



**Regular City Council Meeting Minutes  
City Hall Council Chambers, 2660 Civic Center Drive  
Monday, January 25, 2016**

**1. Roll Call**

Mayor Roe called the meeting to order at approximately 6:00 p.m. Voting and Seating Order: Willmus, Laliberte, Etten, McGehee and Roe. City Manager Patrick Trudgeon and City Attorney Erich Hartman were also present.

**2. Pledge of Allegiance**

**3. Approve Agenda**

Etten moved, McGehee seconded, approval of the agenda as presented.

**Roll Call**

**Ayes:** Willmus, Laliberte, Etten, McGehee and Roe.

**Nays:** None.

Mayor Roe advised that the City Council would recess as the City Council at this time and reconvene as the Roseville Board of Adjustments and Appeals; and sought a motion to that affect.

Willmus moved, Etten seconded, recessing the City Council meeting at approximately 6:04 p.m. and convening as the Board of Adjustments and Appeals.

**Roll Call**

**Ayes:** Willmus, Laliberte, Etten, McGehee, and Roe

**Nays:** None.

Board of Adjustments and Appeals for the City of Roseville

Chair Roe reviewed the procedure and tonight's process for consideration of the appeal of Vogel Mechanical of Administrative Decision based on City Council direction denying their request to move the location of the fence as conditioned for approval of the Interim Use. Chair Roe noted that staff had received the request to appeal dated November 27, 2015 (Attachment D), of that administrative decision in accordance with Section 1009.08 of City of Roseville Zoning Code.

Numerous bench handouts related to this issue were provided, attached hereto and made a part hereof, as follows:

Via Attorney Dan Wall

- Email dated November 25, 2016 from Steve Wilson, Sales Manager with Midwest Fence, 525 E Villaume Avenue, So. St. Paul, MN in response to an email dated November 24, 2015 from Bert Sorlien, Sales Director with Premier Fence, Inc.
- Subsequent email dated January 19, 2016 from Mr. Wilson withdrawing from the Vogel project at this time pending resolution of the fence location.

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- Email dated January 11, 2016 from Monica Megyesi, Network Real Estate-CenturyLink, 3801 Elm Road, Warren, OH and attached standard Encroachment Agreement; and related emails between Attorney Wall and Ms. Megyesi regarding CenturyLink Real Estate Division's ongoing investigation of the easement

### Via City Staff addressed to City Council

- Letter dated January 25, 2016 from Lisa Galvin, Project Manager with Vogel Mechanical, Inc. (employee of Vogel Mechanical)
- Email dated January 25, 2016 from Cassie Yunker, 2852 Wheeler Street N in opposition of the Vogel appeal

### **Staff Response by Community Development Director Paul Bilotta**

Community Development Director Bilotta clarified the appeal currently before the Board of Appeals and Adjustments, of staff's administrative decision as detailed in the staff report dated January 25, 2016, provided an historical background of the Interim Use and its deputed condition, and staff's interpretation of the City Council's direction(s) related to this matter. Mr. Bilotta noted that it was the role of this Board to determine whether or not staff met their intent and ordinance requirements during these deliberations.

Mr. Bilotta further noted that amendment of the Interim Use was another option for the City Council after the Board determines whether or not the standard previously imposed was reasonable.

Mr. Bilotta opined that staff remained confident, based on City Council direction, that they had made an accurate interpretation and subsequent response to Vogel Mechanical on the fence location condition.

Mr. Bilotta briefly reviewed the Interim Use itself and standards created that were unique to this particular application; and providing no past precedent or code language for staff to rely on. Given the additional clarity provided by the City Council's August 24, 2015 action which limited the authority to move the fence location based only on whether it was precluded from being installed at that location by utility companies, staff then denied the south installation request resulting in the November 7, 2015 appeal of that administrative decision. Due to no available code language, Mr. Bilotta advised that staff had included some pieces of code language related to other issues that they may find relevant, including some other screening standards used in other situations.

### **Appellant Vogel Mechanical Response by Dan Wall, Esq., Legal Counsel, Vogel Mechanical**

Attorney Wall advised that, as recent as late this afternoon, he had still been in contact with Ms. Megyesi of CenturyLink regarding easement matters, which was also under review by their legal counsel and insurance company. However, Mr. Wall advised that no final word had yet been received as to whether the fence could be located on their easement and if so, would they have they pay for removal and replacement of all or a portion of it if their underground cable needed repair. Mr. Wall noted that the cost of this fence and its installation for Vogel Mechanical was not an insignificant amount of money, estimated at up to \$40,000 for the fence and installation.

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Mr. Wall asked the Board to consider if they would be willing to put that kind of investment in a backyard with the potential for its removal and undetermined party responsible for replacing it; and opined that it was not reasonable to expect Vogel Mechanical to do so. Since he had not been made privy to Mr. Bilotta's CenturyLink contacts locally or Mr. Wilson with Midwest Fence, Mr. Wall admitted that he and the Vogels were playing catch-up. However, after Mr. Bilotta had made his administrative determination, Mr. Wall advised that he had held subsequent discussion with Paul Moliner from CenturyLink whom Mr. Bilotta had apparently depended on for making his determination. Mr. Wall referenced CenturyLink contacts and differing responses from their staff in Minnesota, Missouri, and Ohio; with past conversations with Joe Hale in Missouri resulting in asking for a copy of the deed with the related easement, which had then been forwarded by Mr. Hale to Ms. Megyesi in Ohio over the holidays, further delaying responses.

Mr. Wall advised that Ms. Megyesi's response was CenturyLink's standard encroachment agreement, as provided to the Board. Mr. Wall reported that he had asked her the same question as he had asked Mr. Moliner related to replacement of the fence if removed and whether the Vogels would be reimbursed by CenturyLink, since nothing in the Encroachment Agreement requires CenturyLink to do so, yet which language requires the Vogels to indemnify CenturyLink. Mr. Wall stated his understanding was that, while the Vogels didn't need the permission of CenturyLink to install the fence on their easement, CenturyLink could disregard any damage to the fence or expense incurred by Vogels. Mr. Wall referenced copies of email correspondence as provide as bench handouts tonight as well.

Mr. Wall further referenced the email correspondence to Ms. Megyesi from Ms. Lisa McCormick yesterday and today and referencing other communication between him and the City specific to language of the Easement Agreement beyond the standard language provided by CenturyLink in his interest of protecting his client. Mr. Wall expressed his surprise upon receiving this Roseville resident's correspondence with CenturyLink, but opined it is consistent with attitudes expressed throughout this process. Mr. Wall clarified that, based on Ms. Megyesi's latest email to his attention earlier today, CenturyLink was still in the investigative stage and therefore, he remained optimistic of a favorable resolution; and a best case scenario if the fence was placed on the easement, it would not interfere with their existing cable facilities. However, Mr. Wall noted that this placed the Vogels still in limbo at the time of this appeal hearing, and with the City Council's determination on August 24, 2015 and subsequent direction to staff, it limited the Vogel options specific to this remaining easement question. Since his client remained without an answer at this time, Mr. Wall opined that this hearing was premature until they receive confirmation from CenturyLink.

Mr. Wall turned their response over to Bonnie and Dave Vogel to provide a photographic history of what has led up to this appeal hearing tonight, after which he asked that the Vogel fence contractor Bert Sorlien from Premier Fence explain to the Board why it is not feasible to install the fence along the line as directed by the City Council and subsequently determined by staff's administrative determination.

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After their presentations, Mr. Wall advised that he would conclude with documentation of email traffic between and among staff (City Manager Trudgeon and Mr. Bilotta), with Ms. McCormick and neighbors adjacent to the north of the Vogel Mechanical property, and other correspondence that he had obtained from the City of Roseville through his request through the Data Practices Act information request process, which he opined would serve to further enlighten the Board.

Mr. Wall asked whether or not a simple or super majority vote was required of the Board for this determination, with Chair Roe clarifying with City Attorney Hartman that it required a simple majority vote of the Board.

Mr. Wall requested time for rebuttal at the end of this discussion and public comment period, opining that so much misinformation had been provided to the Board to-date, and he anticipated more would come forward tonight; and he wanted to have the last word.

At the request of Chair Roe, and from a legal perspective, City Attorney Hartman confirmed that that was not a legal issue. Chair Roe ruled that, since Mr. Wall represents the appellant party, he would provide staff and Mr. Wall one more opportunity to speak before the Board deliberated and made its decision. However, Chair Roe clarified that the purpose of this appeal hearing is not to define how the situation had arrived at this point since all parties had been involved in that history, and while he wanted to respect the appellant, he wanted to remain realistic about the purpose of this hearing and the decision before the board versus hearing the history of the issue.

In response, Mr. Wall noted that he and his client had only been made aware of the full history and correspondence trail after making the Data Practices Information Request, and opined that he had only been aware of approximately half of that material before that formal information request, and he thought it was pertinent to this hearing.

Mr. Wall asked if individual Councilmembers had read all the information that has been disclosed to him; with Chair Roe responding that he was not aware that all had been privy to that information as provided in Mr. Wall's Data Information Request.

**Bonnie Vogel, Co-Owner of Vogel Mechanical**

Ms. Vogel opined that their firm had been asked to provide a fence outside any other conditions or guidelines applied to Limited Production/Processing facility in the community. Ms. Vogel noted that there had been no recommendation from staff when this original request went before the Planning Commission, but only requested by neighbors at that point, and not reflective of their Interim Use application. Ms. Vogel stated that this issue had become bigger beyond what was being presented here, and created a personal struggle for their family and firm, as well as for the neighbors, and was resulting in a big expense for their firm.

Ms. Vogel agreed with Mr. Wall's interpretation of the pending status related to language of the standard encroachment agreement received from CenturyLink, and read Section 2.2 of that agreement related to installations or construction within the easement tract. While they could continue to go around in circles with different opinions, Ms. Vogel opined that language was very clear from her perspective. Ms. Vogel noted the impacts for fence contractors based on

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practical applications and their confusion as well, with subsequent withdrawal from the project due to remaining uncertainties and their lack of willingness to guarantee their fence and its installation under those terms. Ms. Vogel noted that it was easier for other parties without any skin in the game to say what could or should be done in a particular situation.

Ms. Vogel provided a slide show of the actual fence line and what they proposed; and a perspective of where this started, as well as before and after photos of various exterior views from initial meetings and their agreement to cooperate with the neighbor requests before realizing what they were up against. As part of Ms. Vogel's slides, she reviewed a typical day of operation for Vogel Mechanical viewed from their back parking lot and; before photos of the building prior to their purchase and after with a secure building, security system installed and operational fence. Ms. Vogel opined that the property and building was in much better condition than before their purchase, including replacement and/or painting of awnings and garage doors, which should serve to help with visual and noise concerns from the viewpoint of their residential neighbors to the north. Ms. Vogel also provided various views of the fence line at the start of this process when they first purchased the property. Ms. Vogel noted that at that time, residences couldn't even be viewed with the existing vegetation, and noted her confusion from the beginning as to why they were being asked to install a fence as part of a short-term, five-year Interim Use.

Ms. Vogel proceeded to provide pictures from various locations along the fence line before and after trimming, stakes placed by their surveyor and the residential neighbor's surveyor, and noted the likely regrowth of some of the vegetation even after trimming, as provided by the Arborist they had hired for this process, Dean Turner. Ms. Vogel noted the string line and survey locations with no fence, location of the actual property line and areas it meandered, an example of an encroachment of a residence denied to exist, footing locations with at least one problematic given the meandering of the underground cable that would put it on top of the cable, and other proximity differences along the encroachment. Ms. Vogel noted some trees in the area with mature root lines, damage realized from current growth along the fence line, and the inability to remove one existing fence post as it was ingrown into an existing mature tree.

Ms. Vogel asked that they were not disputing installation of the fence, only the problems installing it as required based on property lines, variations between the ground and root systems of existing mature trees, and more beneficial and level ground available on the south side and neighboring properties that would still place the installation in close proximity to the original location.

Noting a displayed photo, Mr. Wall noted that early on, it had been pointed out to Ms. McCormick as representative of the neighbors that a branch was leaning on the fence and the top of the fence had in turn grown into a bench. At that point, Mr. Wall noted that she had been asked if her clients would remove those major branches preventing the fence installation, and that her response had been "no," and her further response that if the Vogels wanted them removed, they should do so. Mr. Wall noted that subsequently, the neighbors had been asked, through Ms. McCormick, if they would reimburse the Vogels for the \$1,400 to do so or provide a release for any damage done or claim of tree damage if the Vogels removed them. Since the response from Ms. McCormick had been that the Vogels should perform the work at their own risk, Mr. Wall

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advised that he had told his client not to do the work in case there was any damage to the trees and a subsequent monetary amount sought and awarded for that damage.

Ms. Vogel proceeded to present additional slides showing lilac vines and growth through the fence, and significant roots in some areas on top of the fence, causing her to question how they could build a fence on top of the existing fence, with volunteer trees growing up through the existing fence, some on both sides and some on the property line itself. Ms. Vogel provided slides of landscaping and tree planting they had added to-date to screen their property from that of the residences to the north, including new trees, along with additional trees and a berm along the boulevard. While not clear what that had to do with their 5-year Interim Use, Ms. Vogel opined that she felt they had gone above and beyond what was intended or required of this condition.

Ms. Vogel concluded her presentation with before and after pictures of the north side of their property, and asked that the Board consider that the outlines of the landscaping were much the same in addition to their addition of Conifers and Maples. In light of further consideration of the hours, time, and resources already provided by Mr. Sorlien as their fence contractor, as well as the City Council, other contractors involved, and city staff, and the "nasty grams" received from residents to the north, Ms. Vogel asked if the problems created throughout this process were serving to accomplish the original goals. Ms. Vogel opined that their firm was on the right track, and advised that they would continue to provide sufficient cover to screen the properties.

