, extensions and modifications; (b) the payment of all un-forgiven principal deferred sums, evidenced by this Agreement, to protect the security granted hereunder; and (c) the performance of the OWNERS covenants and agreements under this Agreement. For these purposes, the OWNERS do hereby mortgage, grant and convey to the CITY, with the power of sale, the described real estate. As security for the obligation of the OWNERS to make repayment as provided in this Agreement, the OWNERS hereby grant and convey unto the CITY, and the CITY shall have a lien on the real estate located in the CITY \_\_\_\_\_, \_\_\_\_\_ County, Minnesota, legally described as:

Commonly \_\_\_\_\_ known \_\_\_\_\_ as:  
"Property") \_\_\_\_\_ (hereinafter the

Said lien shall be in the full amount necessary to satisfy the Loan and the repayment obligation, as set forth in this Agreement, together with the costs, including reasonable attorney's fees, to collect such amount, if collection is necessary.

2. Primary Residence:

The OWNERS agree to continue to occupy the Property as their principle place of residence during the term of the Loan.

3. Terms of the Agreement:

- A. Interest shall accrue on this Loan at the rate of 0%.
- B. All payments of principal shall be deferred.
- C. The principal amount of the Loan shall be forgiven, in full, only after 10 years from the date of the Effective Date, unless the OWNERS should default as described hereunder. Principal will be forgiven 10% annually from the date of the Effective Date should the OWNERS remain in compliance with the Loan terms.
- D. This mortgage and all liens created hereunder will automatically terminate and be of no further force and effect if a Notice of Lis Pendens to Foreclose Mortgage has not been filed on or before \_\_\_\_\_ (ten years from the Effective Date).

4. Insurance: OWNERS agrees to keep all buildings, improvements, and fixtures, currently or in the future located on or a part of the Property, insured against loss by fire, extended coverage perils,

vandalism, malicious mischief, and, if applicable, steam boiler explosion to the full insurable value and at least the amount of the full insurable value (**total of all liens on property**) at all times while any amount remains unpaid under this Agreement. If any of the buildings, improvements or fixtures are located in a federally-designated flood prone area and if flood insurance is available for that area, OWNER shall procure and maintain flood insurance in amounts reasonably satisfactory to the CITY. The insurance shall be issued by an insurance company or companies licensed to do business in the State of Minnesota and acceptable to the CITY. The Property shall maintain property insurance and such insurance policy shall contain a mortgagee/loss payable clause in favor of the CITY affording all rights and privileges customarily provided under the so-called standard mortgage clause. The insurance policies shall provide for not less than thirty (30) days written notice to the CITY before cancellation, non-renewal, termination or change in coverage; and the OWNERS shall deliver to the CITY a duplicate original or certificate of insurance for such policies. In the event of damage to the Property by fire or other casualty, the OWNERS shall promptly give notice of such damage to the CITY and the insurance company.

5. CITY hereby agrees to furnish the OWNERS with a conformed copy of this Agreement at the time of execution

6. Default:

In the event of any default in the payment of any principal or other indebtedness due hereunder or any other breach of this Agreement, the CITY may, at its right and option, declare immediately due and payable the principal balance of this Agreement, together with any attorneys fees incurred by the CITY in collecting or enforcing payment thereof, whether suit be brought or not, and all other sums due hereunder and payment thereof may be enforced and recovered in whole or in part at any time by one or more of the remedies provided in any document securing this Agreement. The CITY may extend the time of payment of principal of this Agreement without notice to or consent of any party liable hereon and without releasing such party. Default by the OWNERS shall be defined by one or more of the following:

- A. If the Property fails to be maintained as a primary residence as described in the Small Cities Development Program Procedural Guidelines.
- B. If the OWNERS fail to utilize the Small Cities Development Program funds for rehabilitation of the described Property in a manner authorized by the CITY.
- C. If the OWNERS fail to insure the Property as described above.
- D. If the real estate hereinafter described is sold, transferred, or otherwise conveyed, whether voluntarily or involuntarily, either while the OWNERS are living or by reason of the death of the OWNERS.
- E. If the real estate hereunder described loses its homestead status for real estate tax purposes.
- F. If the OWNERS should become delinquent on their Property taxes and assessments attributed to the Property described hereunder.
- G. If in the event that the OWNERS are authorized to perform certain work elements as allowed by the Small Cities Development Program Procedural Guidelines and the OWNERS fail to fulfill the Work Agreement.
- H. If the OWNERS make untrue, false or fraudulent statement on the Small Cities Development Program Application.
- I. Failure to comply with any of the terms of this Agreement.

In the event of default, the remaining un-forgiven portion of the Loan shall be repaid to the CITY in the following manner:

A. Repayment to the CITY shall be made by the OWNERS or his/her/their heirs, executors, or representatives not later than the 30<sup>th</sup> day following (a) the date of default or (b) notice of default by the CITY, whichever is earlier. If the Loan is not repaid during this repayment period, the OWNERS shall pay at an annual rate of interest rate of 12% until the outstanding balance is repaid.

B. In its sole discretion, the CITY may designate a later date for payment and/or waive late fees. If the CITY makes such a designation, written notice will be given to the OWNERS, his/her/their heirs, executors, or representatives. Terms for repayment would then be as agreed between the parties.

OWNER's Right to Reinstate. If OWNER meets certain conditions, OWNER shall have the right to have enforcement of this Mortgage discontinued at any time prior to the earlier of. (a) 5 days (or such other period as applicable law may specify for reinstatement) before the sale of the Property pursuant to any power of sale contained in this Mortgage; or (b) entry of judgment enforcing this Mortgage. Those conditions are that OWNER: (i) pays Lender all sums which then would be due under this Agreement had no acceleration occurred; (ii) cures any default of any other covenants or agreements; (iii) pays all expenses incurred in enforcing this Agreement, including, but not limited to, reasonable attorneys' fees; and (iv) takes such action as Lender may reasonably require to assure that the lien of this Agreement, Lender's rights in the Property and OWNER's obligation to pay the sums secured by this Agreement shall continue unchanged. Upon reinstatement by OWNER, this Agreement and the obligations secured hereby shall remain fully effective as if no acceleration had occurred.

**Acceleration- Remedies.** CITY shall give notice to OWNER prior to acceleration following OWNER's breach of any covenant or agreement in this Agreement. The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to OWNER, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Agreement and the sale of the Property. The notice shall further inform OWNER of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of OWNER to acceleration and sale. If the breach is not cured on or before the date specified in the notice, or if the maturity date has occurred, CITY at its option may require immediate payment in full of all sums secured by this Agreement without further demand and may invoke the power of sale and any other remedies permitted by applicable law. CITY shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph., including, but not limited to, reasonable attorneys' fees.

If CITY invokes the power of sale, CITY shall cause a copy of a notice of sale to be served upon any person in possession of the Property. CITY shall publish a notice of sale and the Property shall be sold at public auction in the manner prescribed by applicable law. CITY or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Agreement; and (c) any excess to the person or persons legally entitled thereto.

#### 7. Property Transfer by Contract for Deed:

If this Agreement is executed by a Contract Vendor, as one of the OWNERS, such execution shall be deemed for the purpose of establishing and continuing the existence of the indebtedness described and

the lien granted herein. However, in the event of default of the terms hereof, neither the CITY, nor its successors or assigns, shall take any action against such Contract Vendor, except as may be necessary in order to subject the real estate described herein to the satisfaction of said indebtedness. The Contract Vendor shall not be personally liable by reason of any default which may occur in the performance or by reason of the non-performance by the OWNERS of any of the terms of this Agreement; and the CITY shall not seek or be entitled to any personal judgment against the Contract Vendor by reason of any default hereunder. The sole remedy of the CITY against the Contract Vendor, in the event of any default, shall be to proceed against the real estate described herein in the manner provided in this Agreement and by law in order to subject the real estate to repayment of the Loan. The parties hereto agree that any conveyance of the real estate described herein by the Contract Vendor shall subject said real estate to this lien for so long as the Loan is unpaid and outstanding.

8. Owner Covenant:

The OWNERS agree to keep the Property free from all junior liens and encumbrances.

The OWNERS further agree to commit or permit no waste on the Property, to keep the Property in good repair, and to pay any expenses or attorney's fees that may incur, by reason of litigation in protection of this Agreement.

9. Additional Terms:

- A. This Agreement may be prepaid in whole or in part without penalty.
- B. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.
- C. It is intended that this Note is made with reference to and shall be governed by and construed in accordance with the laws of the State of Minnesota.
- D. The provisions of this Agreement shall run with the real estate described above and shall inure to the benefit of and be binding upon the parties hereto and their respective, heirs, executors, representatives, successors and assigns.

**(Signature page to follow)**



This instrument is exempt from registration tax under Section 287.04 of Minnesota Statutes.

**WINDOM AREA HOSPITAL**  
**Windom, Minnesota**

**COMBINED FINANCIAL STATEMENTS**

**YEARS ENDED APRIL 30, 2009 AND 2008**

**WINDOM AREA HOSPITAL**  
**Windom, Minnesota**  
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**YEARS ENDED APRIL 30, 2009 AND 2008**

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## INDEPENDENT AUDITORS' REPORT

Board of Directors  
Windom Area Hospital and Affiliate  
Windom, Minnesota

We have audited the accompanying combined balance sheets of Windom Area Hospital and its discretely presented component unit as of April 30, 2009 and 2008, and the related combined statements of revenues, expenses and changes in net assets, and cash flows for the years then ended. These combined financial statements are the responsibility of the management of Windom Area Hospital. Our responsibility is to express an opinion on these combined financial statements based on our audits.

We conducted our audits in accordance with U.S. generally accepted auditing standards and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the combined financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the combined financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall combined financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the combined financial statements referred to above present fairly, in all material respects, the financial position of Windom Area Hospital as of April 30, 2009 and 2008 and the results of its operations, changes in net assets and its cash flows for the years then ended in conformity with U.S. generally accepted accounting principles.

In accordance with *Government Auditing Standards*, we have also issued our report dated June 26, 2009 on our consideration of Windom Area Hospital's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

The management's discussion and analysis on pages 2 through 6, is not a required part of the basic combined financial statements but is supplementary information required by the Governmental Accounting Standards Board. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the supplementary information. However, we did not audit the information and express no opinion on management's discussion and analysis.

*Larson Allen LLP*  
LarsonAllen LLP

Minneapolis, Minnesota  
June 26, 2009

**WINDOM AREA HOSPITAL**  
**Windom, Minnesota**  
**MANAGEMENT'S DISCUSSION AND ANALYSIS**  
**APRIL 30, 2009 AND 2008**

**Introduction**

The Windom Area Hospital (Hospital) offers readers of our financial statements this narrative overview and analysis of the financial activities of Windom Area Hospital for the fiscal years ended April 30, 2009 and 2008. We encourage readers to consider the information presented here in conjunction with the Hospital's combined financial statements, including the notes thereto.

**Overview of the Financial Statements**

This discussion and analysis is intended to serve as an introduction to Windom Area Hospital's audited combined financial statements. The combined financial statements are composed of the balance sheet, combined statement of revenues, expenses, and changes in net assets, and the statement of cash flows. The combined financial statements also include notes to the combined financial statements that explain in more detail some of the information in the combined financial statements. The combined financial statements are designed to provide readers with a broad overview of the Hospital's finances.

