

AGENDA
CITY OF CHARLEVOIX CITY COUNCIL MEETING

Monday, March 4, 2013 - 7:00 p.m.
210 State St, City Hall, Second Floor City Council Chambers, Charlevoix, MI

- I. Invocation or Pledge of Allegiance**
- II. Roll Call of Members Present**
- III. Inquiry Regarding Possible Conflicts of Interest**
- IV. Consent Agenda**
 - A. City Council Meeting Minutes – February 18, 2013 Regular Meeting **PG 1-9**
 - B. Accounts Payable Check Register **PG 10-16**
 - C. Payroll Check Register **PG 17-19**
- V. Public Hearings**
- VI. Reports**
- VII. Requests, Petitions and Communications and Actions Thereon**
 - A. Presentation Regarding of Lake Harbor Apartments Payment In Lieu of Taxes (PILOT) Program **PG 20-31**
 - B. Discussion Regarding Sea Scout Ship 11 Use of Marina Slip **PG 32-33**
 - C. Discussion on Planning Commission Resolution from 2006 Concerning Review Of City Projects **PG 34-42**
 - D. 2013 Power Line Trimming Contract **PG 43-44**
 - E. Purchase Medium Range Directional Drilling System **PG 45-46**
 - F. Purchase Reclosure **PG 47-52**
- VIII. Introduction and Initial Actions Relating to Ordinances or to Resolutions That Require Publication or Hearings Prior to Final or Further Action**
- IX. Resolutions**
- X. Ordinances**
- XI. Miscellaneous Business**
- XII. Audience – Non-Agenda Input (written requests take precedent)**
- XIII. Adjourn**

The City of Charlevoix will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting upon one weeks notice to the City of Charlevoix. Individuals with disabilities requiring auxiliary aids or services should contact the City of Charlevoix Clerk's Office in writing or calling the following: City Clerk, 210 State Street, Charlevoix, MI 49720 (231) 547-3250.

Posted February 28, 2013 4:00 p.m.

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Presentation Regarding Lake Harbor Apartments Payment in Lieu of Taxes (PILOT) Program

DATE: March 4, 2013

PRESENTED BY: Jeff Gates, TJ Acquisitions

- ATTACHMENTS:**
1. Memo from TJ Acquisitions dated October 10, 2012
 2. Property Tax Analysis November 8, 2012
 3. State Housing Development Authority Act
 4. Example-Ordinance for May Street Apartments

BACKGROUND INFORMATION: Jeff Gates, TJ Acquisitions, would like to make a presentation to City Council regarding the establishment of a Payment in Lieu of Taxes (PILOT) program for Lake Harbor Apartments. The agenda item is to gauge whether City Council is initially supportive of the program and whether the initiative merits Staff investing additional time and resources to execute the program.

See attached information.

RECOMENDATION: If Council is supportive of the program, a motion can be made to direct Staff to develop program documents for a PILOT program for Lake Harbor Apartments for Council's future consideration.

T J ACQUISITIONS LLC

P.O. Box 313
Novi, MI 48376
Phone: (248) 921-8112
Fax: (248) 596-1750

October 10, 2012

Mr. Robert J. Straebel, City Manager
City of Charlevoix
210 State Street
Charlevoix, MI 49720

RE: Lake Harbor Apartments
637 Petoskey Avenue

Dear Mr. Straebel:

It was a pleasure to meet with you to discuss our plans for Lake Harbor Apartments. Although we shared with you our plans and how we became involved in Lake Harbor, I will reiterate the points I made in our meeting so that you can share this information with members of your staff.

Lake Harbor is a 24 unit affordable rental housing development located on Petoskey Avenue. It was built in the 1980's by the Teklin Corporation through the Section 515 Program administered by the Rural Development (RD) Agency of the U.S. Department of Agriculture (USDA). Lake Harbor primarily provides affordable housing for families, but it also serves single persons, couples, seniors and persons with disabilities. The average annual income of a typical resident of an RD property is about \$11,700.