**Bert Sorlien, Sales Director, Premier Fence, Inc.**

Mr. Sorlien provided his credentials and experience as a residential and commercial fence estimator and contractor. Mr. Sorlien clarified that he had not received any monies from Vogel Mechanical to-date, and wanted to make that known as a preamble to his comments. Mr. Sorlien provided a background of Premier Fence, with their firm building fences since 1978, originally under Midwest Fence prior to forming their own full-service company, with on average of 500 fence installations annually and various applications.

Mr. Sorlien reviewed his history and experience with Vogel Mechanical in providing an estimate to replace the existing fence along the northern property line, with his initial estimated for an 8' tall Cedar fence as requested by the Vogels, which he noted was an uncommon installation at that height, and his opinion that the existing 6' fence height seemed to serve the same purposes. Therefore, Mr. Sorlien advised that he had provided the Vogels with an estimate for a 6' fence at the cost of \$16,000 and an estimate for an 8' high fence at the cost of over \$40,000 projected. Given State of MN requirements for a fence to be constructed to withstand up to 90 mph winds, Mr. Sorlien advised that an engineer had been consulted to address design parameters.

Mr. Sorlien noted that the Vogels had to remove the existing fence to get an accurate utility location, and upon that removal, serious concerns became apparent to him related to trees, brush, branches, vines and other encroachments, including a shed, trees straddling the fence, as well as the aforementioned CenturyLink cable meandering through the easement.

Mr. Sorlien noted that his first responsibility was to protect his company and his clients, and that it was necessary for him to install a fence that his warranty could support, as well as installing

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the fence in a manner that would not put his client at risk for future costs. Under the circumstances, Mr. Sorlien advised that he could not guarantee either by installing this fence up to the property line, opining that the Cedar fence would more than likely be damaged, and while a cyclone fence is more tolerant to that growth, solid fences were not. Therefore, Mr. Sorlien advised that he could not in all good conscience provide the Vogels with a warranty; and his professional recommendation would be to install the fence at a minimum of 5' to 10' from the property line, which would also allow the Vogels to maintain the fence on both sides.

Mr. Sorlien advised that this had been discussed among all parties that while the fence could be installed up to the property line, it didn't mean it would be practical to do so or in the best interest of various parties, and noted the response from Midwest Fence supporting that supposition. Mr. Sorlien further advised that, if his firm was forced to install the fence up to the property line, a number of encroachments of residential neighbors remained; and respectfully asked that if that was the Board's continuing directive, that those encroachments be removed by those property owners.

Given the size, location and importance of this CenturyLink cable, Mr. Sorlien expressed his preference to not install the fence in the easement to avoid risks, especially with the way the underground cable appeared to meander. In order to install the fence, Mr. Sorlien noted that he needed to dig a hole, and to do so in close proximity to the cable created a risk for his firm, his clients, and CenturyLink customers should the cable inadvertently be hit.

Based on these potential litigious and personal concerns presented, Mr. Sorlien advised that he had been forced to eliminate his interest in this installation. Mr. Sorlien stated that he personally felt the Vogels had gone above and beyond without any concessions provided by the neighbors to the north, and he didn't see any common ground forthcoming. Mr. Sorlien noted that after being consulted with by those residential neighbors, Midwest Fence had also withdrawn their interest in the installation, contrary to their initial expressions of interest. Mr. Sorlien opined that the city had given Premier Fence some flexibility as they deemed necessary during the installation, but had not provided any definition as to how far from the property line the fence installation could deviate. If the City denies this appeal and if in the course of installation he needed to shift the location to avoid a root or cable, Mr. Sorlien stated that he had no legal footing to support his decisions in the field. Mr. Sorlien expressed his concern that any decision made in the field to deviate from placing the fence installation on the property line would result in a legal challenge from the neighbors; and stated that he was unwilling to put his firm at risk of a legal challenge.

Mr. Sorlien reiterated his concern with the actual required location of the fence, and noted that installing it on the property line did not necessarily mean it would end up on the property line, with the edge of his concrete footings varying from 2 inches to 5 inches between the physical property line and fence, creating a gap between the northern neighbors and Vogel property. Also, Mr. Sorlien noted that current City Code required the Vogels to maintain the space between those properties even though their demanded fence placement prohibited them from performing that maintenance without trespassing. Based on the topography of the land, Mr. Sorlien noted that the fence height would vary between 6' and 8', and anticipated that may create another legal

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challenge from the neighbors if they see that varying fence height and felt their view was unprotected.

As a fence contractor, Mr. Sorlien asked that the Board consider installation between 5' and 10' from the property line to avoid compromising the fence installation and its performance.

**Attorney Wall**

Mr. Wall displayed the information he had received from his Data Practices Information Request, providing a chronological history and stating that he could not rush through it as much as the Board may like him to do so; stating his need to provide a thorough of a representation for his clients as possible, and as he had done during his thirty-seven years as an attorney. Mr. Wall opined that the fact that the Board hasn't looked at or been aware of all of the materials leading up to Mr. Bilotta's administrative decision further emphasized the need for this thorough review. Mr. Wall opined that as most cases have theories in them, this issue started out to be a solution looking for a problem, when in fact there was no problem.

Mr. Wall proceeded to review the written record of emails and correspondence beginning when staff initially came before the Planning Commission in June of 2014 with the Vogel Interim Use request, without condition at that point for a fence, since there was already a 6' fence in place that blocked the view from the ground, and staff's finding that noise would not be an issue with this use based on the findings provided by staff during their analysis, as well as no significant impact on land or injuries to the neighborhood or their health, welfare and safety. Mr. Wall noted that of the 60 properties invited by the Vogels to the developer open house, only six residents from the neighborhood attended.

Ms. McCormick asked for a barrier fence, but Mr. Wall noted that deliberations by the Planning Commission, did not take into consideration that operations on this parcel had been ongoing for the majority of years since 1970 and the first residence built to the north constructed in 1979 and subsequent homes constructed with the view of this commercial property already in place upon the purchase of their property. Mr. Wall noted that a previous owner/use on the property (Aramark) had installed the initial fence, and at that time there was no sight line issue brought forward, and didn't exist other than from decks which were obviously higher than the view from the residence itself. At that point, Mr. Wall noted that a condition of approval for the Interim Use required installation of a fence or landscaping with subsequent City Council approval requiring both; and in the spring of 2015 the Vogels presented a plan for that fence installation as conditioned without dispute on their part, with two surveys ordered and paid for by Vogels. Mr. Wall noted that he wasn't involved with his clients at that time, otherwise he would have raised these issues at that time.

Mr. Wall proceeded to review the history of the case, meetings with contractors and staff on-site, discussion on the best location for the fence to screen views; and summarized correspondence from that point forward as noted involving staff, Ms. McCormick and other neighbors, frustrations and lack of willingness to compromise on the part of the neighbors, and the neighbors request that the City Council find the Vogels in violation of the conditions of their Interim Use. Mr. Wall reviewed additional correspondence addressing concerns of both parties, efforts of staff and



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the Vogels to reach a compromise related to the fence location and installation and related vegetation and easement; and staff's subsequent return to the City Council for clarification of their original directive.

With a reminder from Chair Roe that this history is not the purpose of tonight's appeal hearing, Mr. Wall disagreed, opining that this background information was necessary to provide the basis for the administrative decision made by Mr. Bilotta and the pressure he was under from the residents to get this condition addressed and attempts by those neighbors, chiefly represented by Ms. McCormick and Ms. Erickson to apply their own parameters to the condition for screening and landscaping while Mr. Bilotta continued to attempt appeasement of all parties for a reasonable solution.

Mr. Wall referenced individual Councilmember involvement (Willmus and Etten) as part of this correspondence trail, and offered to provide a copy of the information for the benefit of the Board if they were interested in personally reviewing the materials prior to tonight's deliberating. Mr. Wall opined that Ms. McCormick continued to dispute expert advice and experience offered to staff and/or the Vogels from their arborist, surveyors, and fence installer as well as discussing any of their concerns.

Mr. Wall noted his letter of November 13, 2015 asking for a 5' to 10' setback, at which point this voluminous historic correspondence remained unknown to him but once the easement situation came forward and proved more problematic for his client. When he was initially hired by the Vogels to represent them regarding the rezoning issue, Mr. Wall advised that he was not aware of the fence issue at that time. Mr. Wall noted that his client was also not privy to much of the correspondence between staff, individual Councilmembers and Ms. McCormick until his Data Practices Information Request on their behalf. Mr. Wall also noted, that had he been aware of this correspondence, he would have included it as part of his appeal correspondence to the Board.

Member McGehee asked Mr. Sorlien the difference in a slatted chain link and wooden fence, with his response that a chain link fence would be more affordable, and as estimated by him earlier in his comments, at approximately \$14,500 for this installation with a 6.5' height. He further stated that a board fence of similar height would be perhaps \$2,000 more or about \$16,000.00

Member Willmus asked if staff had the emails dated January 25, 2016 from the Vogels and Mr. Wall; with Mr. Wall advising that even though he was out of the office today until after 4:00 p.m. and immediately prior to tonight's meeting of the Board, he had sent copies to staff. Member Willmus advised that, at the appropriate time tonight, he would have questions on the 11:29 a.m. email from earlier today.

Member Etten stated his position that the Easement Agreement provided by CenturyLink was generic and not considered exclusive and questioned how their legal counsel's determination may impact the deed and easement whether the property was platted or not platted at the time the original easement was issued.

Mr. Wall responded that it probably made no difference other than to CenturyLink, but the bottom line remained that they would not allow the fence installation on or near their cable. Mr. Wall advised that he had revised the standard easement agreement provided by CenturyLink and returned it to them, but noted they require indemnification and any approval of the fence design; but advised that he did not intend to recommend to this client that they sign such an agreement as currently written.

In conclusion, Mr. Wall thanked the Board for their patience and time allowed for his presentation.

**Public Comment**

Chair Roe reviewed the protocol for and invited public comment.

**Timothy Callaghan, 3062 Shorewood Lane**

While not a neighbor, Mr. Callaghan stated that he had dealt with similar concerns, and opined that this didn't involve only two neighbors, but the whole neighborhood's concern. In his listening to this situation, Mr. Callaghan opined that there was no legal requirement that the neighbors removed limbs that entered into another person's property, and stated he had never heard it referred to as an encroachment before. Mr. Callaghan noted that they had talked about a 6.5' limitation if the fence was installed in a residential area or in the front yard that had not been mentioned. Mr. Vogel stated that he found it interesting that the Vogels had signed this Interim Use Agreement as conditioned in June of 2014, but all of a sudden had found many issues after the fact, and appeared to be unaware of the easements affecting their property, even though the lot had a number of telephone poles running through it, expressing his surprise they hadn't noticed them. Mr. Callaghan opined that he was finding a lot of misinformation being spread by the Vogels and their attorney, causing him concern.

**Lisa McCormick, Wheeler Street**

Ms. McCormick opined that she found Mr. Wall's presentation very interesting; and noted that she had also sought out a similar Data Practices Information Request, and recognized the significant amount of communication involved in this process. Ms. McCormick noted one comment stating it was unfortunate that more communication between the residents and Vogels hadn't been accomplished; and advised that she was not going to apologize in any way for her initiation in taking on a lot of that communication. Ms. McCormick offered to provide those emails for the record as summarized by Mr. Wall, and for the record, stating that he had not read the entire email related to future liability and indemnity. Ms. McCormick stated that the neighbors were not concerned about any indemnity based on assurances from Mr. Molinar of Century Link, thus the statement referenced in the email related to indemnity with the point being that the neighbors didn't share that same concern if putting up their own fences.

As for all encroachments, Ms. McCormick stated that she thought it was possible to work out a lot of this, since only a few inches were being addressed. Ms. McCormick advised that she had sought and received permission from the Erickson's to share this information: that they'd also spent money on surveys, and there was one fence post that was approximately 2' to 3" over the property line, and noted they were willing to remove it, but when talking to Mr. Steve Wilson had been advised that they couldn't do so as it was too late in the season to get in line for that

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contractor. As far as Mr. Wilson withdrawing from the installation process and not willing to provide an estimate, Ms. McCormick stated that this information had come from Mr. Wall and she had not been told that.

Ms. McCormick addressed the garden planter displayed in the photos by Ms. Vogel, and noted that she also had drawings and continued to question and suspect the information being provided to neighbors, especially since they are hearing more than one view. Specific to allegations that the underground utility line meandered, Ms. McCormick stated that Ms. Erickson had photographic evidence of locates and cables showing them consistently 2' to 3' on the north side of the property line, and questioned why one view showed them on the property line and another as she just indicated with photos available to show those discrepancies.

Regarding the expectations of the neighborhood, Ms. McCormick stated that this was occurring within the context of rezoning and the extension of Twin Lakes Parkway, in conjunction with the Vogels coming into ownership and use of this building. While expressing appreciation in pictures showing only 5-6 vehicles in the parking lot during the day, Ms. McCormick noted that the Vogels had yet to move their operation in completely; otherwise, she questioned why they would need that large of a building if they didn't intend to expand their operations.

Using Oasis Park as an example of an 8' board fence, Ms. McCormick noted that Mr. Wall was the Mayor of Roseville at the time of that installation for the Advanced Circuits, Inc. (ACI) building. Ms. McCormick opined that the staff report was in error, and from her research, the buildings used as that example were actually adjoined in 1993 or 1994, well before sound mitigation efforts took place, with the fence and extensive double barrier of trees intended for that purpose.