The combined financial statements include the Hospital and Foundation finances. The mission of the Windom Area Foundation is to provide charitable support for medical and educational programs of Windom Area Hospital. Total Foundation net assets equal \$86,441 at year-end.

**Required Financial Statements**

The Hospital's combined financial statements report information of Windom Area Hospital using accounting methods similar to those used by private sector healthcare organizations. These statements offer short and long-term information about its activities. The combined balance sheet includes all of the Hospital's assets and liabilities and provides information about the nature and amounts of investments in resources (assets) and the obligations to Hospital creditors (liabilities). The combined balance sheet also provides the basis for evaluating the capital structure of the Hospital and assessing the liquidity and financial flexibility of the Hospital.

All of the current year's revenues and expenses are accounted for in the combined statement of revenues, expenses, and changes in net assets. This statement can be used to determine whether the Hospital has successfully recovered all of its costs through its patient service revenue and other revenue sources. Revenues and expenses are reported on an accrual basis, which means the related cash could be received or paid in a subsequent period.

The final required statement is the combined statement of cash flows. The statement reports cash receipts, cash payments, and net changes in cash resulting from operations, investing, and financing activities. It also provides answers to such questions as where did cash come from, what was cash used for, and what was the change in the cash balance during the reporting period.

**Financial Highlights**

Hospital total assets increased by \$1,049,104 to \$17,889,193 in FY 2009 and by \$605,083 to \$16,840,089 in FY 2008. Net property, plant and equipment decreased by \$18,104 in FY 2009 and by \$169,840 in FY 2008. Total liabilities decreased by \$108,861 in FY 2009 and by \$637,991 in FY 2008. The total margin was 7.3%, 9.4% and 9.3% for the years ended April 30, 2009, 2008 and 2007, respectively.

**WINDOM AREA HOSPITAL**  
**Windom, Minnesota**  
**MANAGEMENT'S DISCUSSION AND ANALYSIS**  
**APRIL 30, 2009 AND 2008**

**Financial Analysis of the Hospital**

The combined balance sheet and the combined statement of revenues, expenses, and changes in net assets report the net assets of the Hospital and the changes in them. The Hospital's net assets - the difference between assets and liabilities - is a way to measure financial health or financial position. Over time, sustained increases or decreases in the Hospital's net assets are one indicator of whether its financial health is improving or deteriorating. However, other non-financial factors such as changes in economic condition, population growth and new or changed governmental legislation should also be considered.

**Net Assets**

A summary of the Hospital's balance sheets at April 30, 2009, 2008 and 2007 is presented below:

**Table 1**  
**Condensed Combined Balance Sheets (in Thousands)**

	April 30,		
	2009	2008	2007
Current Assets	\$ 4,100	\$ 3,593	\$ 3,808
Assets Limited as to Use	6,186	5,708	4,669
Capital Assets	7,458	7,476	7,647
Other Assets	146	63	111
<b>Total Assets</b>	<b>\$ 17,889</b>	<b>\$ 16,840</b>	<b>\$ 16,235</b>
Current Liabilities	\$ 1,010	\$ 1,022	\$ 1,567
Long-Term Debt Outstanding	1,994	2,091	2,184
<b>Total Liabilities</b>	<b>3,004</b>	<b>3,113</b>	<b>3,751</b>
Invested in Capital Assets, Net of Related Debt	5,364	5,385	5,367
Restricted	305	324	287
Unrestricted	9,216	8,018	6,830
<b>Total Net Assets</b>	<b>14,885</b>	<b>13,727</b>	<b>12,484</b>
<b>Total Liabilities and Net Assets</b>	<b>\$ 17,889</b>	<b>\$ 16,840</b>	<b>\$ 16,235</b>

As can be seen by Table 1, net assets increased by approximately \$1.2 million to \$14.9 million in fiscal year 2009. In fiscal year 2008, net assets increased by approximately \$1.2 million to \$13.7 million. The change in net assets results primarily from operating income.

**WINDOM AREA HOSPITAL**  
**Windom, Minnesota**  
**MANAGEMENT'S DISCUSSION AND ANALYSIS**  
**APRIL 30, 2009 AND 2008**

**Revenues, Expenses, and Changes in Net Assets**

The following table presents a summary of the Hospital's historical revenues and expenses for the fiscal years ended April 30, 2009, 2008 and 2007.

**Table 2**  
**Condensed Combined Statements of Revenue, Expenses, and Changes in Net Assets (in Thousands)**

	Year Ended April 30,		
	2009	2008	2007
Operating Revenues	\$ 13,377	\$ 12,681	\$ 12,060
Operating Expenses	12,601	11,741	11,104
Operating Income	776	940	956
Non-Operating Income	194	258	217
Excess of Revenues over Expenses	970	1,198	1,173
Capital Grants and Contributions	188	45	77
Changes in Net Assets	1,158	1,243	1,250
Total Net Assets, Beginning of Year	13,727	12,484	11,234
Total Net Assets, End of Year	\$ 14,885	\$ 13,727	\$ 12,484

**Operating and Financial Performance**

**Volume:** Inpatient admissions (excluding newborns) for fiscal year 2009 were 583 compared to 698 in fiscal year 2008 and 788 in fiscal year 2007. This is a decrease of 115 or 17% between 2009 and 2008 and a decrease of 90 or 11% between 2008 and 2007. Patient days (excluding newborns) for fiscal year 2009 were 1,554 compared to 1,933 in fiscal year 2008 and 2,129 in fiscal year 2007. This is a decrease of 379 or 20% from 2008 and a decrease of 196 or 9% between 2008 and 2007. The length of stay increased from 2.7 days in 2007 to 2.8 days in 2008 and decreased to 2.7 days in 2009. Emergency department visits decreased to 3,245 in fiscal year 2009 from 3,332 in fiscal year 2008. This is a decrease of 87 visits or 3%. They increased from 3,163 in 2007, which is an increase of 169 or 5%. All other outpatient visits for 2009 were 17,468 compared to 16,400 in 2008 and 17,337 in 2007. This is an increase of 1,068 visits from 2008 to 2009 and a decrease of 937 visits from 2007 to 2008. Total surgeries increased to 1,435 in fiscal year 2009 from 1,376 in fiscal year 2008. This is an increase of 59 surgeries or 4%. In fiscal year 2008 surgeries decreased from 1,435 which is a decrease of 59 surgeries or 4%.

**Net Patient Service Revenue:** As a result of the rate increases during the year, net patient service revenue increased \$685,176 or 4% compared to fiscal year 2008. Revenue deductions, the amount of patient service revenue uncollectible due to contractual agreements, government reimbursement policies, and bad debts increased to \$5,778,048 from \$5,137,592, a 12% increase.

**Other Operating Revenue:** Other operating revenue increased \$10,880 and decreased \$43,940 in fiscal years 2009 and 2008, respectively, from the previous year. The decrease in fiscal year 2008 was due to the write-down of the investment in Southwest Radiology Center due to the Hospital's share of losses during the fiscal year. The increase in fiscal year 2009 is due to a smaller share in losses in Southwest Radiology Center

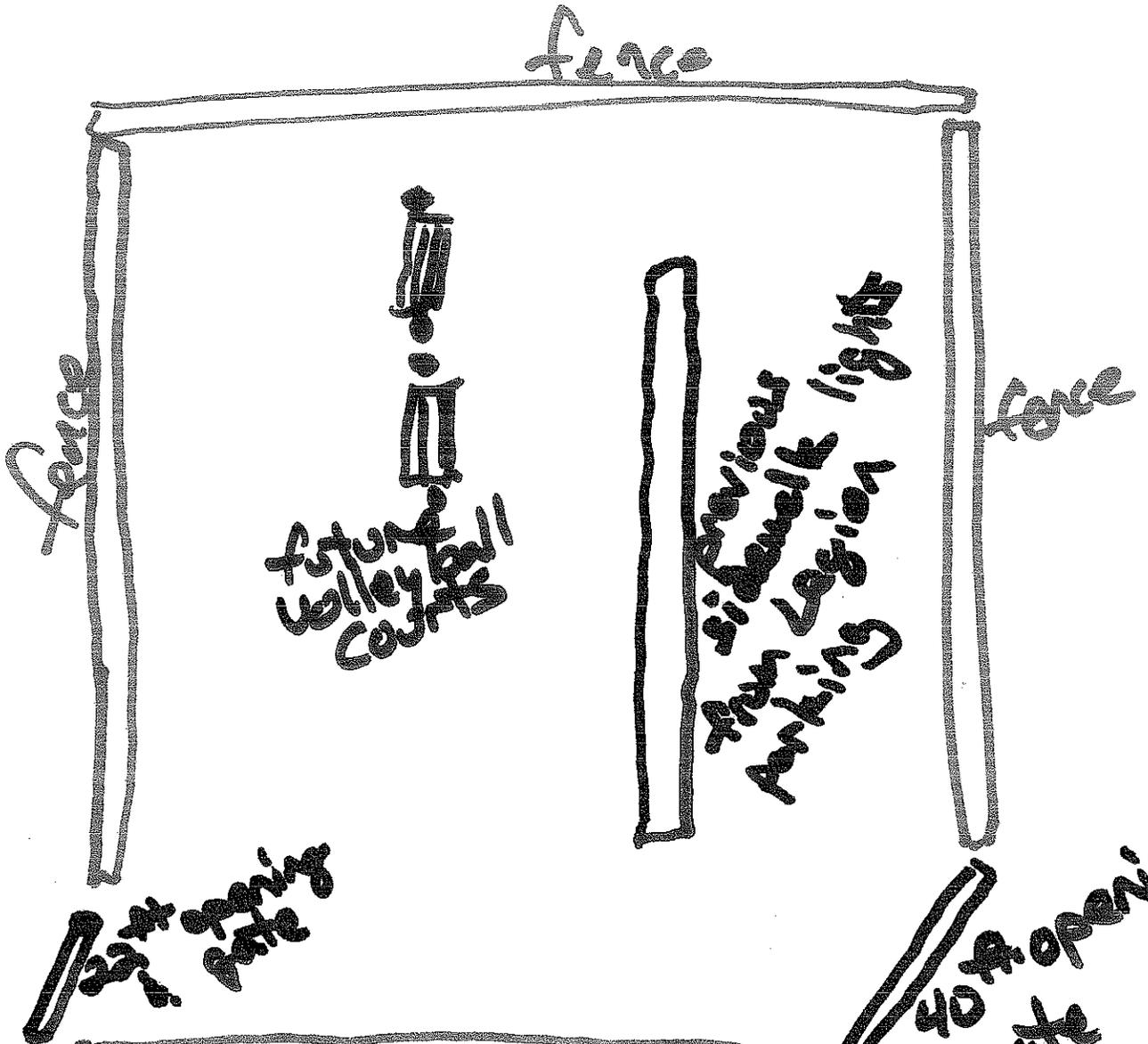
T I T L E

T O

The Easterly One Hundred Thirty-Five (135) feet of the Westerly One Hundred Ninety-Five (195) feet of Block Two (2), except that part thereof shown as Parcel 207G on Minnesota Department of Transportation Right of Way Plat Numbered 17-8 as the same is now on file and of record in the office of the County Recorder in and for Cottonwood County, Minnesota;  
Lots Two (2), Three (3), Four (4) and Five (5), in Block Four (4);  
and Lots Two (2), Three (3), Four (4), Seven (7), Eight (8) and Nine (9), in Block Six (6);  
all in Tibodeau's Center, a subdivision in the West Half of the Southeast Quarter (W $\frac{1}{2}$  SE $\frac{1}{4}$ ), of Section Twenty-Four (24), in Township One Hundred Five (105) North, of Range Thirty-Six (36) West of the 5th P.M., in the City of Windom, Cottonwood County, Minnesota.