Earlier this year, my partner and I purchased a controlling interest in the partnership that owns Lake Harbor Apartments. Our purchase was motivated by the fact that we buy, re-develop, and then manage RD and other similar affordable housing developments. At present we have 37 similar properties around the State.

Our vision for the property was to purchase it; and then renovate the property by using the Low Income Housing Tax Credit Program. This is a federal program administered by the Michigan State Housing Development Authority (MSHDA). The low income housing tax credit program is the primary financing mechanism for creating and preserving affordable housing. Current economic and regulatory conditions are favorable for us to proceed with this strategy.

Our renovations to the property are focused on the following:

- Improvements that result in reduced maintenance
- Improvements that improve energy efficiency and reduce energy costs
- Improvements that enhance curb appeal and compliment the community
- Improvements that enhance tenant comfort and convenience
- Improvements that enhance marketability

To achieve these improvements we intend to spend nearly \$1,000,000 to renovate the buildings, units and site. Lake Harbor is long overdue for renovations and the improvements address deferred maintenance issues that include the following:

Site Improvements & Repairs:

- Sidewalk and site concrete replacement. Provide ADA/barrier free access
- Rebuild parking lot and drive-- Remove existing pavement, stabilize base and place 3" of new asphalt
- Replace site lighting with LED fixtures
- Provide landscaping maintenance and enhancements
- Replace dumpster enclosures with vinyl fencing
- Replace site signage
- Add office and community building
- Add playground equipment

Building Common Areas:

- Drywall patching as required prior to painting
- Paint all walls and ceilings
- Replace door frames and doors
- Implement Section 504 ADA improvements for barrier free access
- Replace door hardware with lever handled hardware
- Replace all flooring
- Replace laundry room countertops and laundry sinks
- Install new energy star light fixtures
- Replace boilers and water heaters with high efficiency units
- Augment attic insulation to R-49
- Provide re-cycling facilities

Building Exteriors:

- Install new vinyl siding (w/Tyvek or equal building wrap), trim, fascia and soffit
- Install new gutters and downspouts
- Replace windows and sliding glass doors with new vinyl, insulated, low-e units
- Replace building entry doors
- Rebuild balconies with composite decking and install new vinyl railings

Unit Interiors:

- Drywall patching as required prior to painting walls and ceilings
- Replace all interior doors and frames
- Replace vinyl flooring and carpet
- Replace door hardware with lever handled hardware
- Install new bath accessories and replace shelving
- Replace cabinets and countertops
- Install new refrigerator, range, under cabinet microwave, dishwasher, garbage disposal and range hood using energy star appliances where available.
- Install new kitchen sink and faucet, bath lavatory and faucet, tubs and surrounds, tub and shower valve, and toilet using low flow fixtures

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- Replace electrical devices and install new energy star light fixtures
- Add smoke detectors
- Install new window treatments
- Replace hydronic baseboard
- Install thru-wall energy star air conditioning unit
- Add energy star ventilated range hoods
- Add energy star ventilated bath fans
- Update existing barrier free unit to current ADA standards
- Convert one additional unit to barrier free

To facilitate the renovations we will use two different sources of financing and funding. First, we will assume the existing mortgage with the current lender, USDA Rural Development. Second, we will raise equity for this project through the sale of the low income housing tax credits mentioned earlier. Both of the financing sources ensure that the property will continue to serve persons with incomes at 60% or less of the county median income.

The tax credits are the key element of this transaction and we must compete for those tax credits. Each year MSHDA conducts two funding rounds for the tax credits. Developers submit applications for their projects and the applications are competitively scored. Applications for the tax credits are about 3 times the amount of tax credits available, hence there are winners and losers.

To have any chance of winning a tax credit reservation, a project must have a PILOT ordinance in effect. A development with a PILOT ordinance has as much as a 15 point advantage over a development that doesn't. Furthermore, a PILOT is critical to maintaining affordable rents and a financially stable property. In affordable housing developments rents are restricted and expenses are regulated. PILOT's allow properties to maintain affordable rents and still operate the property in a financially stable manner.