Ms. McCormick provided a brief summary of the background information and rationale or neighbors in requesting this fence. Ms. McCormick noted there were other examples in the community of 8' board on board fence installations without creating the same issues as this was causing. Ms. McCormick expressed her regret that this had turned out the way it had, and the burdens created on all sides. Ms. McCormick expressed her understanding that all neighbors had been continually in communication with the Vogels, but some were unable to attend meetings due to disabilities or health issues, but clarified that at no point had they been left out of this process.

Ms. McCormick stated that she had asked Mr. Bilotta if there was some way the Vogels could sit down at the table with the neighbors, but had been told that ship had already sailed and he stated there was no need for neighborhood involvement, which she found unfortunate.

Whatever the ultimate resolution, Ms. McCormick stated that she understood the complexities, but also stated she was not willing to walk away from this. Ms. McCormick noted the temporary snow fencing currently installed in the interim and stated that the neighbors want to avoid litigation but would continue to pursue whatever they could do to improve this situation from their perspective.

**Farhiya Eintle, 1795 Centennial Drive**

Ms. Eintle expressed her disappointment in listening tonight, expressing her hope that something different would have been brought up for the appeal than the history of what had happened. Ms. Eintle opined that she could see no legitimate reason for the Vogel appeal, and noted the reasons some neighbors were unable to attend tonight's meeting, even though they remained united in this effort. While not wanting to create bad feeling and attempt to show respect for all parties, Ms. Eintle noted this had been pending for 1.5 years, and neighbors were still waiting for the fence to be up. Ms. Eintle noted that the neighbors had worked together to do their part with the trees, surveys and fence location, but continued to wait and noted the expenses involved for the residents as well. If the resolution required cost-sharing, Ms. Eintle opined that that may be a possibility, but stated how important installing the fence was for the neighborhood for the safety of their homes and children. With the decision already set, Ms. Eintle questioned the validity of the appeal. Ms. Eintle clarified that Ms. McCormick had been chosen by the neighborhood to serve as their spokesperson, and also noted that the neighbors were recipients of the emails and knew what was transpiring. Since it would be disorganized and time-consuming for all the neighbors to speak, Ms. Eintle stated that Ms. McCormick and Ms. Erickson had been chosen to speak on the behalf of the neighbors, and that their comments were not just decisions coming from them personally. Ms. Eintle expressed how sad she found it that the good things they were doing for their fellow neighbors were being abused tonight.

**Kathleen Erickson, 1790 Centennial Drive**

Ms. Erickson stated how hard this was for her to be treated with such disdain by Mr. Wall's comments, when the neighbors were simply exercising their community rights. Ms. Erickson noted that the Vogels, Mr. Wall and the neighbors were all part of the same community, and noted that it was painful for her at this point, and stated that she already felt different about her city because of this ongoing 2-year issue, as well as how she felt about her home.

Ms. Erickson referenced the glowing pictures provided by Vogel Mechanical and proud display of their accomplishments and what they had done for their business. However, Ms. Erickson offered her personal photo display of the same thing from a different perspective. Ms. Erickson proceeded to display photos of their backyard gazebo and the corner where they encroached 3" to 5" onto the Vogel property. Having lived there for thirty years, Ms. Erickson opined that no one cared what happened on their side of the fence, and they had attempted to make it livable for their family, and didn't tell them when they purchased their property. However, Ms. Erickson opined that there may be such a thing as a policy of adverse possession when no one has voiced any concerns for over thirty years, and being unable to come back to you after only owning the adjacent property for a year and alleging that you've stolen some of their property. However, Ms. Erickson expressed her willingness to concede that 3" to 5" inches of their property back with the mature Maple trees that they had nurtured and trimmed over the years to keep them off the fence, and a Mulberry bush actually growing on the Vogel property that they had maintained over the years in addition to ongoing trimming of other encroachments from the Vogel property onto their property.

Ms. Erickson noted a picture displayed by Ms. Vogel that appeared to be taken from the Erickson deck and questioned how that photo had been obtained.

Ms. Erickson reviewed the history of the Vogel's request for a clearance cut by Xcel Energy and disputes with Mr. Wall on ownership of trees, and the results of this clear cut as photographed and trees stripped of foliage. After that, Ms. Erickson noted that neighbors had determined they would work on the remaining encroachments and after ten pick-up loads she showed the resulting photos. Ms. Erickson further reviewed the CenturyLink locates along the residents' side of the fence, allegations of markings being moved; removal of the existing fence by Vogel contractors at 7:00 a.m. one day, and showed a video of part of their fence coming down and how vulnerable and open it left their property.

Once the existing chain link fence was removed, Ms. Erickson reported frequent people perusing their area and yard, and several weeks later hearing chain saws coming from the back of their property, and identification of Mr. Dean Turner from Twin City Tree – as shown in the photos – performing that work and serving as an independent contractor of Vogels to cut neighboring trees. Ms. Erickson stated that she was accused of harassing Vogel staff, but stated she had never approached anyone other than Dave Vogel to assist him in locating the compost site for disposal of some things they'd cut down. In her query of Mr. Turner as to who hired him to do this work – without any notice to neighbors – Ms. Erickson reported that Mr. Turner responded that they were working for the Vogels and they did not need to give the neighbors any notice. While this may be true, Ms. Erickson opined that good neighbors didn't do this to other neighbors, and displayed a photo of everything cut along the string line stretched on the ground.

Ms. Erickson referenced the question by Ms. McCormick if a licensed arborist was doing this work, and upon display of a picture of what was now left, she noted this was not the same beautiful view as shown during Ms. Vogel's presentation and represented what the neighbor had left to view. Ms. Erickson advised that, since that time, they had pulled out their planter, removed their fence, but not the fence post, but had asked Vogels for a seven-day notice when the fence was to be installed to then deal with the remaining encroachments. However, Ms. Erickson advised that they had not received any notice to-date, nor any protections offered to-date.

**Chuck Erickson, 1790 Centennial Drive (husband)**

Addressing concerns with possible problems with the underground cable, in his personal history as a resident in that home since 1985, Mr. Erickson advised that nothing had ever happened to or been done with that underground cable during that time, even though he recognized that was always a possibility.

**Lisa Galvin, Vogel Mechanical Employee**

As a young professional concerned with business growth, Ms. Galvin stated that she was speaking tonight to share her concerns related to that growth and how this may impact future business decisions. Ms. Galvin asked that the Board consider the expenses of the Vogels so far and loss of business opportunities due to events having occurred and these proceedings. Ms. Galvin asked that the Board consider those expenses compared to her salary, and the desire to create more jobs in the community and encourage businesses such as Vogel Mechanical. Ms. Galvin stated that she could bear witness to some of the things that had occurred, and from her outside perspective, she opined that the owners of their business had acted with integrity and asked that

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the Board consider some of the slanderous comments being thrown out this evening. Ms. Galvin stated employees had experienced their photos being taken as they come into work, and expressed how intimidating that was, in addition to this situation continuing to affect the prosperity of the business itself.

**Mr. Pat Phillips, 3084 Shorewood Lane**

Mr. Phillips thanked the Board for their forbearance in hearing this information, including the extraneous information presented tonight.

Mr. Phillips expressed his objections about some of the adverse remarks made during Mr. Wall's presentation about neighborhood representatives; and questioned the summation of some of that email correspondence and whether it fairly represented the whole picture. Mr. Phillips stated that he was here to voice his support for those owning property adjacent to and living with what was being done by the Vogels, even though he encouraged the Board to be supportive of Roseville businesses as well and treat all fairly. Mr. Phillips opined that those businesses were needed for jobs and to improve the tax base; and expressed his support for business. However, Mr. Phillips noted how unfortunate it was that things came about this way without anticipating problems in installing the fence at the time initial decision were made.

**Diane Hilden, Bayview Drive**

Ms. Hilden spoke to the promotion by the Roseville City Council of community engagement, and questioned if it clearly understood what that meant in actual practice. However, Ms. Hilden noted that like a democracy, it was often messy, and noted that she had held this conversation with some individual Councilmembers before. As part of that democratic process, Ms. Hilden noted one problem was that it often took so long to accomplish something, which may not do much harm but also might not do much good, resulting in this type of situation.

Ms. Hilden opined that this was an outstanding example of community engagement and involvement to find the right balance of a business that should have been informed at the time of their purchase of this property rather than finding out about underground utilities after the fact. However, Ms. Hilden expressed her resentment that the reputation of a member of the community, and the reputation of Mr. Bilotta, were both besmirched tonight without the opportunity to defend themselves, opining she found that depressing and should receive serious consideration when asking people to be involved in their community.

Ms. Hilden opined that this should not happen and hoped it didn't create a resident versus business consideration which would be even more wrong. Ms. Hilden further opined that the City Council had made their decision, and that the decision should be upheld by trusting staff to make reasonable decisions based on the information available at the time without second-guessing things. Ms. Hilden opined that this would result in a better, bigger city all around.

**Vicki Boyer, 1785 Centennial Drive**

While this situation doesn't immediately affect me being one street further in, Ms. Boyer stated that the way the Board chose to handle it would potentially affect her in the future. Ms. Boyer recognized Ms. McCormick and Ms. Erickson as spokespeople for the neighborhood, and while

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the whole neighborhood could address the Board, she didn't think it was necessary or desired. Ms. Boyer recognized businesses as part of the community going forward, but also asked that residential properties be protected, their values and property rights. Ms. Boyer stated that she didn't want Ms. McCormick or Ms. Erickson to take any fault for this concern, or to put forth any idea that no one else was concerned, and clarified that the neighbors were all concerned.

With no one else coming forward to speak, Chair Roe closed public comment at approximately 8:15 p.m.

**Attorney Wall Rebuttal**

Regarding comments made about our lack of communication, Mr. Wall stated that had he continued to correspond with Ms. McCormick on line while she insisted on and ignored other factual items involved, his stack of emails would have been as extensive as those of Mr. Bilotta and taken hours away from his family and legal practice. Ms. Wall stated that the Vogels continued to work with city staff, and he had told her that there was no need for her to insert her opinions into the process.

In comments alluding to neighbors prevented from accessing the Vogel property, Ms. Wall stated that was not true, but clarified that the Vogels had simply asked that they be present, along with a city staff representative and himself.

Mr. Wall stated that the Vogels had done everything possible within their power, but the situation was now a problem looking for a solution.

**Bonnie Vogel Rebuttal**

Ms. Vogel addressed two cable locates performed earlier last fall, with Mr. Sorlien and Don Peltier able to confirm, indicated the cable line was marked 6" on the south side of the property line along their side of the fence and marked in the same place both times. When the neighbors had similar locates, Ms. Vogel advised that the locates done in their yards once the fence had been removed, showed a variance along the lines, and advised that this had not been clearly or fairly communicated to all parties.

Speaking to reputations, Ms. Vogel opined that their business reputation had been negatively impacted, and cited examples of people and other business contacts outside of the Roseville communication area that had been aware of this situation and remarked on it; questioning how that happened.

Ms. Vogel addressed comments related to noticing the neighborhood seven days before work, advising that the work schedule had been communicated to their firm and city staff and was compliant with those requirements, opining that should work for both sides. Ms. Vogel noted that they were asking that the fence be located on their property so they didn't need to access neighborhood properties or obtain waivers to do so.

Ms. Vogel opined that the City was asking their business to comply with completely different standards than any other requirements or for other businesses or properties. Ms. Vogel agreed

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the fence should be installed, and would have been installed had they been allowed to install it in the original location.

**Staff Rebuttal, Community Development Director Bilotta**

Mr. Bilotta offered no additional comments, but stated he would stand for questions of the Board at their discretion.

Member Willmus referenced the CenturyLink email from Ms. Megyesi to Ms. McCormick and references about them not allowing plantings, trees or shrubs in their easement area, assuming that was a standard for them everywhere. Member Willmus asked Mr. Bilotta, when he made his administrative determination or interpretation of the City Council's clarification of August 24, 2015, had he been aware of CenturyLink's position for planting within that easement area.

Mr. Bilotta advised that his conversation with the CenturyLink representative was regarding the fence itself and if it could be allowed, and any plantings to the south as they allowed.

At the request of Member Willmus, Mr. Bilotta confirmed the easement area was 10' on the Vogel side, but clarified that staff had yet to see documentation to that effect.

Chair Roe asked Mr. Wall to clarify the width; with Mr. Wall advising that at this time, the only documentation they have available is a 1968 title search done for an entity purchasing the property and eventually renting it to Ararmak, showing a 10' utility easement on the Vogel property and not extending over the property line.

Member Etten asked Mr. Bilotta to speak to the locates performed to-date for CenturyLink's cable, and whether there was any more clarity to define their actual location.

Mr. Bilotta responded that the two initial locates had one showing the cable north of the fence, and 1 showing it south of the fence. With subsequent locates by the neighbors shown on the north side, Mr. Bilotta admitted that created a quandary and a key piece in locating fence footings. Mr. Bilotta reported that he heard from CenturyLink through the Vogels that removal of the chain link fence may have caused interference with the equipment in attempting to locate the buried cables, and a subsequent locate by the Vogel fence contractor for actual location of the fence and determination of whether or not the cable meandered north or south of the line and future construction. Mr. Bilotta referenced the hand drawing provided in attachments, indicating where the buried cable meandered, and closest indicated roughly on the property line causing staff to determine that it fell within the flexible zone and not 3' from the line. When the neighborhood came back with their perceptions that it may be further north, Mr. Bilotta opined that from staff's perspective, it fell within the flexible zone.