COTTONWOOD COUNTY ABSTRACT COMPANY

WINDOM, MN



fence

fence

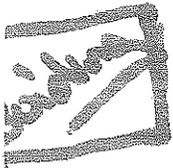
fence

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courts

BIG BOY BOILING  
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parking

22' opening  
gate

40' opening  
gate



concrete patio walkway

Window  
Door &  
Sleep

patio  
plant  
pot

Jack  
Stacks  
Stacking

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on metal gate  
with wheels  
easily closed  
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104 ft. fence

Project of DK

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Time of year

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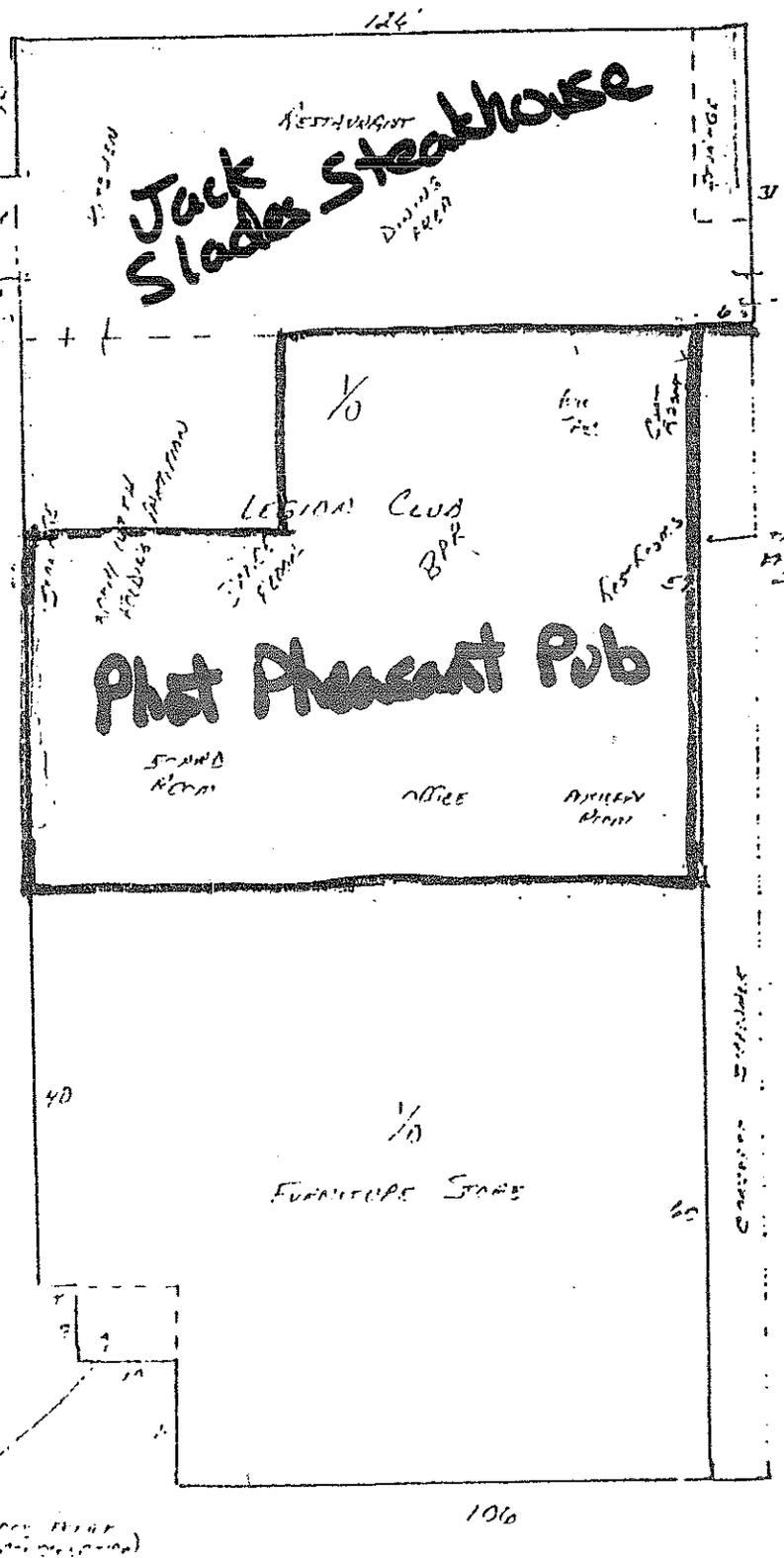
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LEGION CLUB Complex  
 Total of 4 floors  
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 DEMOLITION INTERIOR  
 CHANGING ROOMS - REMOVED  
 DEMOLITION

COLD EXH. EXT. 80%  
 WOOD FLOORING 10%  
 TILE FLOOR

LEGION CLUB NEEDS MAIN  
 FLOOR

FURNITURE STORE AREA  
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 1968 at cost of \$20,000  
 AS FOR R.M.P., ASSESSOR

27

COOPER  
 WORK ROOM  
 WOOD FLOORING  
 TILE FLOOR  
 REPAIRS  
 WALL CASE  
 CASE  
 CASE

78-752-275-1

78-752-275-1

78-752-275-1

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R/W LINE

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38°54'38"

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PPP

BLOCK

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SOUTHWESTERLY LIM  
ADELE PLAZA SUF

EASEMENT LIMITS  
ALLEY

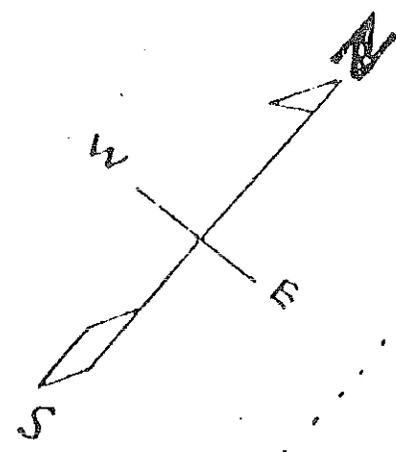
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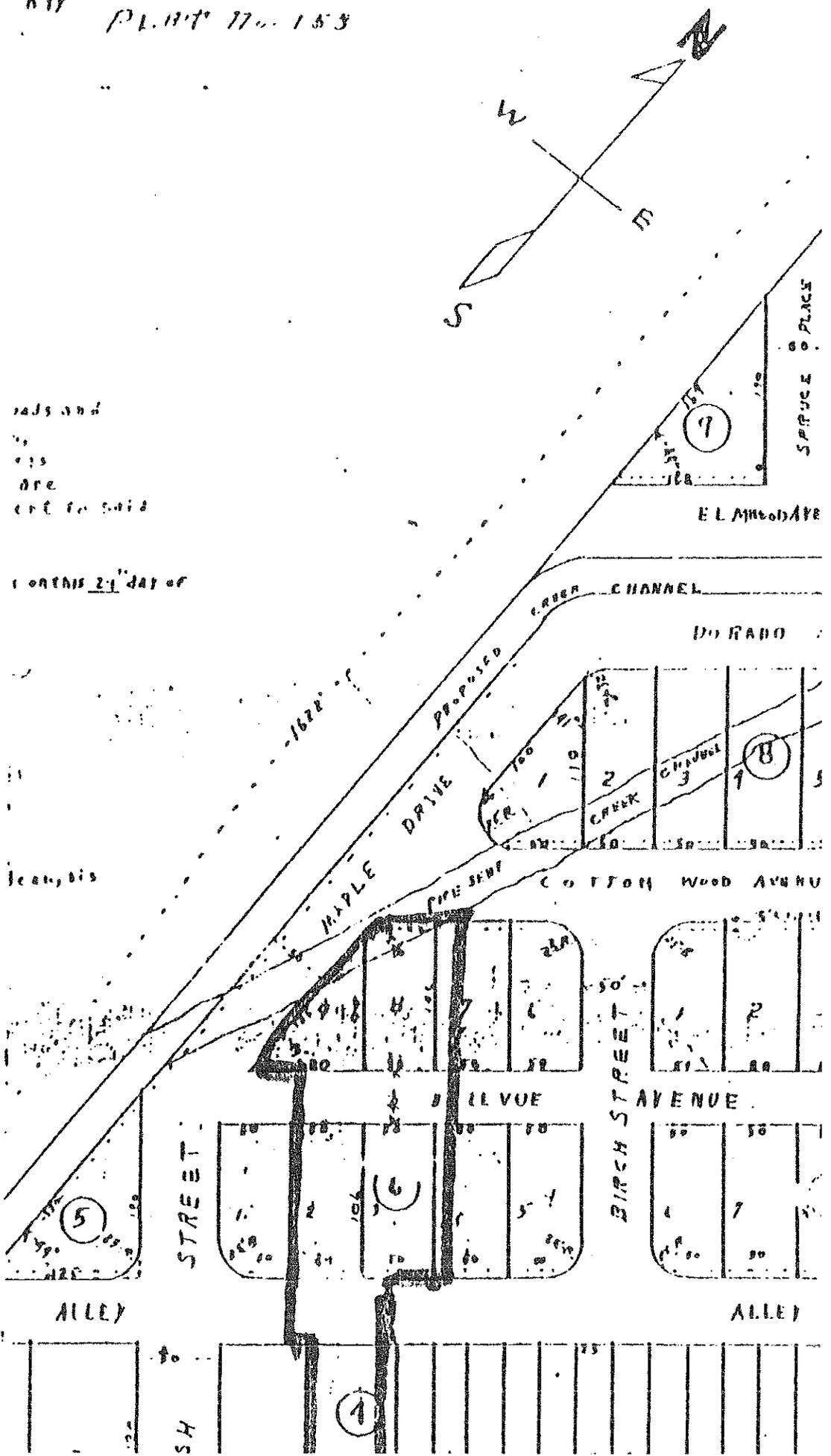
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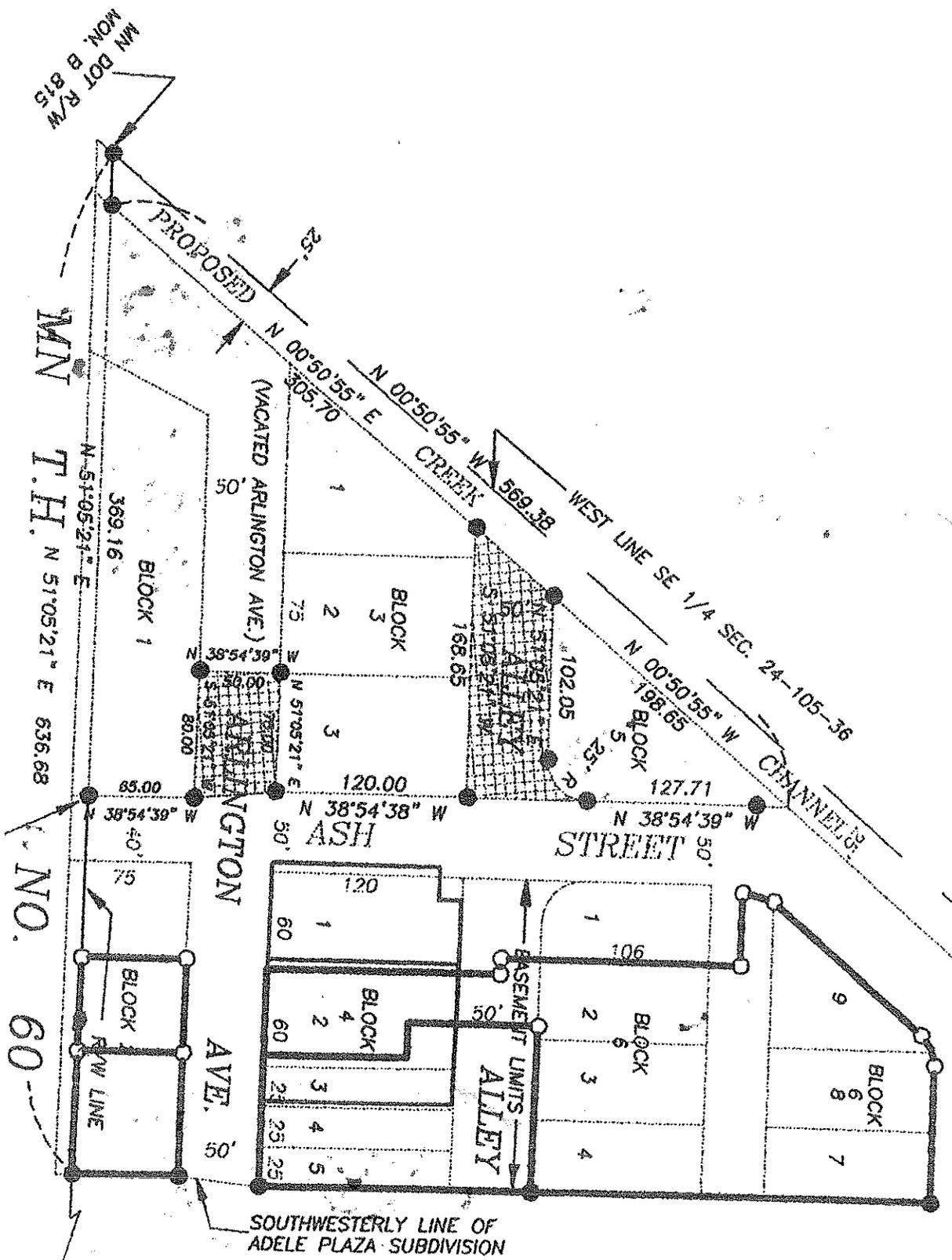
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(VACATED ARLINGTON AVE.)