The need for a PILOT for Lake Harbor is the reason we have met with you. Again, for the benefit of all I will explain a PILOT, which is the acronym for "Payment In Lieu Of Taxes". A PILOT is the payment of a service charge in lieu of ad valorem taxes. It is a statutory means of providing property tax relief for affordable housing projects. It is permitted under Act 346 of the Michigan Statutes and the purpose of the statute is to make affordable housing more affordable. Attachment #1 is the section of the statute that permits the property to be exempt from all ad valorem property taxes. Only properties that are specifically designated as affordable housing developments and meet specific criteria qualify for a PILOT. In fact, a PILOT ordinance can be project specific.

The PILOT is a fee based on annual shelter rents, which are defined as rental income less utilities paid by the landlord. PILOT's are calculated on a percentage basis that ranges from 0% to 10% of the annual shelter rents. The PILOT fee is then proportionally allocated to all of the various taxing units.

To understand the impact to the State, County, and City, I have prepared Attachment #2. This illustrates the effect of a 10% PILOT. Under a 10% PILOT, annual revenues to the City would be reduced by about \$956 and revenue to the County and State would be reduced by about \$4,424. Even though funding is reduced to the State, the PILOT would not have an adverse effect on the per pupil funds the school district receives back. The fees paid under a PILOT are transparent. The finances of the property are audited annually and a copy of the audit is included with the PILOT calculations and payment.

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The PILOT can run for any number of years, however in order to achieve the maximum amount of points it must run for more than 15 years. Typically we like to see the PILOT run for an 18 year term. The PILOT ordinance itself is a standard, boilerplate document because many of the conditions in it are required by the statute. PILOT's are in place in hundreds of communities around the state.

The PILOT ordinance can be conditioned on the start and completion of the renovations. This serves as a safeguard to the City in the event we are not successful in securing a tax credit reservation so that we can complete the proposed renovations.

It is imperative to understand that the purpose of granting a PILOT is not to put money into our pockets. As the owners of this property we have the potential to earn a very limited annual return of only \$2,800. The real beneficiaries are the residents in that their rents are maintained at affordable levels; the project in that expenses can be maintained at a level to keep the property in good condition; and the community in that it has revitalized affordable housing.

We are seeking the joint cooperation and participation of the City to assist us in revitalizing and preserving Lake Harbor as an affordable housing development. With the PILOT and the tax credits, we will be able to offer totally renovated 1 and 2 bedroom apartments and because of federal rental assistance, no resident will pay more than 30% of their income towards the rent. Hot water and heat is included in our rents so the resident only pays for electricity.

By working together there is a unique opportunity for a win-win-win situation for the City, for the current and future residents of Lake Harbor Apartments, and for us that can result in:

- Preserving and revitalizing quality affordable housing.
- Improving the physical condition and appearance of Lake Harbor Apartments.
- Attracting new and retaining existing quality residents.
- Economic development that results in jobs, employment and local business.
- A financially feasible, long-term investment.

As we discussed the sensitivity of this proposal requires that we move deliberately and do a thorough job of educating those individuals who will make the recommendations and decisions. The next tax credit funding round is February 15, 2013 so our goal is to have this ordinance in place by January. Please let me know when you would like to meet again so that we can have further dialogue on the issue and answer any questions.

In the meantime, should you have any questions or require any additional information, please contact me at (248) 921-8112. We look forward to working with you.