**Board Member Discussion/Action on this Appeal of the Administrative Ruling**

Member McGehee stated she would stick with her original comment that no good deed goes unpunished. As a strong supporter of community engagement, Member McGehee opined that the neighbors had done an excellent job of coming together on this, and further opined she didn't think they were being unreasonable, especially since they hadn't heard for a year that the fence



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was being installed. Member McGehee clarified that it had never been her intention that the fence had to be 7' or 8' high, only that it needed to be opaque. Toward the end, Member McGehee noted she had heard communication about engineered fences and sizing of footings, all which would be irrelevant if installed according to code at 6' or 6.5'. As spoken to by Mr. Bilotta, Member McGehee noted that flexibility was what had been asked for by the City Council in the first place, and she did not believe it was unreasonable in the beginning or now to install the fence approximately along the northern border as originally requested by the City Council.

Member McGehee stated that she had to concur with some of the findings and information about laying cable and easements, and that the Vogels should have understood that at the time of their property purchase, with their realtor pointing that out. Member McGehee opined that it was foolhardy to sign an agreement without that due diligence. With the Vogels stating twice tonight that this fence requirement is unreasonable for an Interim Use, Member McGehee noted that those specific conditions were applied from the beginning and they didn't state any objections at that time. Member McGehee reiterated that she didn't feel it was an unreasonable at that time or at this point, and stated that she hadn't seen sufficient evidence to change the decision. By asking Century Link as late as December of 2015 to hold their firm harmless, Member McGehee opined that was an unreasonable expectation of anyone.

Member McGehee stated that the thing she found most discouraging was the view from residential backyards now and the way their private property had been laid waste to, making it look like a tornado had gone through their backyards, unfortunately unable to be rectified now. Member McGehee opined that she found it unfortunate that residents who tried to get something simple accomplished had now had irreparable harm done to their properties, their view and their environment. Member McGehee apologized for any role the City Council may have played in that result, but reiterated her position that she saw no reason to deviate from her original decision.

Member Etten agreed with many of the comments of Member McGehee, and expressed his disappointment with the various cuttings having created such a big loss for those residential properties. As previously stated in his referenced email, Member Etten noted that this is an unfortunate situation, and whether the City felt it had communicated sufficiently or not, this didn't work and created losses on both sides.

Member Etten expressed interest in hearing from his colleagues and City Attorney Hartman their comments on the encroachment agreement and whether or not it may affect either of the fence companies and building on the property line. Member Etten stated that he was still unsure at this point how to proceed.

Member Laliberte agreed it was unfortunate that this ended up in this situation. Member Laliberte noted that when an Interim Use comes before the City Council, it was common to ask for various conditions to that approval to ensure improvements are made or that it is a palatable use for that particular period of time. Member Laliberte referenced her recollection of when this was initially discussed and everyone was friendly and all was great and no concerns expressed. Since that time and for a number of reasons at the hand of all parties involved, Member Laliberte noted the spiraling downward of the situation, and opined that everyone shared that responsibility:

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staff, the City Council, neighbors and the appellant; and further opined that things could have been done differently, but they weren't, and it created this situation.

Member Laliberte noted that from the beginning she was aware that there were more than two neighbors expressing similar concerns, and advised that she never questioned that was the case. Specific to questions raised as to why this appears to have a different standard, Member Laliberte noted that there was a broader attempt to improve this area and the properties in this region, with everyone seeming to be amenable to that effort. Based on the information currently available, Member Laliberte stated that she would still support the original direction of the City Council and their information to staff.

Member Willmus stated that his interpretation of this appeal was it asking whether Mr. Bilotta made the correct determination with the information he had available; and to that question, Member Willmus responded that yes, he had and did; and therefore advised that he would not support the appeal.

As a secondary consideration and separate issue or question perhaps facing the City Council at some point in the future, Member Willmus suggested it may be asked if all the available information was available, and at this point tonight, he would have to say legitimately that all the information was not available. However, Member Willmus opined that was not an issue on the table this evening.

As previously and correctly characterized, Chair Roe opined that the purpose of this appeal was whether or not staff's decision was proper or based on sufficient backing at the time it was made. Chair Roe stated that he was concerned to hear a lot of the information presented about comments back and forth, and opined he didn't think that got to the point, but might serve to characterize the environment at the time this situation developed. However, Chair Roe stated that it didn't cause him to be concerned about whether the decision was based on sufficient justification. Further, Chair Roe questioned if the draft encroachment agreement said anything conclusively about the decision made by staff; and while it can be negotiated by the two parties, ultimately it didn't state it objected to a fence in the easement, but simply outlined the terms for both parties.

Chair Roe supported the notion that staff's interpretation was for installation as close to the north property line as possible, and didn't say if less than 5' it still wouldn't meet the spirit of the City Council's intent. While it may be necessary to jog around obstacles already in place that may also add to the cost, Chair Roe opined that it didn't preclude the construction of the fence, or the height of the top if topography varies. Chair Roe opined that there ways to make this work, and clarified the original direction was for 6' to 8' height for the fence, so in areas where topography indicated there was no need for 8', if staff was interpreting it that way, that was not the City Council's intent.

City Attorney Erich Hartman addressed questions about the encroachment agreement, advising that he frequently drafted them and if someone has an easement and another party wanted to construct something in the easement area, the standard agreement included provisions if those im-

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provements ever need to be moved or suffer damages due to those improvements, a standard and typical indemnification clause was included as part of the agreement. As mentioned by Chair Roe, this was typically negotiated and revised from the standard version, and as stated by Attorney Wall, it was complex dealing with a corporation and timely responses, but confirmed this was something you'd expect to see.

Chair Roe noted the draft resolution provided had blanks for findings, whichever decision was made by the Board.

Etten moved, McGehee seconded, directing staff and the City Attorney to revise a draft resolution (Attachment I) for future adoption at the next regular meeting of the body as Resolution No. \_\_\_\_\_ entitled, "Resolution of Decision of the Board of Adjustments and Appeals Related to the Appeal of Vogel Mechanical Regarding an Administrative Decision," DENYING the appeal requested by the applicant based on and memorializing the following findings :

- Specific to the 6' to 8' fence height, the resolution of June 23, 2015 and subsequent review on August 24, 2015 produced no new information at that time; and the fence can meander and not be 7' or 8' tall, but 6' or 6.5' or less based on actual topography of the site
- Sufficient flexibility was provided by staff for location of the fence
- Staff had no additional information presented when asking the City Council to uphold the decision based on materials presented and agreed to on those dates; and subsequently used as the basis for staff's administrative ruling on November 19, 2015, and found to be sufficient and consistent with original City Council direction
- Further information provided at tonight's hearing was found inconclusive as to any deviation from that initial decision
- Utility locates are consistent as based on the border are incorporated into these findings
- Information presented tonight is not inconsistent with the information discussed on June 23, August 24 and November 19, 2015 when the decision was made.

Member Laliberte cautioned that this situation will remain difficult unless all parties were willing move past this.

Member McGehee suggested staff could perhaps find a way to mediate a meeting between parties to resolve remaining hard feelings.

**Roll Call**

**Ayes:** Willmus, Laliberte, Etten, McGehee, and Roe

**Nays:** None.

Chair Roe advised that the appellant had further redress available through the court system if they chose to pursue that option.

**Adjourn/Reconvene**

Etten moved, Willmus seconded, closing the meeting of the Roseville Board of Adjustments and Appeals and reconvening as the City Council at approximately 8:47 p.m.

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**Roll Call**

**Ayes:** Willmus, Laliberte, Etten, McGehee, and Roe

**Nays:** None.

**Recess**

Mayor Roe recessed the meeting at approximately 8:48 p.m., and reconvened at approximately 8:56 p.m.

**4. Public Comment**

Mayor Roe called for public comment by members of the audience on any non-agenda items. No one appeared to speak.

**5. Council & City Manager Communications, Reports, and Announcements**

Mayor Roe announced that Ramsey County was seeking election judges to serve in the upcoming 2016 elections, and provided contact information for applying and training opportunities.

Mayor Roe also announced vacancies on Roseville citizen advisory commissions and the process for applications, interviews and appointments, and contact options for additional information.

Mayor Roe provided a reminder of upcoming open houses for information on MnDot projects occurring in 2016 in or near Roseville.

**6. Recognitions, Donations and Communications**

**a. Proclaim Black History Month**

Due to time constraints, without objection, Mayor Roe waived the formal reading of the proclamation, but invited all members of the Roseville community to renew their commitment to ensuring racial equality, understanding and justice.

Laliberte moved, Etten seconded, proclaiming February 2016 as Black History Month in Roseville.

**Roll Call**

**Ayes:** Willmus, Laliberte, Etten, McGehee and Roe.

**Nays:** None.

**b. Present Green Building Award Winner**

Noting the lateness of the hour, Mayor Roe noted that the recipients had left the meeting with their small children, and the award would be presented at a future meeting.

**7. Approve Minutes**

*Comments and corrections to draft minutes had been submitted by the City Council prior to tonight's meeting and those revisions were incorporated into the draft presented in the Council packet.*

**a. Approve January 4 Housing & Redevelopment Authority and the January 4 Economic Development Authority Meeting Minutes**

Willmus moved, Etten seconded, approval of the January 4, 2016 Housing & Redevelopment Authority Meeting Minutes and the January 4, 2016 Economic Development Authority as presented.

**Roll Call**

**Ayes:** Willmus, Laliberte, Etten, McGehee and Roe.

**Nays:** None.

**b. Approve January 4 City Council Meeting Minutes**

Etten moved, Willmus seconded, approval of the January 4, 2016 City Council Meeting Minutes as amended.

**Corrections:**

• **Page 1, Lines 34-36 (McGehee)**

Correct to read: "Councilmember McGehee thanked City Manager Trudgeon for a recent newspaper article extending wishes for a Happy New Year and highlighting some city-related items. *[Councilmember McGehee suggested a follow-up article on building bee houses and the affects of pesticides on the health of bees.]*"

• **Page 4, Line 36 (McGehee)**

Correct to read: "...noted *[that]* home delivery issues ..."

• **Page 5, Lines 1 – 3 (McGehee)**

Correct to read: "...asked that staff *[keep]* *[remain]* aware of the need to publicize issues in the newspaper and not *[depending]* *[depend]* solely on ..."

**Roll Call**

**Ayes:** Willmus, Laliberte, Etten, McGehee and Roe.

**Nays:** None.

**d. Approve January 11, City Council Meeting Minutes**

Willmus moved, Laliberte seconded, approval of the January 11, 2016 City Council Meeting Minutes as presented.

**Roll Call**

**Ayes:** Willmus, Laliberte, McGehee and Roe.

**Nays:** None.

**Abstentions:** Etten

**Motion carried.**

**8. Approve Consent Agenda**

At the request of Mayor Roe, City Manager Trudgeon briefly reviewed those items being considered under the Consent Agenda; and as detailed in specific Requests for Council Action (RCA) and related attachments, dated January 25, 2016.

**a. Approve Payments**

Etten moved, McGehee seconded, approval of the following claims and payments as presented and detailed.

ACH Payments	\$717,258.67
80124-8030	897,167.14
<b>TOTAL</b>	<b>\$1,614,425.81</b>

**Roll Call**

**Ayes:** Willmus, Laliberte, Etten, McGehee and Roe.

**Nays:** None.

**b. Approve Business & Other Licenses & Permits**

Etten moved, McGehee seconded, approval of business and other licenses and permits for terms as noted.

**Roll Call**

**Ayes:** Willmus, Laliberte, Etten, McGehee and Roe.

**Nays:** None.

**c. Approve General Purchases and Sale of Surplus Items in Excess of \$5,000**

Etten moved, McGehee seconded, approval of general purchases and contracts for services as noted in the RCA and Attachment A entitled, "2016 Capital Improvement Plan Summary," dated January 11, 2016.

**Roll Call**

**Ayes:** Willmus, Laliberte, Etten, McGehee and Roe.

**Nays:** None.

Etten moved, McGehee seconded, approval of the sale of surplus vehicles or equipment as noted in the RCA dated January 11, 2016.

**Roll Call**

**Ayes:** Willmus, Laliberte, Etten, McGehee and Roe.

**Nays:** None.

**d. Approve Minnesota Department of Transportation (MnDOT) Master Partnership Contract**

Etten moved, McGehee seconded, adoption of Resolution No. 11292 (Attachment C) entitled, "Resolution *[to]* Enter Into a master Partnership Contract with the

Minnesota Department of Transportation;” *and authorizing the Mayor and City Manager to execute MnDOT Agreement #1002070 (Attachment B), subject to approval by the City Attorney.*

**Roll Call**

**Ayes:** Willmus, Laliberte, Etten, McGehee and Roe.  
**Nays:** None.

**e. Approve DigniCare Senior Living Encroachment Agreement**

Etten moved, McGehee seconded, approval of the Encroachment Agreement (Attachment A), as conditioned in detail in the RCA dated January 25, 2016, at 197 West County Road B-2 (DigniCare).

**Roll Call**

**Ayes:** Willmus, Laliberte, Etten, McGehee and Roe.  
**Nays:** None.

**f. Approve Valley Park Storm Water Treatment Pond Complex Maintenance Cooperative Agreement with City of Shoreview**

Etten moved, McGehee seconded, approval of a Cooperative Agreement (Attachment A) between the Cities of Roseville and Shoreview, for maintenance and repair activities associated with the Valley Park Stormwater Treatment Pond Complex.