ARLINGTON AVE.

AVE.

ASH STREET

STREET

CREEK

CHANNEL

WEST LINE SE 1/4 SEC. 24-105-36

ALLEY

ALLEY

SOUTHWESTERLY LINE OF ADELE PLAZA SUBDIVISION

BLOCK 1

BLOCK 2

BLOCK 3

BLOCK 4

BLOCK 5

BLOCK 6

BLOCK 7

BLOCK 8

BLOCK 9

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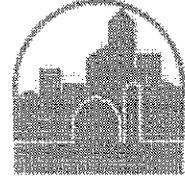
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9



# WINDOM POLICE DEPARTMENT

444 9th St., P. O. Box 38  
Windom, MN 56101  
(507) 831-6134  
Fax: (507) 831-1957



**Jeffrey A. Shirkey, Chief**

DATE: July 28, 2009

TO: Windom City Council

FROM: Chief Jeffrey Shirkey

SUBJECT: Phat Pheasant Outdoor area...

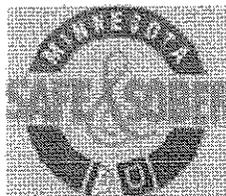
I was asked to assess the outdoor area behind the Phat Pheasant Pub and to make a recommendation, as to what the owner should do to the area in order to have it enclosed so the council could amend his liquor license, for him to have outdoor dances all the time.

I checked out the area (see photo's). Right now there are two open areas that at the time of the event is blocked off only by Orange snow fencing. The area that is fenced in is also a very large area and someone could easily climb the fence at the very back to get in, without being seen. Also this fence is only approximately 6 feet tall, of which someone could still hand a drink over the fence to someone.

My recommendation would be that the owner take fence panels and have it so he can temporarily erect them, by hooking them together across these two spaces so that there is a solid barrier all the way around. I would also like to see the current fence and the temporary barriers be at least 2 feet higher or 8 feet high, and to where there is no large gaps at the bottom of the fence. Then all parties attending this event would have to come and leave through the main building area, where of course there is a party checking everyone's identification.

The council should also consider the noise complaints from the music, if they are going to grant this to happen anytime. Noise can travel a long ways, and if the band is going to play until after midnight there are going to be complaints.

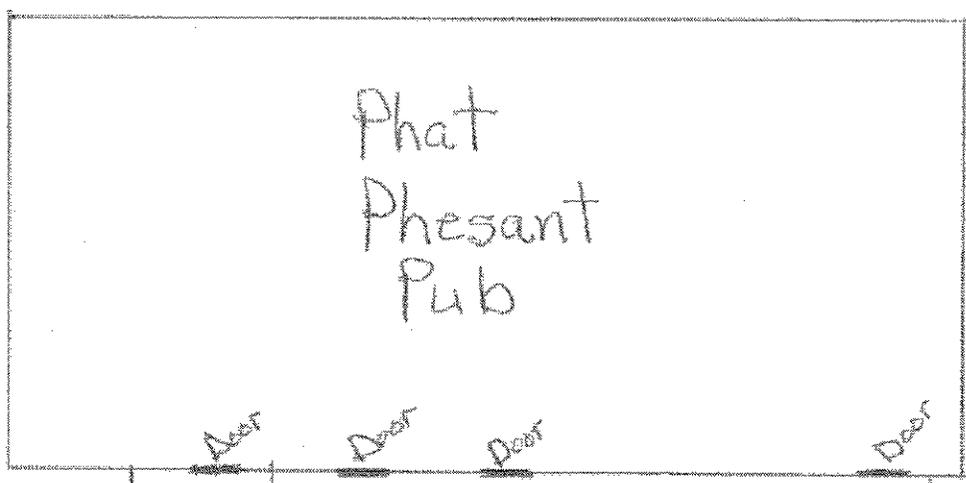
Jeffrey A. Shirkey, Chief  
Windom Police Department



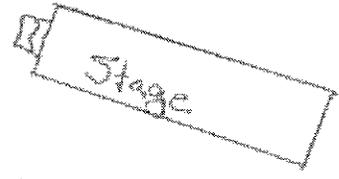
Hwy. 60

Front Parking Lot

Parking Lot

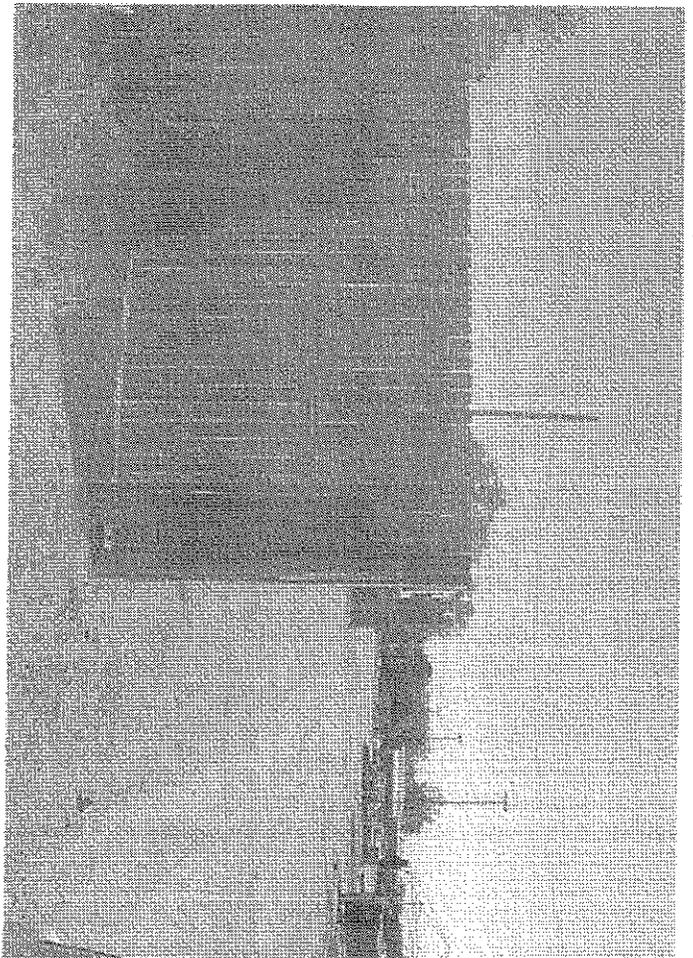
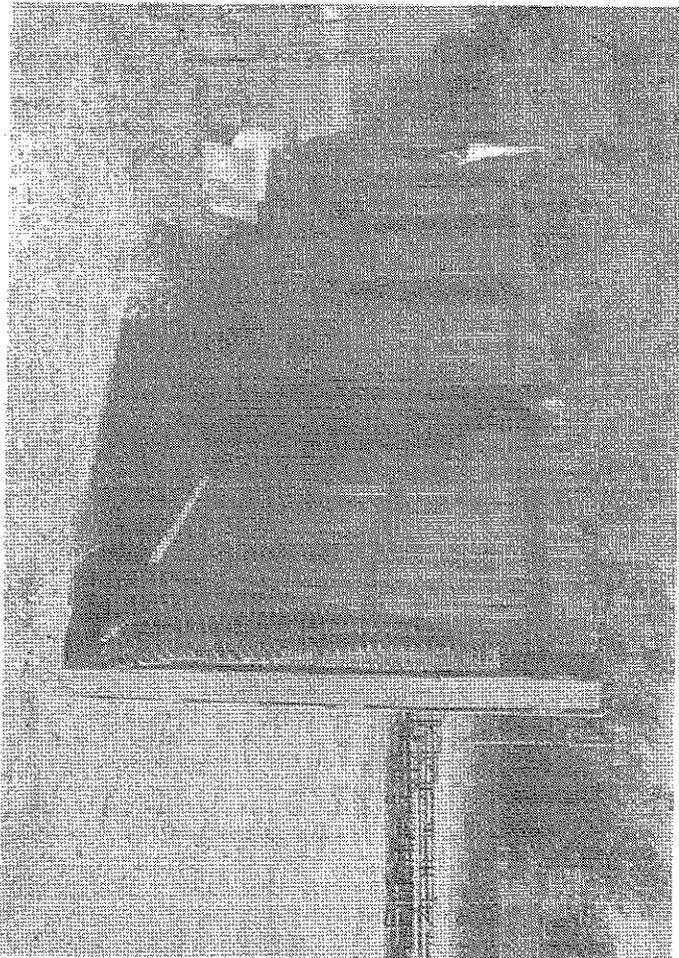
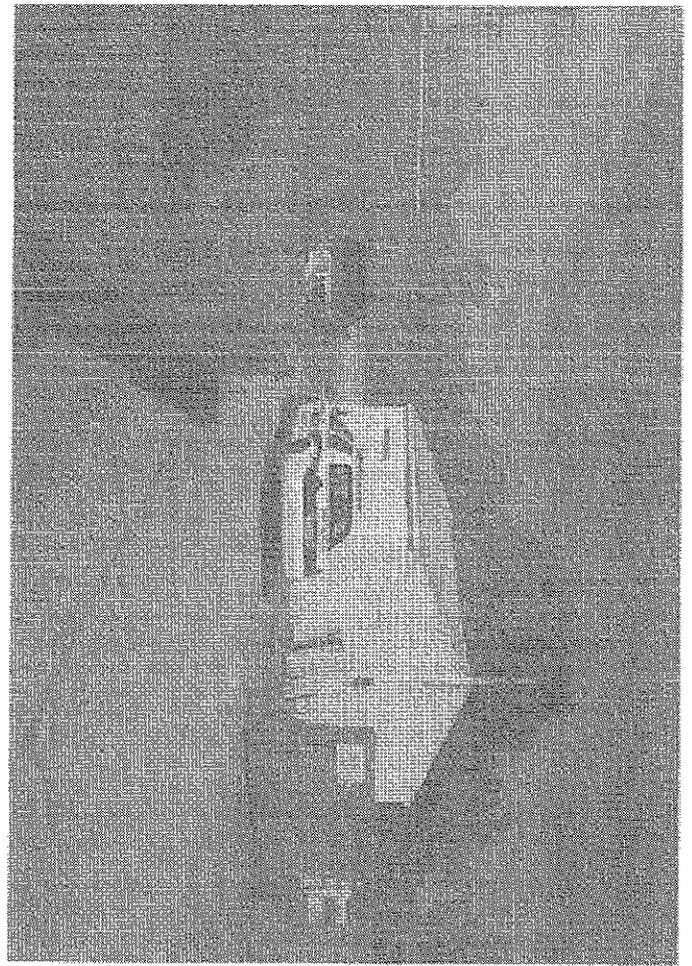
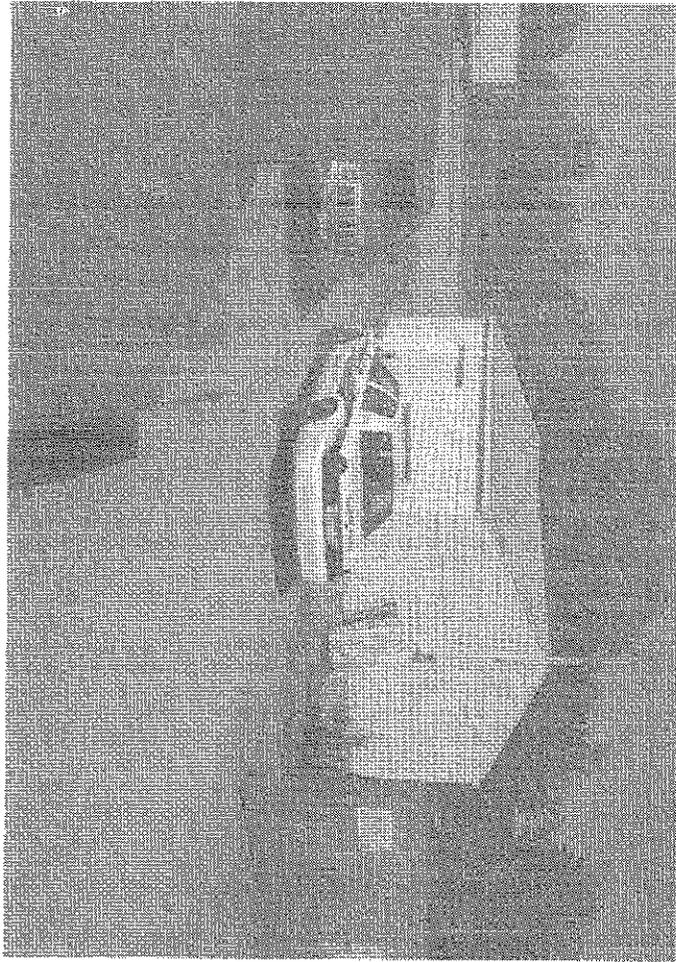