Sincerely,



Jeffrey F. Gates

Enclosures as noted:

1. Attachment #1 – State Housing Development Authority Act 346 of 1966
2. Attachment #2 – Property Tax Analysis

Lake Harbor Apartments (Charlevoix, MI)
 Property Tax Analysis
 November 8, 2012

	<u>2012</u>
Taxable value:	\$ 323,300
SEV:	\$ 323,300
Assessed Value:	\$ 323,300
PILOT	\$ 11,248

AD VALOREM / PILOT ALLOCATIONS

Description	Millage	Ad Valorem		PILOT	Reduction
		Taxes			
State & County					
State Education Tax	6.00000	\$ 1,939.80	\$ 1,312.09	\$ (627.71)	
County Allocation	4.70000	\$ 1,519.51	\$ 1,027.80	\$ (491.71)	
School Operating	18.00000	\$ 5,819.40	\$ 3,936.27	\$ (1,883.13)	
School Debt	1.90000	\$ 614.27	\$ 415.50	\$ (198.77)	
School Debt 08	0.95000	\$ 307.14	\$ 207.75	\$ (99.39)	
School Debt 2008	0.06500	\$ 21.01	\$ 14.21	\$ (6.80)	
Char EM Alloc	0.20000	\$ 64.66	\$ 43.74	\$ (20.92)	
Special Ed 64	0.67130	\$ 217.03	\$ 146.80	\$ (70.23)	
Special Ed 08	1.16000	\$ 375.03	\$ 253.67	\$ (121.36)	
Vocational AI Ed	0.75000	\$ 242.48	\$ 164.01	\$ (78.46)	
Chx Lib Op 97	0.44400	\$ 143.55	\$ 97.09	\$ (46.45)	
Chx Lib Op 04	0.63390	\$ 204.94	\$ 138.62	\$ (66.32)	
Chx Lib	0.74000	\$ 239.24	\$ 161.82	\$ (77.42)	
County Transit	0.25000	\$ 80.83	\$ 54.67	\$ (26.15)	
County Recycling	0.15000	\$ 48.50	\$ 32.80	\$ (15.69)	
Co. Sr Citizen	0.40000	\$ 129.32	\$ 87.47	\$ (41.85)	
Grandvue Oper	0.75000	\$ 242.48	\$ 164.01	\$ (78.46)	
Grandvue Bond	0.18000	\$ 58.19	\$ 39.36	\$ (18.83)	
County Roads	1.00000	\$ 323.30	\$ 218.68	\$ (104.62)	
Recreational	0.33000	\$ 106.69	\$ 72.16	\$ (34.52)	
Admin Fee		\$ 19.88	\$ 13.45	\$ (6.43)	
County/State Sub-Total		\$ 12,242.25	\$ 8,602.00	\$ (4,640.25)	
City					
City Operation	9.05000	\$ 2,925.87	\$ 1,979.07	\$ (946.80)	
Infrastructure	2.05930	\$ 665.77	\$ 450.33	\$ (215.44)	
Refuse	0.90000	\$ 290.97	\$ 196.81	\$ (94.16)	
Admin Fee		\$ 29.26	\$ 19.79	\$ (9.47)	
City Sub-Total		\$ 4,911.87	\$ 3,645.99	\$ (1,265.88)	

RE-CAP/SUMMARY

	City	County/State	Total
PILOT	\$ 2,646.01	\$ 8,602.00	\$ 11,248.00
Sub-Total	\$ 2,646.01	\$ 8,602.00	\$ 11,248.00
		LESS: PRIOR AD VALOREM	\$ 16,629.09
		TOTAL REDUCTION	\$ (5,381.09)

STATE HOUSING DEVELOPMENT AUTHORITY ACT OF 1966 (EXCERPT)
Act 346 of 1966

125.1415a Exemption of housing project from taxes; filing certified notification of exemption with local assessing authority; annual service charge; amount; duration of exemption; distribution of payments for public services; exceptions; payment of service charge equal to full amount of taxes; reduced housing charges; "low income persons and families" defined; rules; reimbursement prohibited.

Sec. 15a. (1) If a housing project owned by a nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, mobile home park corporation, or mobile home park association is financed with a federally-aided or authority-aided mortgage or advance or grant from the authority, then, except as provided in this section, the housing project is exempt from all ad valorem property taxes imposed by this state or by any political subdivision, public body, or taxing district in which the project is located. The owner of a housing project eligible for the exemption shall file with the local assessing officer a notification of the exemption, which shall be in an affidavit form as provided by the authority. The completed affidavit form first shall be submitted to the authority for certification by the authority that the project is eligible for the exemption. The owner then shall file the certified notification of the exemption with the local assessing officer before November 1 of the year preceding the tax year in which the exemption is to begin.