**Roll Call**

**Ayes:** Willmus, Laliberte, Etten, McGehee and Roe.  
**Nays:** None.

**g. Approve Memorandum of Agreement Amending the Terms of IAFF Fire Fighters Contract to Recognize the Battalion Chief job Classification**

Etten moved, McGehee seconded, approval of the proposed terms and conditions of the Memorandum of Agreement to amend the 2016-2017 collective bargaining agreement with the IAFF; and direct City staff to prepare the necessary documents for execution, subject to City Attorney approval.

**Roll Call**

**Ayes:** Willmus, Laliberte, Etten, McGehee and Roe.  
**Nays:** None.

Due to the lateness of the hour, and without objection, Mayor Roe amended the agenda to hear the Lake Owasso Safe Boating Association’s request at this time (Action Item 12.a).

**12. Public Hearings and Action Consideration**

**a. Consider Lake Owasso Safe Boating Association's Request for Permit Renewal of the Water-Ski Slalom Course on Lake Owasso**

Lt. Lorne Rosand briefly presented this annual request, noting Mr. Joe Bester from the Lake Owasso Association was present for any questions.

Mayor Roe opened and closed the public hearing at 9:12 p.m. with no one appearing for or against.

*City Manager Trudgeon noted four written comments received via email in support of this request, provided as bench handouts, and advised they would be entered into the record of these meeting minutes. Those submissions were received from Cory and Sue Parnell, 405 S Owasso blvd.; James Badzinski, 385 S Owasso Blvd. West; Michael Walz, 389 S Owasso Blvd. West; and Pat Martin, 363 S Owasso Blvd. West.*

Councilmember McGehee thanked the Association for their continued respect for and use by the association of Lake Owasso.

McGehee moved, Etten seconded, approval of the Lake Owasso Safe Boating Association's request for a permit from the Ramsey County Sheriff for a water ski course on Lake Owasso for the 2016 season.

**Roll Call**

**Ayes:** Willmus, Laliberte, Etten, McGehee and Roe.

**Nays:** None.

**9. Consider Items Removed from Consent**

**10. General Ordinances for Adoption**

**a. Consider Approval of Rezoning of Properties within the Twin Lakes Redevelopment Area**

Senior Planner Bryan Lloyd briefly summarized this request as detailed in the RCA dated January 25, 2016.

Mr. Lloyd reviewed the background in the City Council's creation of four distinct community mixed use (CMU) districts, and the public input provided during that lengthy process, to rezone and further define the Twin Lakes Redevelopment Area CMU district designation. Mr. Lloyd advised that this resulted in amending the comprehensive plan for four parcels north of Terrace Drive and the incomplete segment of Twin Lakes Parkway and its alignment for guidance similar to other Twin Lakes parcels. Mr. Lloyd noted those amendments had previously been approved by the City Council, and the comprehensive plan map subsequently changed accordingly.



As part of that approval process, Mr. Lloyd noted that the comprehensive plan amendment had then been sent to the Metropolitan Council for their review and approval, which had been completed, and now was back before the City Council for completion of the rezoning process as the next step. Mr. Lloyd reviewed the various zoning designations and least extensive uses tailor-made for those parcels between those lower density residences to the north and commercial uses.

Mr. Lloyd advised that a draft ordinance was included in meeting packet materials for consideration by the City Council as part of tonight's requested action.

Mayor Roe offered an opportunity for public comment, while noting the formal public hearing had been held at the Planning Commission meetings of September 2 and 17, 2015. Mayor Roe noted that the Planning Commission voted 5/0 to recommending zoning changes for these particular properties as well as others at that time.

No one appeared to speak to this issue.

Willmus moved, McGehee seconded, enactment of Ordinance No. 1491 (RCA Exhibit B) entitled, "An Ordinance Amending Title 10 of Roseville City Code Changing the Zoning Designation of Certain Real Property for Consistency with its Designation in the Comprehensive Land Use Plan Map;" rezoning existing High Density Residential-1 (HDR-1) zoned parcels addressed as 2805 – 2837 Fairview Avenue, 2830 Fairview Avenue, and 1633-1775 Terrace Drive to Community Mixed Use-1 (CMU-1); based on the findings and recommendations of the Planning Commission, public input, City Council deliberation, as detailed in the RCA and attachments dated January 25, 2016.

Mayor Roe noted this signified the last step in a lengthy process resulting from past deliberations.

**Roll Call**

**Ayes:** Willmus, Laliberte, Etten, McGehee and Roe.

**Nays:** None.

**Recess**

Mayor Roe recessed the meeting at approximately 9:15 p.m., and reconvened at approximately 9:19 p.m.

**11. Presentations**

**a. Park & Recreation Quarterly Update**

Mayor Roe welcomed Commission Chair Jerry Stoner; and Commissioners Philip Gelbach and Luke Heikkila. Discussion items were provided in detail in the RCA and attachments dated January 25, 2016.

1716 Marion Street Park Proposal

Chair Stoner advised that the Parks & Recreation Commission had voted unanimously to recommend acquisition of this parcel to the City Council.

Roseville Cedarholm Golf Course Clubhouse Replacement

Due to Commissioner Dave Holt having a prior commitment and needing to leave the meeting before this presentation, Chair Stoner advised that while he served as the Task Force lead on this issue, Commissioner Gelbach would substitute making the report for Commissioner Holt.

Commissioner Gelbach summarized the process and approach for creating a community involvement process for Cedarholm Golf Course Clubhouse Replacement (Attachment A) and accomplishments of the task force since the Commission had last met jointly with the City Council. Commissioner Gelbach reported that the task force was providing options and seeking subsequent direction and input to inform that community involvement process moving forward. Commissioner Gelbach advised that the Parks & Recreation Commission had approved the document as presented; and asked that the next steps include recruitment and appointment of one or more City Councilmembers to serve as a liaison to a community advisory committee at the City Council's discretion.

Using the document as an outline, Commissioner Gelbach referenced possible make-up of the community advisory committee and representation of various participants, including representatives of other advisory commissions as applicable, golfing groups, and individuals along with a representative of the business community.

Commissioner Gelbach reported that the intent was to work on that representation over the next 30-60 days and have something available for approval by the Parks & Recreation Commission and subsequent recommendation to the City Council by the next quarterly joint meeting.

Councilmember McGehee asked the intent or mission of the task force.

Commissioner Gelbach responded that the goal was to define a process that included and engaged the community on rebuilding or rehabilitating the current clubhouse; exploring potential partnership in the community; create a process to keep the public informed and the Parks & Recreation Commission in the forefront; with subsequent information or proposals provided to the City Council for their approval.

Councilmember McGehee expressed her understanding and preference that this was intended as more of a fact-finding effort and explanation of available options as to whether or not to rebuild the golf course or convert it to something completely different.

Commissioner Gelbach stated that the last joint meeting had not provided that specific of a directive; and opined that those decisions shouldn't be made without public input.

Mayor Roe clarified that the direction of the City Council at that joint meeting had been to research and provide options for the club house.

Commissioner Gelbach noted that a number of potential options had been laid out at that time.

Councilmember McGehee stated that she wanted to be very careful about the process; and the rationale for her question was her concern that there may be a goal already in play and if the process was intended to move toward an established goal and only that goal, she had numerous concerns. Councilmember McGehee opined that there were differing opinions as to the future clubhouse; and she didn't want anyone left out of or unheard during the process; and also to make sure the mission remains open enough for any outcome informed by who served as a representative on the committee. Councilmember McGehee stated that she was not in favor of the application process of advertising as it precluded some members of the community that may not be at the heart of the issue, but should be represented. Councilmember McGehee opined that she had seen that happen repeatedly in Roseville with task forces, in that the make-up of the committee matches a desired outcome.

Councilmember Willmus referenced the January 5, 2016 Commission meeting minutes that clearly laid out a process and timeline (Attachment B). Councilmember Willmus suggested that the make-up or membership be similar to that successful process used by the Oval Task Force. Councilmember Willmus noted that it involved on member from the rink operation side, it involved someone from the Schwann's Super Rink, and suggested this committee include a representative from another community that had chosen to go a different direction with their clubhouse. Councilmember Willmus noted that the overall make-up, timeline and preliminary objectives remained preliminary at this time until the committee actually met and laid out their process, and allowing for more flexibility at that time. Other than his last comment, Councilmember Willmus offered his approval of the proposed objectives and process.

At the outset, Councilmember Laliberte opined that Attachment A provided a good place to start as presented; and agreed with the process for public engagement and vetting by the Commission. Councilmember Laliberte expressed her appreciation of Councilmember Willmus' suggestion for representation from another community and/or golf course involved with this type of decision-making; and also supported representation from the Roseville business community, perhaps sourced through the Chamber of Commerce or Roseville Visitors' Associa-

tion. Councilmember Laliberte suggested including a representative of the area School Districts; and offered her full support of the proposed engagement process.

Unless another councilmember expressed interest, Councilmember Laliberte offered to serve as City Council Liaison on the committee.

Councilmember Etten expressed appreciation for the timeline and process; and in general offered his support. As he had previously mentioned to Parks & Recreation Director Brokke, Councilmember Etten noted that the proposed number of representatives may prove too unwieldy. However, in addition to the suggestions of Councilmember Willmus, Councilmember Etten suggested it may be prudent to include input from a successful municipal course, as well as a community having chosen a different direction. To keep the committee size manageable, Councilmember Etten suggested having some of those proposed as representatives, simply make a presentation versus serving on the committee. Other than that, Councilmember Etten thanked the task force for how they laid out various ideas.

Mayor Roe noted the need for a broad group of people providing input to the advisory committee and process; and opined that similar to the Park Master Plan process, there were many different ways to plug in that community input. Mayor Roe referenced the “meetings in a box” or “discover your parks” events; or meetings with specific user groups – all used successfully with the Master Plan process for gaining input rather than serving on a task force or committee. Mayor Roe opined that there was a need to eliminate the idea that just because there was a steering committee and process, other ideas were not just as valid and to be considered legitimately.

While public input is such a big part of the process, Mayor Roe noted that other considerations and issues are also needed to inform those decisions, including funding options/opportunities and whether or not a bond issue is appropriate or prudent and whether a bond issue could be incorporated with other community needs, and related trade-offs and impacts beyond the footprint and amenities of a clubhouse. From the City Council’s perspective, Mayor Roe opined that was a key piece and involved community input on whether or not to bond for the improvement or if they had a preferred option.

Chair Stoner noted that this is modeled after the Park Master Plan process and from his research and observations included a culmination of the Oval Task Force process, the Parks Master plan, and evolution to this with the idea to seek staff’s institutional knowledge of those past processes including what worked and what didn’t and attempt to correct any past problems with this process.

Mayor Roe suggested the task force get on an upcoming Community Engagement Commission meeting agenda to gain their perspective and thoughts.

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Chair Stoner duly noted that suggestion; and advised that the intent was to also use the new electronic communication medium Speak Up! Roseville.

At the request of Councilmember McGehee, Commissioner Gelbach confirmed that the proposed facilitator will be different.

Chair Stoner reported that Commissioner Holt's appointment time was ending this March, he would no longer be serving on the Parks & Recreation Commission, but use his historical knowledge of processes to-date and move to serve as facilitator for the task force through August or September.

Since the parks had a Master Plan process was mentioned, and she represented a group that felt completely left out of that process, Councilmember McGehee expressed her hope that when things were "fixed" with this iteration, the facilitator would see that opinions not representing the Parks & Recreation Commission's viewpoint were not slighted or run over at meetings. Councilmember McGehee advised that she had been asked to relay that message and concern on behalf of residents having shared that with her.

Chair Stoner asked that those instances or perceptions be reported to the Commission immediately for resolution, assuring all that certainly was not their intent nor did they see themselves confining any ideas or options.

Referencing the Master Plan process, Councilmember McGehee noted that when wishes or ideas for parks were brought forward, a concern of hers was that they were not tied to any costs, leaving many residents without sufficient information. Councilmember McGehee suggested if an estimated target cost for each park had been provided, it could have provided choices for residents by making them aware of realistic parameters related to their expectations.

Etten moved, McGehee seconded, to approve going forward with the community process as presented in Attachment A, and to include a representation from a Roseville business and/or Roseville Visitors' Association; with appointment of Councilmember Laliberte to serve as City Council Liaison to the committee.

Councilmember McGehee suggested an amendment to the motion to include one public meeting with a member from one or two municipalities as discussed.

Mayor Roe clarified that this would be under separate direction related to the make-up of the group.

**Roll Call**

**Ayes:** Willmus, Laliberte, Etten, McGehee and Roe.

**Nays:** None.

Without objection, Mayor Roe directed the task force to involve other communities with opposing directions.

**b. Receive Presentation and Consider a Resolution Authorizing City Staff to Apply for Community Development Block Grant Funding and U. S. Bank Grant Funding for the Acquisition and Maintenance of 1716 Marion Street as Public Park and *Play Space***

Assistant to the City Manager/City Clerk Kari Collins provided an overview of this request as detailed in the RCA dated January 25, 2016, and support from the Karen Interagency Group created in October of 2014 and their subsequent identification of four challenges in this area of Roseville as detailed in the RCA.

Ms. Collins noted the opportunity for a possible playground at 1716 Marion Street (Attachment B area map) and lot that has been for sale for some time, not only providing this playground space but also abutting the housing units for Karen immigrants and low income youth living in those apartments. Ms. Collins provided a photo of the property and its topography, naturally sloping down to a foot trail accessing the apartments. Ms. Collins opined it would take minimal site improvement to make that footpath a legitimate pathway to access the playground from the apartments.

Specific to funding for the project, Ms. Collins reviewed U. S. Bank funds (Attachment C) for proposals demonstrating a need for up to \$50,000 for park site improvements or playground equipment in low-income neighborhoods, with applications due by February 18, creating some momentum for this proposal. Ms. Collins noted there was also funding available through Community Development Block Grant (CDBG) funding available that could be applied for in February for acquisition of the property. Ms. Collins noted acquisition of the Marion Street parcel is schedule for the City Council's consideration in a closed session on February 8, 2016.