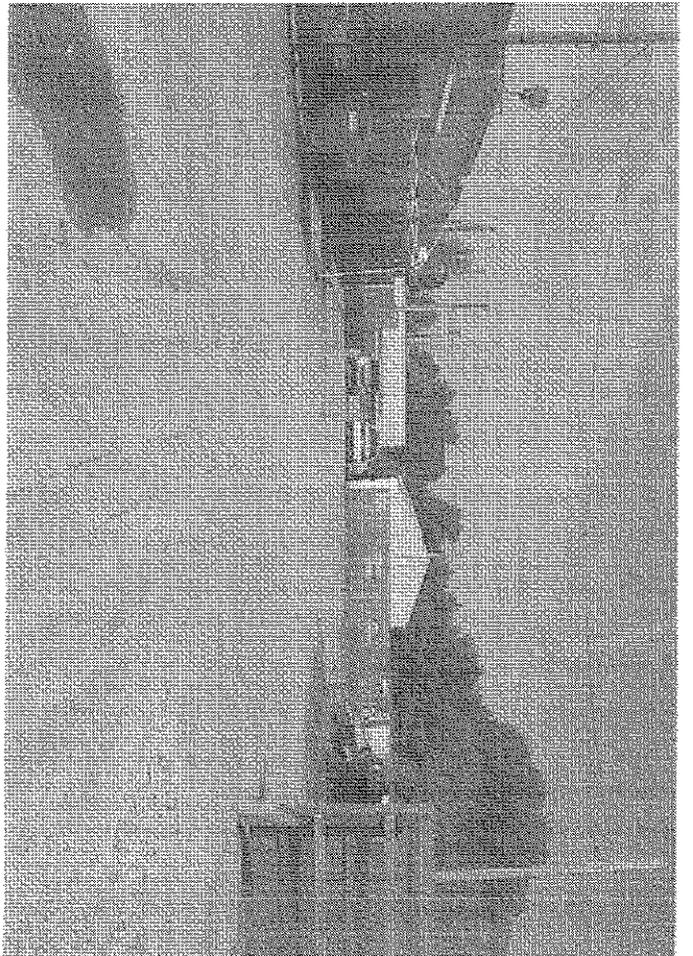
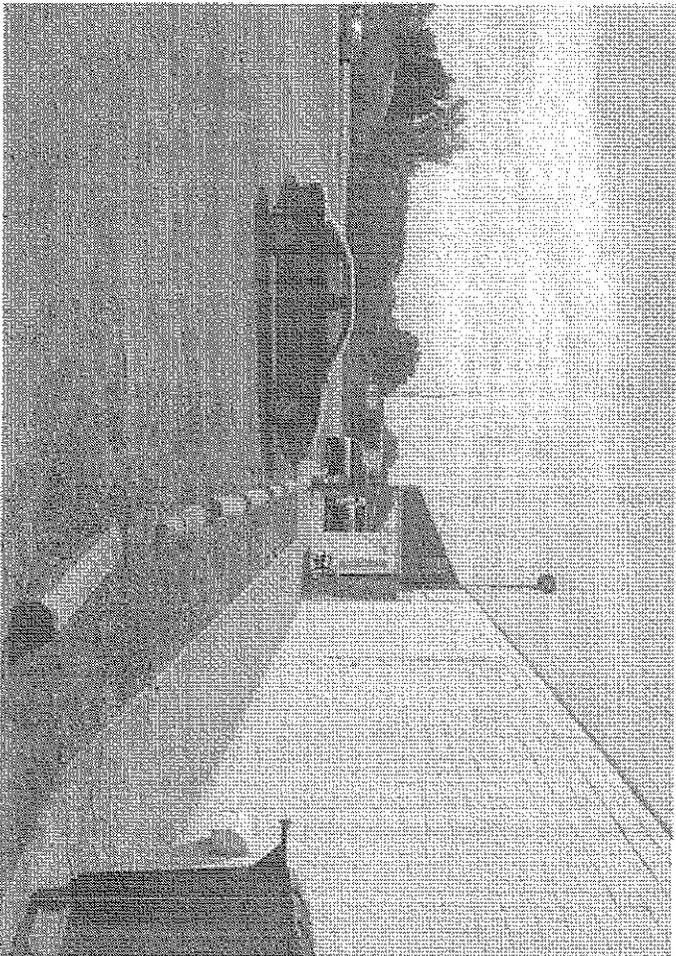
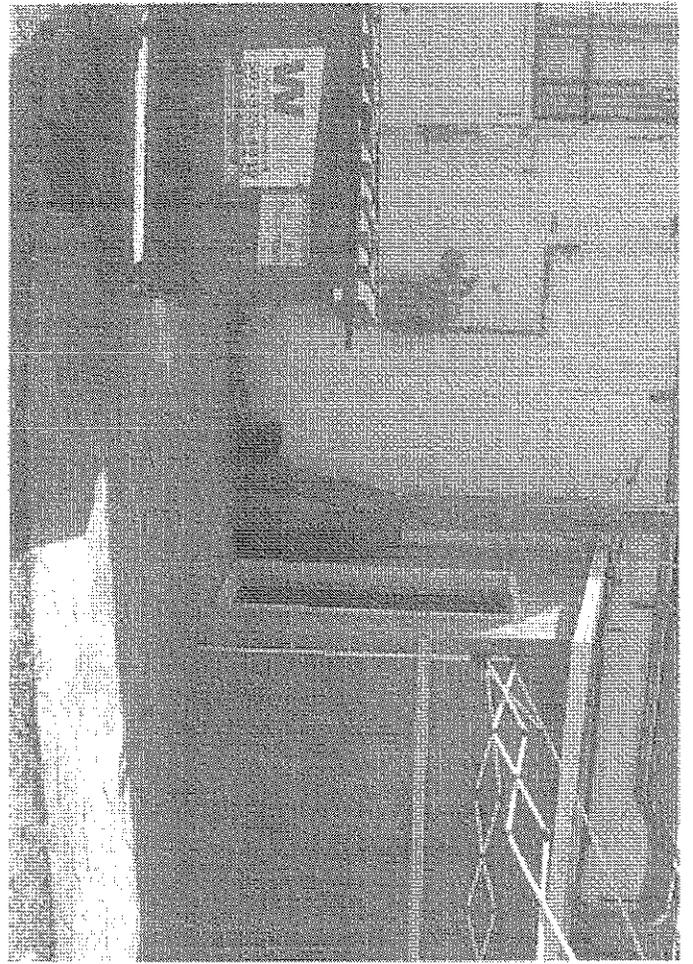
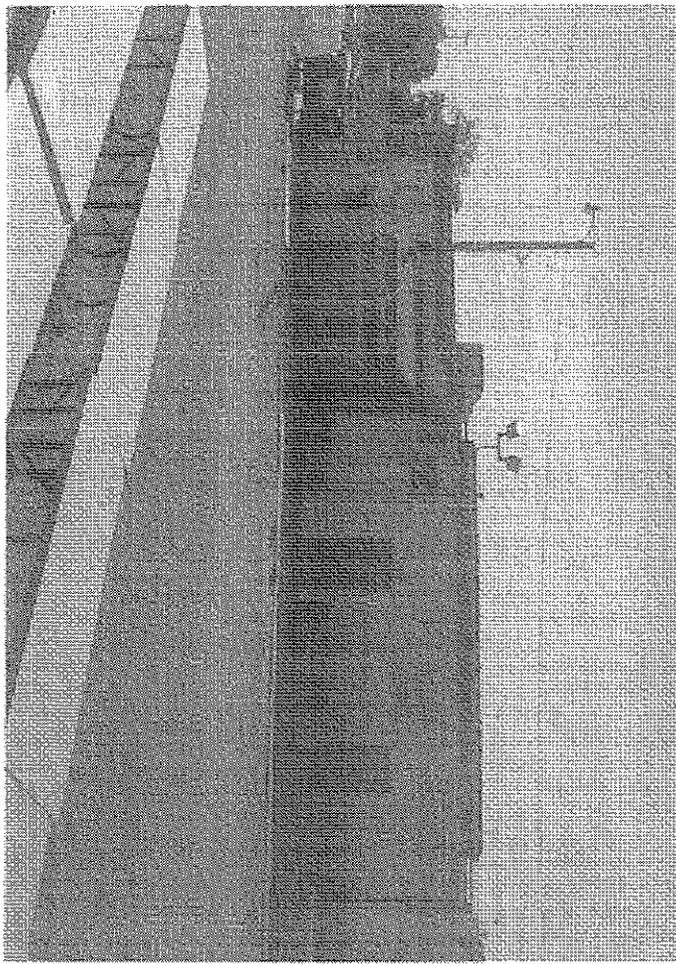
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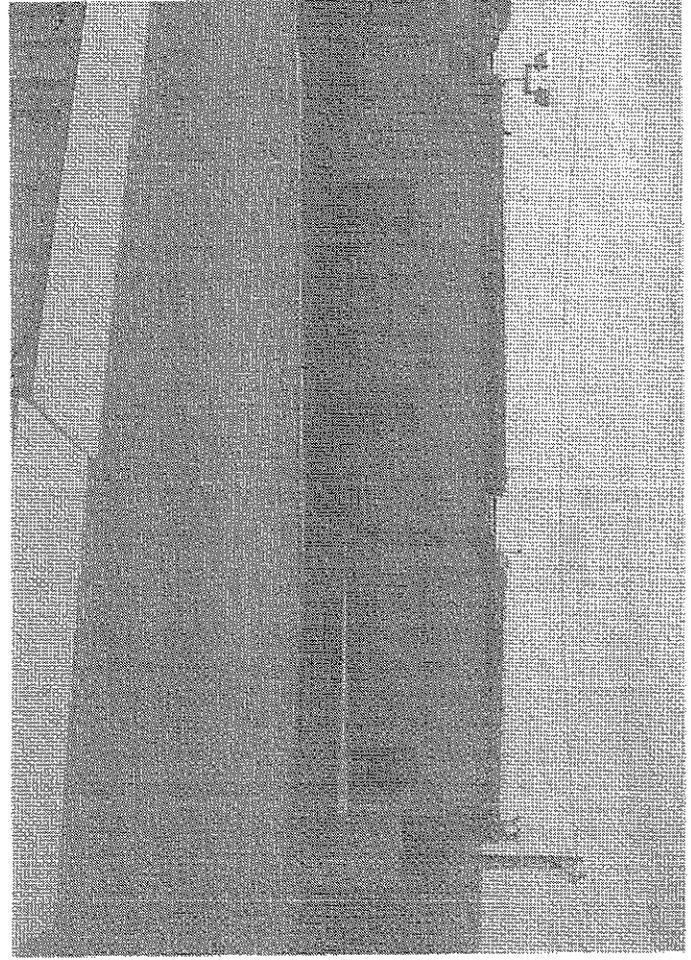
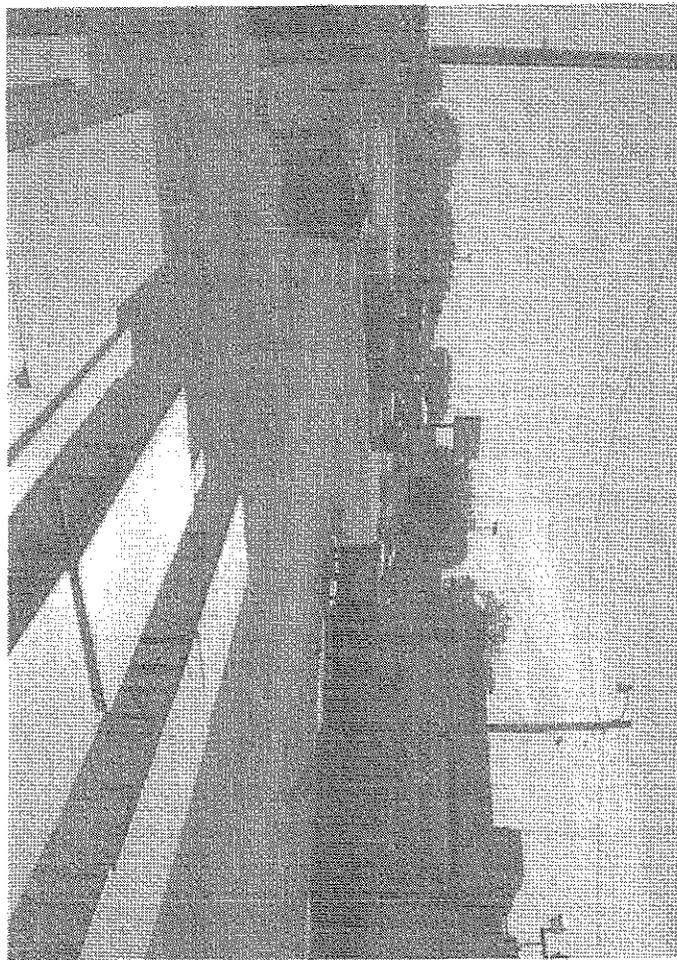
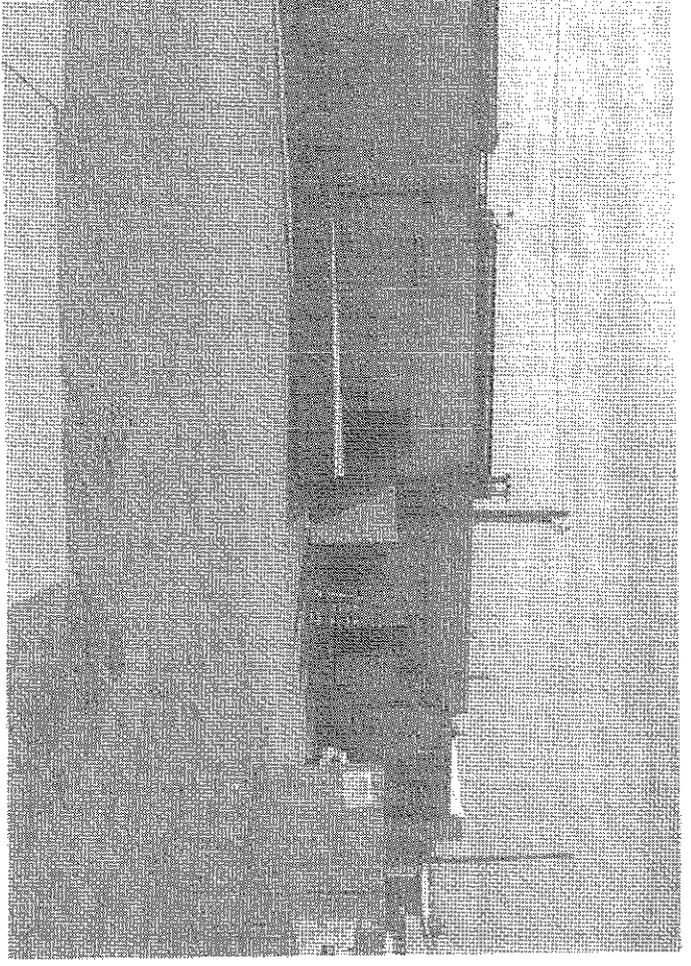
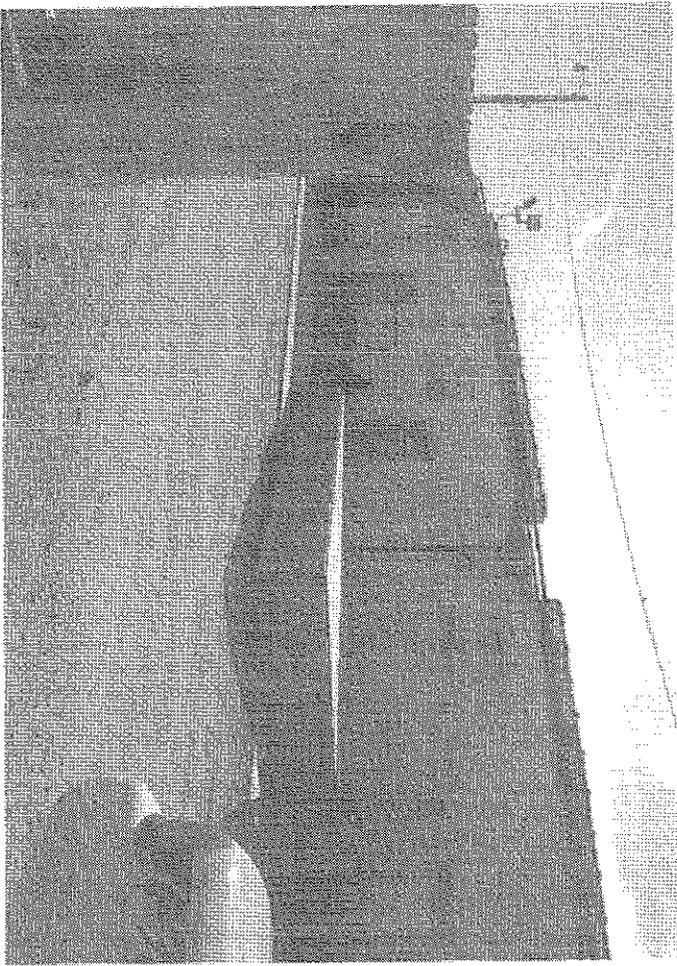


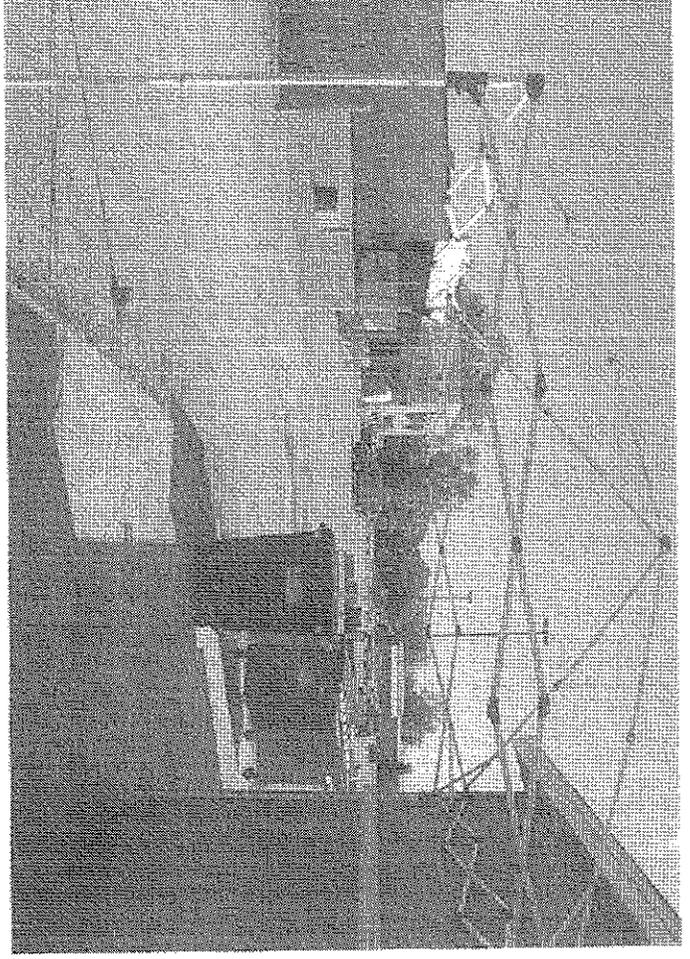
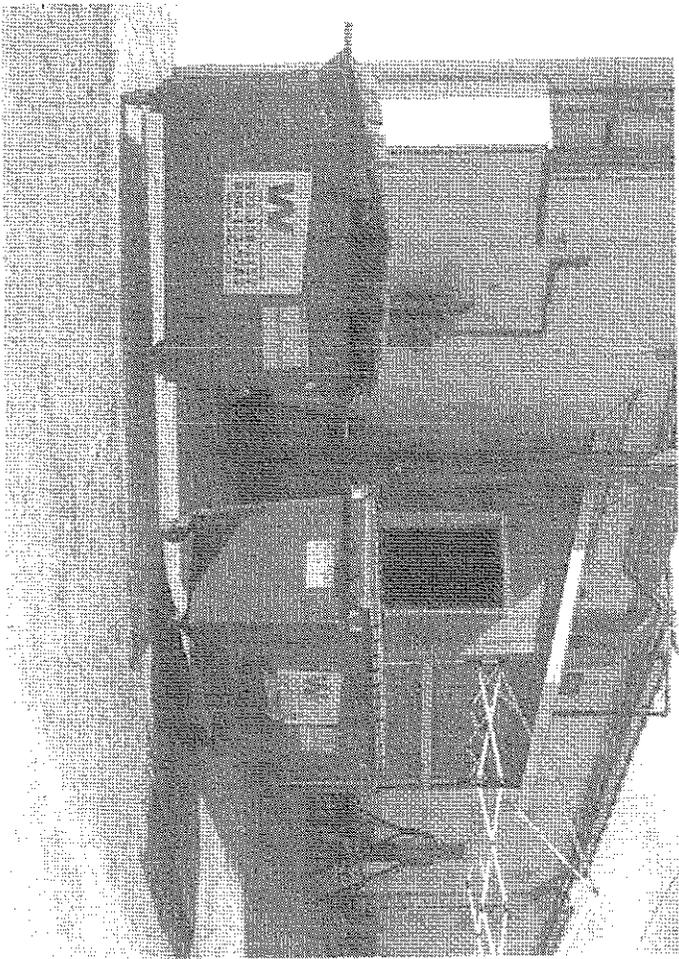
Open Space