Ms. Collins identified community partners, including the City of Roseville and multiple departments, Roseville Police Foundation, Roseville Area Schools, Karen Organization of Minnesota, International Institute of Minnesota, and Roseville Parks & Recreation Commission. Ms. Collins noted that letters of support from partners were provided in tonight's agenda materials.

Ms. Collins introduced partner representatives present tonight, with each speaking in support of this initiative.

**Karen Schaub, Roseville Area Schools Representative**

Ms. Schaub expressed support for this exciting idea and unique way to bring together this group of partners to address ongoing concerns for youth in the Karen community. Ms. Schaub reported that the School District had sent cultural representatives to these housing units and ventured into other ways to engage a variety

of residents by going directly to them. However, Ms. Schaub noted the advantages of having an opportunity for youth and older adults to access this park and use it as a gathering place. Ms. Schaub reiterated her excitement to see the group willing to partner in this; and stated that the School District was more than happy to be part of that partnership and help write the grant application.

**Karen Organization of Minnesota (KOM) Representatives**

Nana Loo, Hta Thi Yu Moo, and Lisa Givens, serving youth and social services needs at KOM to enhance the quality of life for former residents of Burma. Each representative in turn spoke of their support for youth programs possible and challenges with current lack of transportation for these low-income youth to access other recreational areas or be able to participate in summer youth programs, and how this park would alleviate those issues. Comments included the benefits of such a playground to avoid these youth playing on the street or throwing things through apartment windows, causing safety concerns for them and area residents. Additional interest was expressed in the benefit of a playground for gathering and play for the youth as well as their parents and extended families in a safer environment, as well as hosting community events to engage these residents with the broader community.

**Micaela Schuneman, Director of Refugee Services at International Institute of Minnesota**

Ms. Schuneman reported that in this upcoming and next fiscal years, it was expected that more refugee families will be relocated to Minnesota, resulting in more than thirty additional families seeking housing in Roseville. Ms. Schuneman noted that this opportunity would serve to benefit not only current but future clients.

**Sherry Sanders, Lake McCarrons Neighborhood Association Chair and SE Roseville Interagency Work Group Subcommittee for Community Gardens**

Ms. Sanders thanked the City Council for the opportunity to serve on the Interagency Work Group and Subcommittee. Ms. Sanders agreed that there was a sore need for a playground in this location, and this parcel would provide a wonderful source for children to play.

In a related note, Ms. Sanders plugged the anticipated community gardens to help serve this Karen community, with the first planned in the City of Maplewood, with this area involving the tri-city area of Maplewood, St. Paul and Roseville, and recognized the dozen churches in the area working with the Interagency Subcommittee for Community Gardens, with 150-200 16' x 20' plots currently planned to be allocated, including veterans.

Ms. Sanders stated that the Lake McCarrons Neighborhood Association wholeheartedly supported this playground as well.

**Diane Hilden, Lake McCarrons Neighborhood Association Founder and Board Member**

Ms. Hilden reiterated the comments of Ms. Sanders and the need for a playground. Ms. Hilden noted that she was glad to hear that the Roseville City Council considered issues and opportunities in SE Roseville to be a priority in the year ahead, agreeing with that priority moving forward. As the oldest neighborhood association in Roseville, Ms. Hilden reported that there were lots of things they wanted their neighborhood to represent and one of those efforts was to continue fostering community engagement, not only for the Karen community but for this to serve as a model and process to integrate with the Karen community and improve international relationships. Ms. Hilden expressed her hope that this park would have that effect and improve relationships for all residents of the community.

**MOTION**

At 10:02 p.m., Willmus moved, Etten seconded, extending the meeting beyond curfew to conclude this item and to consider one remaining agenda item, 15.b (not 15.a).

**Roll Call**

**Ayes:** Willmus, Laliberte, Etten, McGehee and Roe.

**Nays:** None.

Ms. Collins noted that, while this seems focused on the Karen as the largest refugee group represented in this area of Roseville and the tri-community area, all backgrounds would have use of the park and help serve the community purpose and intent through this collaborative process. Ms. Collins referenced the community aspirations long held important in Roseville as a welcoming and inclusive community, and opined that this got to the heart of that goal. Ms. Collins noted the excitement of the partners and widespread community support, noting that this effort was in no way self-serving, but based on a genuine partnership to meet the needs and identify goals for this community in SE Roseville. Ms. Collins referenced the two grants available to offset costs for acquisition and equipping this park, making it a great opportunity at a small cost.

Ms. Collins asked for support for this initiative to provide play space and gathering space for these families given their limited transportation to access other such facilities in the community or area. Ms. Collins provided a timetable for the grant and project completion process scheduled for November of 2017, and allowing sufficient time to gather the area community together to seek their input and ideas for the park's design and genuinely engage them at this location for this purpose.

Councilmember Discussion

Councilmember Laliberte asked if there were other phases for these grants offered at other times of the year.



Ms. Collins advised that according to the U. S. Bank materials provided, this was a new initiative for them in conjunction and on the heels of the new Minnesota Vikings Stadium. While the grant award would not be announced until May of 2016, Ms. Collins reported that it was the intent to apply for this cycle based on their initiative.

Councilmember Willmus recognized and expressed his appreciation for the proactive efforts of the partners. Councilmember Willmus noted another larger parcel directly north of the Marion Street Parcel (identified on displayed maps) and asked how broadly the entire area had been reviewed. Councilmember Willmus stated that he had some concerns with the physical size and topography of this lot, particularly the slope that fell off rapidly; and with his estimate of 33,000 to 35,000 square feet total, with only about one-third of that level ground that would require little expense to prepare it for playground equipment, etc., when comparing it to the potential of the larger parcel, he had difficulty envisioning programming on it. In addressing the big picture, Councilmember Willmus asked how broad the search had been geographically for other parcels.

Ms. Collins responded that the dollar investment for this lot and potential cost preliminarily identified made it very attractive and attainable. Regarding the lot size mentioned by Councilmember Willmus, Ms. Collins advised that a Parks Master Plan process was needed, and while it may be suitable for a playground, she anticipated such an acquisition further down the road. With this parcel directly abutting the rental property, and actually gently sloping down, Ms. Collins opined that it provided a neat opportunity for a gathering spot for these families as well, one of the reasons the lot intrigued her beyond the youth component. By allowing elderly residents access for gathering, sitting on benches, and easy access to the park by proximity, Ms. Collins noted the sense of community it provided versus a larger lot that may require them finding transportation or not physically able to access that area.

In referencing the displayed map, directly north of Marion and South McCarrons Boulevard, Councilmember Willmus opined that it abutting the apartment property as well. While understanding that SE Roseville is a priority, if looking at a broader approach, perhaps both parcels should be considered for acquisition and a broader planning process for further housing development on that larger parcel abutting South McCarrons Boulevard in addition to providing room for a nice park. Councilmember Willmus suggested partnering with the School District and further meeting needs of that area of Roseville with a more permanent pavilion and greater access for mobile service vehicles (e.g. dental services, food trucks, or other amenities). Councilmember Willmus stated that he really wanted to take a broader look at available vacant space.

Ms. Collins suggested that could be done in the long-term to make a thoughtful investment in the community. However, Ms. Collins noted that right now, 200

youth desperately needed recreation space, and this site could be immediately utilized while doing that long-term master planning to acquire larger and more parcels that would address the additional families and youth anticipated. Ms. Collins noted that most of the Karen population lived off the Woodbridge Court Apartments and currently play in the only available green space available to them, the street boulevard, thus prompting the energy focused on this attainable parcel.

McGehee moved, Etten seconded, adoption of Resolution No. 11293 (Attachment G) entitled, "Resolution Authorizing City Staff to Apply for Community Development Block Grant Funding and U. S. Bank Grant Funding for the Acquisition and Maintenance of 1716 Marion Street as Public Park and Play Space."

Councilmember McGehee spoke in support of the motion, and expressed the importance she placed in pursuing housing programs going forward that included sufficient green space to include children and elderly residents. In her walk-through of this parcel and adjacent buildings, Councilmember McGehee agreed with Councilmember Willmus about the need to look at the larger site as well; however, she agreed that this parcel felt right as a starting point to engage this community to see what they wanted and develop interaction and engagement opportunities through the process. With the community garden initiatives, the ECHO video coming out, and other efforts, Councilmember McGehee opined that it served to signal that we're bringing services to this unique sub-community of Roseville and into the larger Roseville community. Councilmember McGehee noted that there were some real challenges and needs, and only so much can be done with so little, but in this case noted that there is nothing available for these children at this time.

Councilmember Etten stated that this was a great thing for a number of partner organizations and was a concrete step for the City Council's Priority Planning Program (PPP) and for SE Roseville. As grants are pursued from U. S. Bank and CDBG, Councilmember Etten noted that some of the costs will be shared by other groups in addition to the city. When doing this Playground Build, Councilmember Etten suggested involving not only city representatives, but representatives of the broader neighborhood as well as renters adjacent to the park. Councilmember Etten opined that the difference he found in this parcel and the larger one identified by Councilmember Willmus was this is closer to the community needing it and served as a positive in addressing that neighborhood, as well as being much less expensive to address at this time.

Councilmember Laliberte agreed that this fits with the City Council's SE Roseville priorities, and was perfectly positioned. However, Councilmember noted the importance of having this conversation, which was almost missed, before moving forward to consider acquisition. If that opportunity had been missed, Councilmember Laliberte noted the other moving pieces and partners engaged wouldn't have been part of the discussion nor allowed the broader community to

hear this discussion. Councilmember Laliberte stated that she felt it was important to pause the process to have this conversation. Having walked the parcel over the weekend, Councilmember Laliberte stated she found it a great location, and even though there are some challenges such as additional cost of equipment and safe surfaces, beyond the approximate land value and anticipation of grant funding to assist, prompting additional conversation in the near future.

Councilmember Willmus expressed the vital need, before getting to the point of closing on this parcel, to nail down costs, not only those for acquisition of the site and infrastructure planned there, but ongoing capital costs and how those dollars are allocated. Councilmember Willmus opined that that needed to be part of the front-end discussions as well.

Councilmember Laliberte stated that, while not part of her support or lack of support in acquiring this parcel and those partnering in doing so, she thought there was a need to get input from the SE Roseville Interagency Working Group to hear their thoughts and how the parcel should be used. Councilmember Laliberte noted that if seeking community engagement, the City Council needed to abide by that goal all the way around, and suggested putting decision-making and the city's commitment on future movement until that input had been received.

Mayor Roe stated that he was supportive of the motion and thanked the partners for their involvement and their comments tonight. Mayor Roe opined that this was a great experiment and opportunity to see what could be accomplished in this unique community in Roseville, and how it could serve as a model for comparable areas of the community in need of services coming to them, or as an incubator to address the larger SE Roseville vision. Mayor Roe stated that he was looking to an even broader perspective than Councilmember Willmus, such as the whole complex on the larger parcel, such as seeking if AEON or other developers are interested in turning that parcel into something the community could be proud of by taking on that site for a multi-use development of housing and green space and accomplish broader goals at the same time. Mayor Roe expressed appreciation again for the partners stepping forward on this effort, opining it gave the opportunity for a stake in the ground going forward. In speaking to neighborhood associations in general, Mayor Roe noted that there were a number of things the city could help facilitate, but reminded everyone that neighbors can and do accomplish a lot without the city's involvement, and he encouraged them continuing that, and offered his support in those efforts. However, speaking from the voice of reality, if the grants are not successful since they're key to making this work, the project would not proceed unless something else was figured out.

Councilmember McGehee suggested looking into the Bremer Foundation for a possible area of support as well.

Referencing his conversation earlier today with Ms. Collins, Councilmember Etten noted that as part of the City Council's PPP, he had requested that the SE Roseville Interagency Working Group provide an update on a regular basis to the City Council to keep them and the public in the loop and get that information out to the broader community on a more regular basis.

Specific to Councilmember Willmus' request for future costs, Councilmember Etten referenced Attachment F for that information, duly noted by Councilmember Willmus.

Councilmember Willmus noted that she had also spoken with Ms. Collins earlier today, and as part of this exciting experiment had suggested some sweat equity community engagement to help maintain the facility in the future as well as perhaps creating a long-term association or board for long-term support of the playground and area.

**Roll Call**

**Ayes:** Willmus, Laliberte, Etten, McGehee and Roe.

**Nays:** None.

City Manager Trudgeon thanked Councilmember Willmus for bringing up the larger parcel, noting that it would be a critical component for SE Roseville and has been a long-time consideration for redevelopment.

Councilmember Willmus suggested including discussion on that parcel and redevelopment in that area as part of upcoming EDA discussions.

**12. Budget Items**

**13. Business Items (Action Items)**

**14. Business Items – Presentations/Discussions**

**a. High Density Housing Discussion**

**b. Discuss High Density Residential (HDR) Interim Ordinance (Moratorium) Discussion**

Mayor Roe noted that this agenda item had been previously requested by Councilmember Willmus, and asked him to summarize the request.

Councilmember Willmus stated that his intent and the staff comments included in the RCA dated January 25, 2016 were the result of his not having an opportunity to talk to Community Development Director Bilotta before the packet was put together and distributed. Councilmember Willmus clarified that his intent of a short-term moratorium was not to slow down or prohibit development of HDR,

but to take a brief 60 to 90 day pause on any rezoning to HDR and provide an opportunity to have the HDR discussion and implement what may or may not come as a result of those discussions and to make sure all the pieces of the puzzle were in place before moving forward.