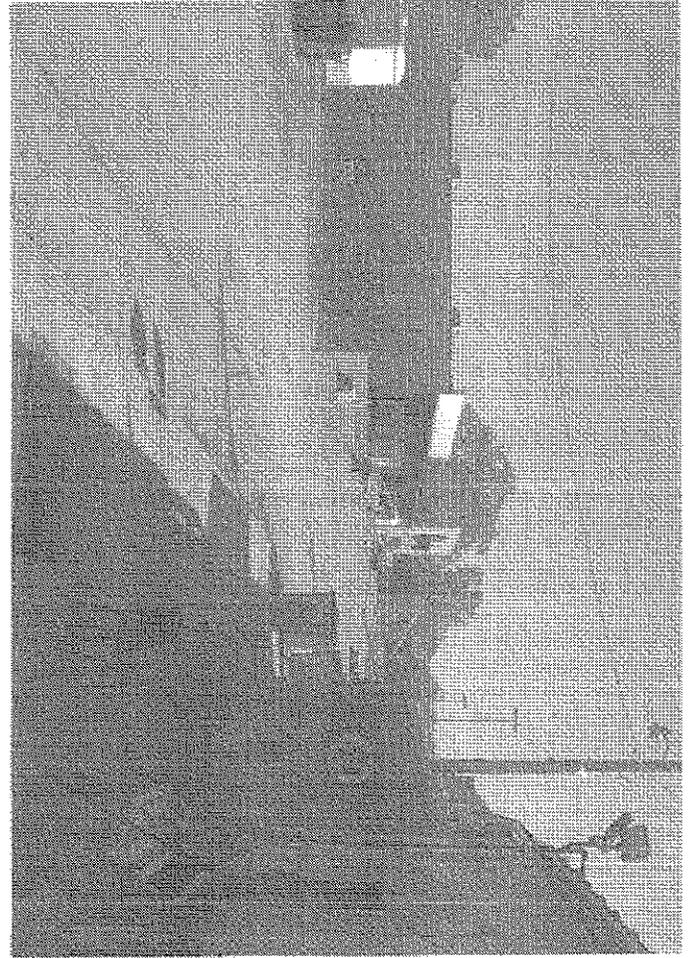
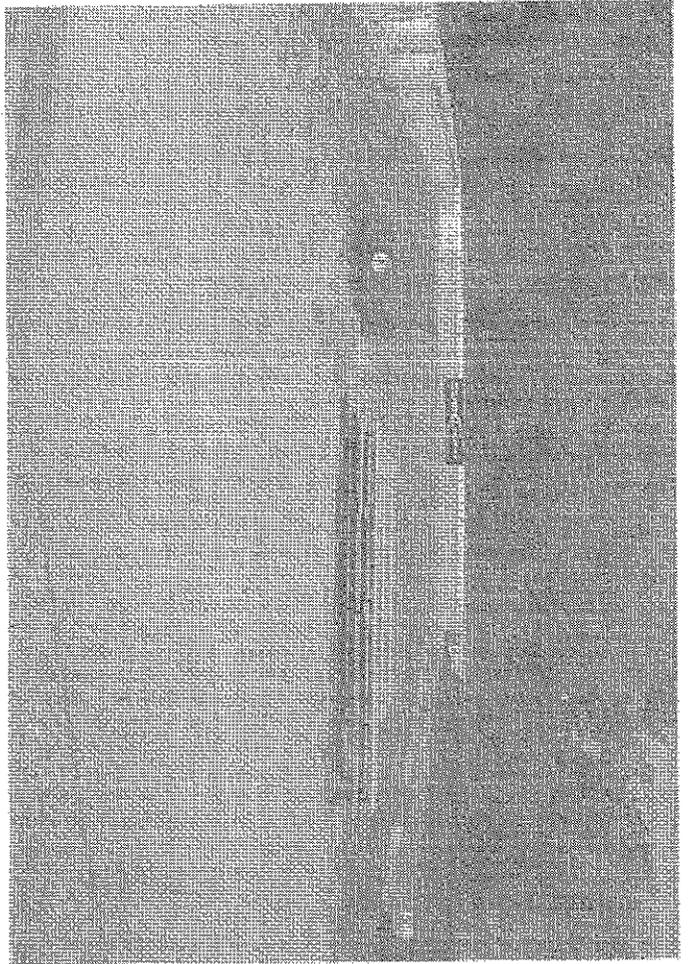
Current Fenced  
in Area.











# RESOLUTION #2009-

**INTRODUCED:**

**SECONDED:**

**VOTED:     Aye:**

**Nay:**

**Absent:**

**AUTHORIZATION TO EXECUTE JOINT POWERS AGREEMENT WITH THE  
SOUTHWEST MINNESOTA BROADBAND GROUP AND APPOINTMENT OF A  
REPRESENTATIVE TO IT'S BOARD**

---

**WHEREAS**, the federal economic stimulus package enacted in February, 2009, has allocated \$7.2 billion for U.S. Broadband Stimulus funding to build broadband facilities and related infrastructure; and

**WHEREAS**, the purpose of the funding is to develop broadband facilities and related services for the "unserved" and "underserved"; and

**WHEREAS**, eight cities, including Wilder, Heron Lake, Jackson, Lakefield, Round Lake, Okabena, Bingham Lake and Windom, desire to form a joint powers entity named the Southwest Minnesota Broadband Group whose purpose is to build broadband facilities and related services infrastructure within their communities; and

**WHEREAS**, participation and development of the Southwest Minnesota Broadband Group will set the ground work for eligibility for stimulus funding to build out broadband facilities and related services for the "unserved" and "underserved" communities within the region; and

**WHEREAS**, a Joint Powers Agreement has been developed to allow participation in the Southwest Minnesota Broadband Group.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF WINDOM,  
MINNESOTA, AS FOLLOWS:**

1.     The City Council approves the Joint Powers Agreement and the City of Windom's participation in the Southwest Minnesota Broadband Group.
2.     The Mayor or the City Administrator are authorized to execute the Joint Powers Agreement and any amendments or required documents on behalf of the City of Windom.
3.     The City Council approves the inclusion of the City of Windom in the submission of a joint application for Federal Stimulus funding to develop broadband facilities and related services for the "unserved" and "underserved" communities and agrees to the terms and conditions required.
4.     The City Council hereby appoints as their representative on the Joint Powers Board Dan Olsen Telecom Operations Manager.

Adopted by the Council this 4th day of August, 2009.

\_\_\_\_\_  
Kirby G. Kruse, Mayor

Attest: \_\_\_\_\_  
Steve Nasby, City Administrator

**CERTIFICATION**

STATE OF MINNESOTA    }  
COUNTY OF COTTONWOOD}

I certify that the above Resolution is a true and correct copy of the Resolution adopted by the Windom City Council at an authorized meeting held on the 4th day of August, 2009, as shown by the records in my possession.

Date: \_\_\_\_\_

\_\_\_\_\_  
Steve Nasby, City Administrator

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

## JOINT POWERS AGREEMENT

THIS JOINT POWERS AGREEMENT, entered into pursuant to M.S. §471.59 is among the Minnesota cities of Jackson, Lakefield, Round Lake, Heron Lake, Wilder, Windom, and Bingham Lake, electively “the Cities”.

### Recitals

Under Minnesota Statute §471.59, governmental units, including cities in the State of Minnesota, are authorized to enter into joint powers agreements with other cities of the State of Minnesota for the purpose of jointly or cooperatively exercising any power common to those cities. The Cities are in need of collectively pursuing deployment of a broad-band facilities network for southwest Minnesota communities, and pursuing all possibly funding options, and if necessary, providing for one or more of the participating cities to act on behalf of the other participating cities in the application process.

### Agreement

1. Term of Agreement: The effective date of this Agreement is August 1, 2009, or the date that all of the Cities have approved this Agreement, whichever is later. This Agreement shall continue until rescinded or terminated in accordance with the terms of this Agreement.

2. Name: The name of the entity created by this Joint Powers Agreement, and administered by the board created herein shall be:

Southwest Minnesota Broadband Group.

3. Joint Powers Board: Established herein shall be a joint board consisting of appointed representatives from each of the Cities hereto. Each City, through their appointee to the board, shall have one (1) vote each, and all decisions of the board shall be by majority vote. The joint board shall have authority to administer the functions of the board, including conducting business pertaining to the purposes set forth herein. At its first meeting, the board shall appoint a chairman, vice-chairman, secretary and treasurer with the powers as provided by state law.

4. Designation of Member for Funding Applications: The joint board shall appoint one or more of its participating Cities to act on behalf of the remaining participating Cities for the purpose of completing and filing any applications or other

associated documents for any funding grant or loans. Until the joint board decides otherwise, the representative from the City of Windom shall act in that capacity.

5. Allocation of Costs: All costs and expenses incurred in the business of the joint powers entity shall be divided and allocated to each of the participating Cities based upon each of their populations.