At the request of Mayor Roe, Councilmember Willmus confirmed that his intent would be that the moratorium would apply to any new HDR zoning as well.

Community Development Director Paul Bilotta noted that any application(s) already in process would continue to go forward, per state statute, and opined that a moratorium may not be necessary if language was adopted guiding anything zoned HDR would need a comprehensive plan amendment and would be at the full discretion of the City Council with the required super majority vote. Mr. Bilotta noted that the City Council could use staff to screen applicants ahead of time, and if the proposal was not in line with desired goals, it could be stopped at that point of the process until or if any more rezoning was approved in the future.

Councilmember Willmus expressed concern with the subjectivity of that staff determination and potential litigation for the city. Given his proposed short timeframe and specificity, Councilmember Willmus opined that the moratorium shouldn't be an issue.

Councilmember McGehee stated that she could support a moratorium in that very narrow timeframe, especially since tonight didn't allow for the HDR discussion, she had some questions including the 80/20 split, green space, side setbacks, etc. that she'd like to revisit as part of that discussion. Councilmember McGehee stated that she was leaning toward supporting a moratorium on a specific short-term basis.

Mayor Roe asked if the intent of Councilmember Willmus was to adopt an ordinance tonight, or have it come back to the City Council; with the consensus to bring it back to the February 8<sup>th</sup> meeting after tonight's discussion provided more guidance to staff and as suggested by City Manager Trudgeon.

As discussed, Mayor Roe summarized the discussion for consideration of an interim ordinance related to new rezoning to HDR-1 or HDR-2 for a 60 to 90 day period for the purpose of more extensive HDR discussions by the City Council and their reaction to that discussion as well as allowing the opportunity to complete Planned Unit Development (PUD) discussions.

Councilmember Willmus advised that he had originally thought a 60-day moratorium was sufficient, but City Manager Trudgeon suggested 90 days based on realistic timing issues, and deferred to staff on the maximum time.

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Councilmember Etten expressed his preference for the narrowed time focus, but suggested 90 days was more realistic and wiser given the amount of time required to accomplish things, including the PUD process. Councilmember Etten stated that he didn't want to feel pressured in his deliberations.

Willmus moved, McGehee seconded, directing staff to prepare an interim ordinance incorporating as its content tonight's discussion and parameters; and bring it forward on the February 8, 2016 City Council meeting agenda for additional discussion and possible action.

**Roll Call**

**Ayes:** Willmus, Laliberte, Etten, McGehee and Roe.

**Nays:** None.

- 16. City Manager Future Agenda Review**  
City Manager Trudgeon provided a preview of upcoming agenda items.
- 17. Councilmember-Initiated Items for Future Meetings**

**18. Adjourn**

Willmus moved, Etten seconded, adjournment of the meeting at approximately 10:31 p.m.

**Roll Call**

**Ayes:** Willmus, Laliberte, Etten, McGehee and Roe.

**Nays:** None.



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Daniel J. Roe, Mayor

ATTEST:



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Patrick J. Trudgeon, City Manager

BW

Kari Collins

Subject:

FW: Online Form Submittal: Contact City Council

**From:** noreply@civicplus.com [mailto:noreply@civicplus.com]

**Sent:** Monday, January 25, 2016 10:38 AM

**To:** \*RVCouncil; Kari Collins; Pat Trudgeon

**Subject:** Online Form Submittal: Contact City Council

## Contact City Council

Please complete this online form and submit.

Subject	Approval of permit for water ski course for 2016 on Lake Owasso.
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### Contact Information

Name:	Cory and Sue Parnell
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Address:	405 So Owasso Blvd
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City:	Roseville
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State:	MN
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Zip:	55113
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This form goes to the Mayor, all Councilmembers and certain City Staff. Due to the volume of emails submitted, a personal reply is not always possible.

How would you prefer to be contacted? Remember to fill in the corresponding contact information.	Email
--	-------

Email Address:

Phone Number:	<i>Field not completed.</i>
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Please Share Your Comment, Question or Concern	I would like to request the Roseville City Council approve the permit for water ski course for 2016 on Lake Owasso which is in front of our house even though we do not water ski ourselves. Enjoy seeing the skiers out there.
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Kari Collins

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**Subject:** FW: Online Form Submittal: Contact City Council

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**From:** [noreply@civicplus.com](mailto:noreply@civicplus.com) [mailto:noreply@civicplus.com]  
**Sent:** Monday, January 25, 2016 6:50 AM  
**To:** \*RVCouncil; Kari Collins; Pat Trudgeon  
**Subject:** Online Form Submittal: Contact City Council

## Contact City Council

Please complete this online form and submit.

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Subject Water Ski course on Lake Owasso

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### Contact Information

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Name: James Badzinski

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Address: 385 South Owasso Blvd. West

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City: Roseville

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State: MN

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Zip: 55113

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This form goes to the Mayor, all Councilmembers and certain City Staff. Due to the volume of emails submitted, a personal reply is not always possible.

---

How would you prefer to be contacted? Remember to fill in the corresponding contact information. No Reply Necessary

---

Email Address:

---

Phone Number:

---

Please Share Your Comment, Question or Concern

I just wanted to write and voice my support for the permit to allow the water ski course on Lake Owasso. The water ski course is located in front of my house. I do not use it myself. but always found it being used regularly. The people that use it have always been very respectful and responsible. I really like the people that use it to continue to be able to do so. Any question please write back...Jim

Unless restricted by law, all correspondence to and from Roseville City government offices, including information submitted through electronic forms such as this one, may be public data subject to the Minnesota Data Practices Act and/or may be disclosed to third parties.

---

Email not displaying correctly? [View it in your browser.](#)

Kari Collins

---

**Subject:** FW: Online Form Submittal: General Inquiry Form

---

**From:** [noreply@civicplus.com](mailto:noreply@civicplus.com) [mailto:noreply@civicplus.com]

**Sent:** Sunday, January 24, 2016 10:23 PM

**To:** Carolyn Curti <[Carolyn.Curti@cityofroseville.com](mailto:Carolyn.Curti@cityofroseville.com)>

**Subject:** Online Form Submittal: General Inquiry Form

## General Inquiry Form

Please complete this online form and submit.

---

### Contact Information

---

First Name Michael

---

Last Name Walz

---

Address 1 389 South Owasso Blvd. West

---

Address 2 *Field not completed.*

---

City Roseville

---

State MN

---

Zip Code 55113

---

Home or Cell Phone  
Number

---

### Email Address

---

Select how would you  
prefer to be contacted No need to contact me

---

Please share your  
comment, question or  
concern (no character  
limit)

As a new Roseville resident who doesn't ski and living on Lake Owasso directly in front of the water ski course I would like to voice the support of my wife and I for renewing the permit for this activity. Those that use it seem very respectful of others and enjoy this healthy form of recreation. Let's encourage them.

---

Email not displaying correctly? [View it in your browser.](#)

Kari Collins

---

**Subject:** FW: Online Form Submittal: General Inquiry Form

---

**From:** noreply@civicplus.com [mailto:noreply@civicplus.com]

**Sent:** Monday, January 25, 2016 10:35 AM

**To:** Carolyn Curti <Carolyn.Curti@cityofroseville.com>

**Subject:** Online Form Submittal: General Inquiry Form

## General Inquiry Form

Please complete this online form and submit.

---

### Contact Information

---

First Name Pat

---

Last Name Martin

---

Address 1 363 South Owasso Blvd W.

---

Address 2 *Field not completed.*

---

City Roseville

---

State MN

---

Zip Code 55113

---

### Home or Cell Phone Number

---

Email Address *Field not completed.*

---

Select how would you prefer to be contacted No need to contact me

---

Please share your comment, question or concern (no character limit) Our dock on Owasso is the closest to the water ski course. I support the water ski course for 2016. Thanks. Pat Martin

---

Email not displaying correctly? [View it in your browser.](#)

BW  
January 25, 2016

Roseville City Council  
2660 Civic Center Drive  
Roseville, MN 55113

Dear Roseville City Council Members,

As an employee of Vogel Mechanical, Inc., I am writing to share the concerns from an unheard perspective on the fence and zoning conditions up for vote at this evening's session. It is clear in my review of meeting minutes and from my attendance at previous hearings, that the voice of the neighbors has long been given a priority both in time and consideration. I urge you now to consider the effects of your decisions on business, specifically small businesses, and the people whose livelihoods your decisions will affect.

It is my understanding that one of the primary goals of the Twin Lakes area is to create jobs. However, in holding Vogel Mechanical, Inc. and BDLM Vogel Properties to fence/landscape/other zoning conditions beyond the normal requirements of published city code and delaying zoning decisions, you are in fact risking jobs. For Vogel as a small business to sustain these changes, is the financial and manpower investment equivalent to many of our salaries.

I feel fortunate that Vogel has done what they can to forge ahead in daily operations despite the drain of finances, operation time, and loss of significant business opportunities due to these delays and exceeding conditions. This has allowed me to keep my position until now. Please do not further jeopardize my and many other employees' future with this great company. We are the active workforce shaping the growth of Roseville, dedicated to community involvement and expertise in our industry. We are not residents on a personal, opportunistic, and emotional campaign who knowingly purchased property adjoining a pre-established commercial/industrial property. We are the future of local business and are the active participants that will shape this community in years to come.

The message you are sending with these decisions will affect many current and upcoming businesses and contributing professionals. Please consider the impact on business and the local jobholders in your decisions.

Sincerely,



Lisa Galvin

Project Manager with Vogel Mechanical, Inc.

**Kari Collins**

---

**Subject:** FW: Appeal to an Administrative Decision, screen fence at Vogel Mechanical

---

**From:** Cassie Yunker

**Sent:** Monday, January 25, 2016 11:52 AM

**To:** Dan Roe; Jason Etten; Lisa Laliberte; Tammy McGehee; Robert Willmus

**Subject:** Appeal to an Administrative Decision, screen fence at Vogel Mechanical

Dear Mayor and Council Members,

I would like to address the "Vogel fence" issue that is on the agenda for tonight January 25th. I unfortunately have activities for my children I have to chauffeur for this evening so I'm unable to make it for public comment. I'm hoping my email will be equally taken into consideration as being there in person.

My property is not directly impacted by this issue but many of my neighbors are along with my neighborhood. As you know the whole neighborhood and Twin Lakes area have directly been involved in many issues and changes for a little over a year now. Though many differing points have been made, I believe this issue deserves unbiased attention. I'm a fairly new home owner and love the city of Roseville, there's many perks to living in our great city, and businesses are one of them. But it's also the residents, the people who live here that set the foundation for all of us to come together to build our community. For myself and my family it's important to have a strong community for my children to grow in and be part of. It offers opportunity for them and helps them build skills to hopefully be productive citizens someday. For this reason I strongly feel Vogel has taken advantage of Roseville residents and our community. When this whole thing originally started I don't think the neighborhood was ever against them moving in, in fact I'm glad to see an abandoned building be used for something, but we also wanted some protections for our properties and the neighborhood when rezoning became a topic. We should not feel punished for their mistake of buying a property that needed additional funding and rezoning that they did not plan for. I may be mistaken since I've never bought a commercial property before, but I feel research and requests should have come before they purchased the property. Now it seems we are taking the hit for their mistakes.

We hear the term be a good neighbor, and they have not fulfilled this. They were asked to put in a fence and instead they have torn down the old one and did not replace it, they have yet to fulfill their condition for the interim use permit. It seems like they just kept coming up with excuses all summer and now are trying to completely back out. I understand they did nothing illegal or against city code, but why did they come in and hack up all the neighbors trees? Anything that was hanging on their property they cut, even ones so high up they didn't interfere with anything, without notice to the owners. They hacked the trees up to the point they are at a minimum, unattractive. Worse, they possibly endangered the trees altogether. Recently I volunteered at my children's school and they are learning about trees and nature. We were in the school forest and a child was breaking branches on a tree. This may seem fairly harmless but the teacher had to sit the kids down and talk to them about not damaging the trees. He made the point that it took years and years for a tree to grow that tall, if you damage the tree and it dies you can plant a new one but it will now take years and years to grow to the height of the tree that die. So other kids and classrooms will not get to enjoy the tree the same way you did for years to come. Now I know that may sound elementary but it made me think that if any one of the property owners trees die they lose it forever, all the memories, the landscape of their yards, the wildlife that made it a home, gone. You may not look at it the way I do so here's another prospective, one of the reasons they requested a screen fence was because of

noise. In the summer the canopy of trees can also help block out noise. So not only are they trying to get out of putting up a screen fence, they took away most of the canopy to their trees that would have helped.

Several of these properties are home owners that have owed those homes for 30+ years, it is no longer a house it is their homes. It probably took them that long to get things just right, years of hard work and now they can recline on their decks and enjoy their yards, they have memories of their children growing up and are now making memories with their grandchild. Some are rental properties, and its taking away value from the neighborhood which could potentially bring in a different kind of renter. It's caused residents to be angry, depressed and feel helpless. Try to put yourself in their shoes. My first thought when I drove home and saw them cutting the trees down was that this is vindictive, there's no other reason to cut that amount of branches.

When I got the letter about the appeal and I was shocked, and have been bothered by it ever since. All I can think of is what happened to being a good neighbor? How can this business just come in here and take over like this. I have my kids asking about it and telling me that's not nice of them, why would they do that to our neighbors and how come the city can't stop them. They've also already lost a friend from the neighborhood because their family had little kids and chose to move rather than deal with all the changes we're seeing.

I understand you can't always side with the residents, that there is no way to make everyone happy all the time. Just like you can't always side with businesses. But all past feeling aside you should not allow Vogel to get their appeal. They should be held accountable to their interim use permit. All the residents have now is you helping them. If you rule in favor of the appeal they have nothing left but some hacked up trees and an open yard.

Thank you for your consideration,

Cassie Yunker

2852 Wheeler St N





Dan Wall

---

**To:** Megyesi, Monica A  
**Subject:** RE: Fairview Easement Issue

Understood. Thank you Monica.

Regards,

Dan

---

**From:** Megyesi, Monica A [<mailto:Monica.A.Megyesi@centurylink.com>]  
**Sent:** Monday, January 25, 2016 11:48 AM  
**To:** 'dwall@gmwlaw.com'  
**Subject:** Fairview Easement Issue

Dan,  
At this time , we are still investigating the easement area both on your side of the property line and on the other side. I hope to have this resolved soon. The best case for us is, that if a fence is placed, it would not interfere with our existing cable facilities.  
thanks

Monica Megyesi  
Network Real Estate  
CenturyLink  
3801 Elm Road  
Warren, Ohio 44483

Voice: 330-372-6048  
Email: [monica.a.megyesi@centurylink.com](mailto:monica.a.megyesi@centurylink.com)

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Dan Wall

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**From:** Megyesi, Monica A [Monica.A.Megyesi@centurylink.com]  
**Sent:** Monday, January 25, 2016 11:23 AM  
**To:** 'dwall@gmwlaw.com'  
**Subject:** FW: Fairview/Centennial Drive: Easement issue

---

**From:** Megyesi, Monica A  
**Sent:** Monday, January 25, 2016 11:29 AM  
**To:** 'mccormickl@aol.com'  
**Cc:** kathyercksn@aol.com  
**Subject:** RE: Fairview/Centennial Drive: Easement issue

Lisa,  
I am waiting for research to be concluded before committing to the width of the easement area. However, we have granted Encroachment rights onto easement areas in the past. We, however, do not approve of planting trees/shrubbery in our easement areas as the roots tend to play havoc with our cable causing the cable to need replacement. Hope this helps...

Thanks  
Monica

---

**From:** [mccormickl@aol.com](mailto:mccormickl@aol.com) [mailto:mccormickl@aol.com]  
**Sent:** Sunday, January 24, 2016 10:34 PM  
**To:** Megyesi, Monica A  
**Cc:** [kathyercksn@aol.com](mailto:kathyercksn@aol.com)  
**Subject:** Re: Fairview/Centennial Drive: Easement issue

Hi Monica,

I know I said I'd wait to hear from you, but after we talked last week, I saw a communication between Vogel's attorney and the City that indicates the agreement he is pursuing is quite different from what I am looking for.

The neighbors are not concerned about future issues relating to indemnification or repairs to the fence in the event that CenturyLink has to disturb it to access its lines, etc. All we are looking for is simply confirmation as to the width of the easement, and that the installation of a fence and/or trees is not precluded by the easement.

Does this help? As I mentioned last week, we would greatly appreciate it if we could receive some confirmation on the above on before 4 pm on Monday, 1/25.

Thanks,

Lisa McCormick

-----Original Message-----

**From:** [mccormickl@aol.com](mailto:mccormickl@aol.com)  
**To:** [monica.a.megyesi@centurylink.com](mailto:monica.a.megyesi@centurylink.com)  
**Cc:** [kathyercksn@aol.com](mailto:kathyercksn@aol.com)  
**Sent:** Tue, Jan 19, 2016 11:52 am  
**Subject:** Fairview/Centennial Drive: Easement issue

Monica,

## Bonnie Vogel

---

**From:** Dan Wall <dwall@gmwlaw.com>  
**Sent:** Tuesday, January 19, 2016 1:44 PM  
**To:** 'Steve Wilson'  
**Cc:** Bonnie Vogel  
**Subject:** RE: Vogel Mechanical

Thank you Steve.

Dan Wall

---

**From:** Steve Wilson [<mailto:SteveW@midwestfenceco.com>]  
**Sent:** Tuesday, January 19, 2016 1:30 PM  
**To:** [dwall@gmwlaw.com](mailto:dwall@gmwlaw.com)  
**Cc:** Dan Larsen; Terry Lancaster  
**Subject:** RE: Vogel Mechanical

Dan,

I was in Nashville last week and read your letter yesterday.

We are withdrawing from this project. To date, we only provided the homeowners approximate budget numbers in case they had to install a fence on their properties. We did not submit an actual proposal.

I did speak to Paul and we discussed the fence placement. I did say the fence *could* be installed along the north property line; at the same time, I said it may not be the *ideal* location. The ideal location is subjective and will vary between the homeowners, fence company and commercial property owner.

Hopefully the parties involved can work toward a resolution.

Respectfully,

**Steve Wilson**

*Sales Manager*

**Midwest Fence**

525 E. Villaume Ave.

South St. Paul, MN 55075

*Direct: 651-203-5603*

*Cell: 651-214-7034*

*Office: 651-451-2222*

**From:** Dan Wall [<mailto:dwall@gmwlaw.com>]  
**Sent:** Tuesday, January 19, 2016 1:06 PM  
**To:** Steve Wilson <[SteveW@midwestfenceco.com](mailto:SteveW@midwestfenceco.com)>  
**Cc:** 'Bonnie Vogel' <[bvogel@vogelmetal.com](mailto:bvogel@vogelmetal.com)>  
**Subject:** Vogel Mechanical

Mr. Wilson:

Could you please get back to me about providing an estimate for a 6' and an 8' cedar fence along Vogel's north property line and other matters I mentioned in my January 8 letter to you? AS you may recall, the Roseville Board of Adjustment will hear Vogel's appeal concerning placement of the fence on Monday, January 25. It would be very helpful to have your response this week.

Thank you.

Dan Wall  
651/636-7697

## Dan Wall

---

**From:** Megyesi, Monica A [Monica.A.Megyesi@centurylink.com]  
**Sent:** Monday, January 11, 2016 9:09 AM  
**To:** 'dwall@gmwlaw.com'  
**Subject:** Vogel Mechanical Encroachment Agreement  
**Attachments:** ENCROACHMENT AGREEMENT Vogel 1.docx

Mr Wall,

I have been asked to provide you with our standard Encroachment Agreement for your review. I do not know, at this time, if the area of concern is a platted utility easement or an easement that was taken by us.

"B" on the Agreement will be adjusted to reflect the actual right.

Please review and provide comments. When an agreement is finalized, I will prepare the document to recording standards.

I can be reached at the information below for questions.

Thank you  
Monica Megyesi  
Network Real Estate  
CenturyLink  
3801 Elm Road  
Warren, Ohio 44483

Voice: 330-372-6048

Email: [monica.a.megyesi@centurylink.com](mailto:monica.a.megyesi@centurylink.com)

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## ENCROACHMENT AGREEMENT

This Encroachment Agreement ("Agreement") is entered into as of the date it is last signed by all of the parties ("Effective Date") by and between Vogel Mechanical, Inc. ("Owner") and Qwest Corporation d/b/a CenturyLink QC ("CenturyLink").

### BACKGROUND:

A. Owner owns certain real property having an address of 2830 Fairview Avenue N, Roseville, Minnesota, and being legally described on the deed that is attached to this Agreement as Exhibit A and incorporated by reference into this Agreement ("Property").

B. By virtue of that certain platted utility easement set forth in (Plat Name), County/State in Plat Name recorded in the County Recording Office, on recording date, as Document Number \_\_\_\_\_, CenturyLink has a utility easement ("Easement") located on a portion of the Property ("Easement Tract"), such Easement and Easement Tract being more fully described on such plat.

C. Owner has requested that CenturyLink allow Owner to encroach upon the Easement Tract to construct and maintain a fence, the type and location of such fence ("Fence") being set forth and depicted on the plans set forth in Exhibit B attached to and incorporated by reference into this Agreement ("Plans"). CenturyLink will allow Owner to so encroach upon the Easement Tract and construct and maintain the Fence subject to the terms and conditions set forth in this Agreement.

For good and valuable consideration, the receipt and sufficiency of which are acknowledged by Owner and CenturyLink, Owner and CenturyLink agree as follows:

1. **Consent to Encroachment.** Subject to the terms and conditions of this Agreement, CenturyLink consents to Owner building the Fence on the Property that encroaches upon the Easement Tract, provided that such encroachment does not unreasonably interfere with CenturyLink's rights under the Easement.

2. **Construction.**

2.1 Owner and CenturyLink acknowledge that CenturyLink has approved the location and type of Fence as set forth in the Plans. Notwithstanding the foregoing sentence, and if applicable due to changes in the Plans desired by Owner after the Effective Date, prior to the initial construction of the Fence, Owner will submit final Plans for the location and type of Fence it seeks to install to CenturyLink for CenturyLink's approval, which approval will be at

CenturyLink's sole discretion. Thereafter, Exhibit B will be revised accordingly to reflect any approved changes made to the Plans.

2.2 Owner will coordinate the installation and construction of the Fence with CenturyLink's designated representative, and in no event will Owner commence such installation or construction without the prior approval of CenturyLink, which approval will be at CenturyLink's sole discretion. In no event will Owner install or construct any portion of the Fence over, above or in close proximity to any of CenturyLink's facilities located in the Easement Tract as of the Effective Date. Owner will contact any appropriate utilities hotline or "one call" service before any excavation, installation or construction of the Fence commences.

3. **No Forfeiture of Rights.** CenturyLink does not agree to allow for the building or installation of any other improvements upon the Property to encroach upon the Easement Tract other than the Fence. By entering into this Agreement, CenturyLink does not and will not be deemed to be relinquishing, diminishing or forfeiting any rights it may have pursuant to the Easement.

4. **Indemnification.** Owner will indemnify, defend and hold CenturyLink harmless from and against any and all claims, demands, losses, damages, penalties, expenses, costs, fees (including reasonable attorneys' fees), judgments, liabilities and causes of action of any nature whatsoever resulting from or relating to the installation, use or maintenance of the Fence, the use or occupancy of the area of encroachment or the Easement Tract by Owner, or arising in any manner out of the acts or omissions of Owner or its agents or any persons acting for Owner in connection with the Fence or with the use or occupancy of the area of Encroachment or the Easement Tract. Owner's obligations under this Section 4 will survive any expiration, release or termination of this Agreement.

5. **Owner Warranty and Successors.** Owner represents and warrants to CenturyLink that it owns the Property and Easement Tract in fee simple as of the Effective Date of this Agreement. This Agreement will run with the Property and Easement Tract, and will be binding upon Owner, its respective heirs, legal representatives, successors and assigns, and any subsequent purchasers of the Property and Easement Tract.

"CENTURYLINK"  
Qwest Corporation

By \_\_\_\_\_  
Methuria L. Ra\*Shad  
Transaction Supervisor, Network Real Estate  
Signature Date: \_\_\_\_\_





**EXHIBIT A**

**PROPERTY**

**EXHIBIT B**

**PLANS**

**From:** Steve Wilson [<mailto:SteveW@midwestfenceco.com>]  
**Sent:** Wednesday, November 25, 2015 1:31 PM  
**To:** Bert Sorlien  
**Subject:** RE: Follow Up

Bert,

You are correct. There is definitely a difference between where a fence CAN be located, versus the BEST location – strictly relating to the fence installation process, longevity and warranty on the finished product.

Ideally, a fence company would prefer flat ground, good access from both sides, good soil and no obstructions above or below grade. The reality is...most job sites don't provide this luxury for various reasons.

You bring up the topic of trees. During the course of a year, every fence company will encounter tree roots while digging holes for fence post footings. Our experience has taught us that tree roots, and even tree limbs can be problematic, long term, if the trees are young and growing. On the other hand, if the trees are mature, the roots typically don't pose a problem other than difficult digging conditions.

In this instance, there are factors, outside the "ideal" fence installation, that influence the placement of the fence. I can comment on the logistics of the fence itself, but it's not my place to say where the fence should go.

Now that I've answered questions from the homeowners, The City of Roseville and Premier Fence, I feel it's best for me, and Midwest Fence, to step back from this situation. I hope all parties involved can communicate effectively and compromise for a resolution.

Have a great Thanksgiving weekend.

Sincerely,

**Steve Wilson**

*Sales Manager*

**Midwest Fence**

525 E. Villaume Ave.

South St. Paul, MN 55075

*Direct: 651-203-5603*

*Cell: 651-214-7034*

*Office: 651-451-2222*

**From:** Bert Sorlien [<mailto:Bert@PremierFence.com>]  
**Sent:** Tuesday, November 24, 2015 4:28 PM  
**To:** Steve Wilson <[SteveW@midwestfenceco.com](mailto:SteveW@midwestfenceco.com)>  
**Subject:** Follow Up

Hi Steve,

Thank you for taking time to speak with me today - I appreciate your professionalism very much.

To clarify our shared understanding/opinion:

We both agree the new fence can certainly be installed in the same location as the old, we can't, in good conscience, recommend that it's best to be placed in the same location (in the interest of the fence exclusively). For reasons discussed, we understand from experience, the existing trees and their root systems will, in time, compromise the aesthetics, and structural integrity of the new cedar fence. This much is evident based on review of photographs of the old fence (attached above).

I know that in certain instances, not all appropriate questions/concerns are expressed and discussed, but I appreciate you being part of this conversation to further clarify the realities a fence contractor and fence owner face in this particular situation.

Sincerely,

*Beit Sorlien*

Sales Director

**Premier Fence, Inc.**

Bus: 651.698.4007

Cell: 612.986.6075

Fax: 651.698.1535

[www.premierfence.com](http://www.premierfence.com)