6. Withdrawal/Termination:

6.1 Withdrawal: Any of the participating Cities hereto may withdraw from this Agreement with sixty (60) days notice. In the event the joint powers entity has incurred any costs or expenses prior to that City's withdrawal, that City shall still be obligated to the extent of expenses incurred to the date of that withdrawal.

6.2 Termination: A unanimous vote of all of the participating Cities may terminate this Agreement at any time.

7. Meeting(s): At the joint board's initial meeting, the board shall decide on the time and place of its meetings and the frequency of those meetings. In addition, the elected officers, or in the alternative, at least two (2) of the board members, may call a meeting of the joint powers board with at least 48 hours notice for each of the board members.

THE UNDERSIGNED HEREBY APPROVE THIS AGREEMENT:

City of Jackson:

By \_\_\_\_\_  
Its Mayor

Date: \_\_\_\_\_

City of Lakefield:

By \_\_\_\_\_  
Its Mayor

Date: \_\_\_\_\_

City of Round Lake:

By \_\_\_\_\_  
Its Mayor

Date: \_\_\_\_\_

City of Heron Lake:

By \_\_\_\_\_  
Its Mayor

Date: \_\_\_\_\_

City of Wilder:

By \_\_\_\_\_  
Its Mayor

Date: \_\_\_\_\_

City of Windom:

By \_\_\_\_\_  
Its Mayor

Date: \_\_\_\_\_

City of Bingham Lake

By \_\_\_\_\_  
Its Mayor

Date: \_\_\_\_\_



**MEMO**

**To: Mayor and City Council**  
**From: James Kartes, Zoning Administrator**  
**Date: July 31, 2009**  
**Re: Planning Commission Special Meeting – July 28, 2009**

---

At a special meeting on July 28, 2009, the Planning Commission held a public hearing and made the following recommendations concerning the application which came before the meeting:

**1. VARIANCE APPLICATION:**

**Applicants & Owners: Dallas L. Smith and Betty L. Smith**  
**Address of Property: 423 & 413 River Bluff Drive, Windom, MN**  
**Legal Description: Lots 5 and 6, Block 2 of Riverbluff Estates Subdivision to the City of Windom, Cottonwood County, Minnesota.**  
**Parcel ID#: 25-688-0250 & 25-688-0260**

The Applicants propose to construct a twin home on two adjoining lots. The dividing wall between the units will be the property line between the two lots. This would enable the two units to be sold independently. In their application, the Applicants are requesting a variance for a zero lot line side yard setback. Pursuant to the City Code section on R-2 Districts, they are required to have a side yard setback equal to ten percent of the property's frontage (which would be 7.0 feet). However, such a setback would not be feasible for a twin home. They are requesting a variance for a zero lot line side yard setback.

**THE PLANNING COMMISSION RECOMMENDS TO THE CITY COUNCIL:**

**Approval of the variance application, submitted by Dallas L. Smith and Betty L. Smith, requesting a zero lot line side yard setback between Lots 5 and 6, Block 2 of Riverbluff Estates Subdivision to allow for the construction of a twin home on these adjoining lots.**

The motion includes that the jurisdictional documents and findings of fact be made a part of the hearing record.

(Please refer to the Planning Commission Minutes for further details and discussion on these matters.)

I will be present at the City Council Meeting on August 4<sup>th</sup> to address any questions the Council may have at that time.

Prior to that time if there are any questions, please contact the Planning and Zoning Office at 831-6125.

JK:mah

**Building & Zoning Office  
City Hall, 444 9<sup>th</sup> Street, P.O. Box 38  
Windom, MN 56101  
Phone: 507-831-6125**

**CITY OF WINDOM PLANNING COMMISSION  
PUBLIC HEARING NOTICE  
VARIANCE APPLICATION- SETBACK**

Pursuant to City of Windom, City Code Sections 11.58 and 11.60, notice is hereby given that the Applicants/Owners, DALLAS L. SMITH AND BETTY L. SMITH, of 41090 380<sup>th</sup> Street, Windom, Minnesota, have submitted a zoning application for a variance for property located in an R-2 District. The Applicants request a zero lot line sideyard setback to allow construction of a duplex on adjoining lots. This setback is less than the minimum required by City Code Section 11.19, Subdivision 4.

A public hearing to consider this application will be held before the Planning Commission in the **City Council Chambers at City Hall, 444 9<sup>th</sup> Street, Windom, MN 56101 on Tuesday, July 28, 2009, at 7:05 p.m.**

Those persons wishing to be heard on this application for consideration of a variance are requested to be at this meeting. The setbacks are shown on the plot plan and the application which may be reviewed in the Building & Zoning Office at City Hall prior to the Public Hearing.

Legally described as follows:                      Lots 5 and 6, Block 2, Riverbluff Estates Subdivision to the City of Windom, Cottonwood County, Minnesota.

Parcel ID #:    25-688-0250 & 25-688-0260

Addresses of the Property are:                      423 and 413 River Bluff Drive, Windom, MN 56101

By Order of the City of Windom  
James Kartes, Zoning Administrator

Published: Cottonwood County Citizen (July 15, 2009)

**CITY OF WINDOM, MINNESOTA**

**444 9<sup>th</sup> Street  
Windom, MN 56101  
507-831-6125**

Case No.: \_\_\_\_\_  
Parcel No.: 25-688-0250 & 25-688-0260  
Fee: \$ 150.00  
Paid: Ck. 5616 Date: 7-14 -09  
Date Filed: 7-14 -09

**APPLICATION FOR CONSIDERATION OF ZONING/SUBDIVISION REQUEST**

**Applicant(s):** Name(s) Dallas L. Smith  
Address 41090 380th Street  
City Windom State MN Zip 56101 (Phone: 507-831-5438)

**Owner(s):** (If other than Applicant)  
Name(s) Dallas L. Smith & Betty L. Smith, husband and wife.  
Address Same as Above  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ (Phone: \_\_\_\_\_)

**Property Address:** 423 and 413 River Bluff Drive, Windom, MN

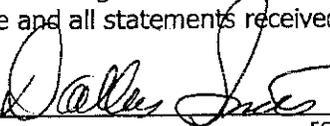
**Legal Description of Property:** Lot(s) 5 & 6 Block(s) 2 Addition Riverbluff Estates Subdivision  
(If metes and bounds, attach description.)

**Existing Use of Property:** Bare Lots in Residential Area Present Zoning: R-2

**Action Requested:** Conditional Use Permit \_\_\_\_\_ Variance X  
Subdivision (Sketch Plat) \_\_\_\_\_ Preliminary Plat \_\_\_\_\_ Final Plat \_\_\_\_\_  
Planned Unit Development (PUD) \_\_\_\_\_  
Amendment (Text, Rezoning, Comprehensive Plan) – SPECIFY: \_\_\_\_\_  
Other (Specify): \_\_\_\_\_

**Description and Reason for Request** (Attach Additional Information if necessary and required) Applicant is requesting a variance to approve a zero lot line sideyard setback to allow the construction of a duplex on adjoining lots. The lot line between Lots 5 and 6 would be the property line (dividing wall) between the units of the duplex.

In signing this Application, I/we hereby acknowledge that I/we have read and fully understand the applicable provisions of the Zoning and Subdivision Ordinances and current administrative procedures. I/we further acknowledge the fee explanation, as outlined in the application procedures, and hereby agree to pay the required fee and all statements received from the City pertaining to additional application expenses.

x  Date: 7/14/09  
[Signature(s) of Applicant(s)]

North

82'

River Bluff Drive

423 River Bluff Drive

413 River Bluff Drive

46.9'

48'

East

off of

35'

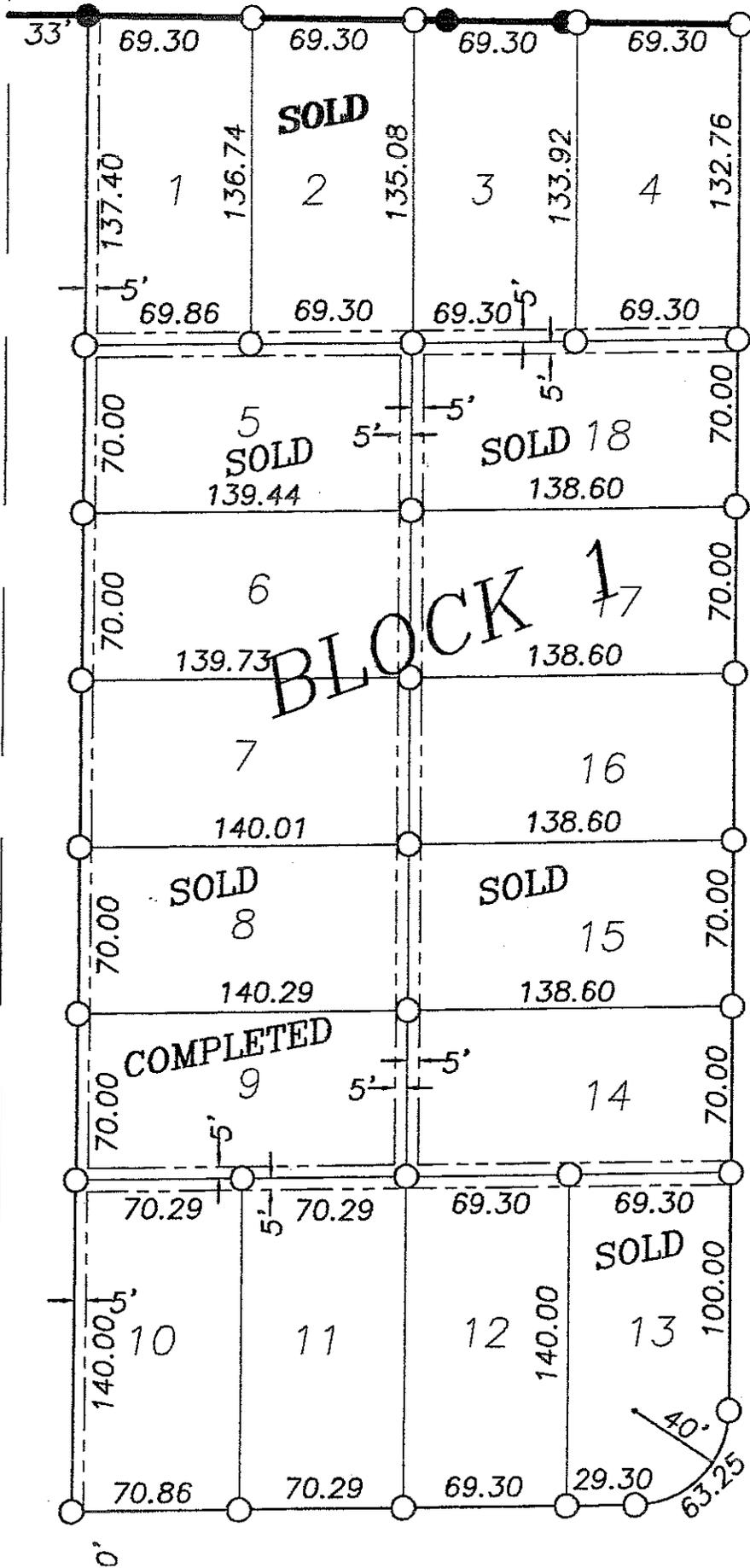
Street West

54'

82'

South

# CINDY STREET



# RIVER BLUFF DRIVE