(2) The owner of a housing project exempt from taxation under this section shall pay to the municipality in which the project is located an annual service charge for public services in lieu of all taxes. Subject to subsection (6), the amount to be paid as a service charge in lieu of taxes shall be for new construction projects the greater of, and for rehabilitation projects the lesser of, the tax on the property on which the project is located for the tax year before the date when construction or rehabilitation of the project was commenced or 10% of the annual shelter rents obtained from the project. A municipality, by ordinance, may establish or change, by any amount it chooses, the service charge to be paid in lieu of taxes by all or any class of housing projects exempt from taxation under this act. However, the service charge shall not exceed the taxes that would be paid but for this act.

(3) The exemption from taxation granted by this section shall remain in effect for as long as the federally-aided or authority-aided mortgage or advance or grant from the authority is outstanding, but not more than 50 years. The municipality may establish by ordinance a different period of time for the exemption to remain in effect.

(4) Except as otherwise provided in this subsection, any payments for public services received by a municipality in lieu of taxes under this section shall be distributed by the municipality to the several units levying the general property tax in the same proportion as prevailed with the general property tax in the previous calendar year. For payments in lieu of taxes collected after June 30, 1994, the distribution to the several units shall be made as if the number of mills levied for local school district operating purposes were equal to the number of mills levied for those purposes in 1993 minus the number of mills levied under the state education tax act, Act No. 331 of the Public Acts of 1993, being sections 211.901 to 211.906 of the Michigan Compiled Laws, for the year for which the distribution is calculated. For tax years after 1993, the amount of payments in lieu of taxes to be distributed to a local school district for operating purposes under this subsection shall not be distributed to the local school district but instead shall be paid to the state treasury and credited to the state school aid fund established by section 11 of article IX of the state constitution of 1963.

(5) Notwithstanding subsection (1), a municipality may provide by ordinance that the tax exemption established in subsection (1) shall not apply to all or any class of housing projects within its boundaries to which subsection (1) applies. If the municipality makes that provision, the tax exemption established in subsection (1) shall not apply to the class of housing projects designated in the ordinance. If the ordinance so provides, the ordinance shall be effective with respect to housing projects for which an exemption has already been granted on December 31 of the year in which the ordinance is adopted, but not before. A municipality that has adopted an ordinance described in this subsection may repeal that ordinance, and the repeal shall become effective on the date designated in the repealing ordinance.

(6) Notwithstanding subsection (2), the service charge to be paid each year in lieu of taxes for that part of a housing project that is tax exempt under subsection (1) and that is occupied by other than low income persons or families shall be equal to the full amount of the taxes that would be paid on that portion of the project if the project

were not tax exempt. The benefits of any tax exemption granted under this section shall be allocated by the owner of the housing project exclusively to low income persons or families in the form of reduced housing charges.

(7) For purposes of this section only, "low income persons and families" means, with respect to any housing project that is tax exempt, persons and families eligible to move into that project. For purposes of this subsection, the authority may promulgate rules to redefine low income persons or families for each municipality on the basis of conditions existing in that municipality.

(8) This state shall not reimburse any unit of government for a tax exemption granted to any housing project under this section.

History: Add. 1968, Act 334, Imd. Eff. July 14, 1968;—Am. 1969, Act 109, Imd. Eff. July 24, 1969;—Am. 1979, Act 49, Imd. Eff. July 7, 1979;—Am. 1982, Act 534, Imd. Eff. Dec. 31, 1982;—Am. 1983, Act 217, Imd. Eff. Nov. 16, 1983;—Am. 1994, Act 363, Imd. Eff. Dec. 27, 1994.

Compiler's note: Section 2 of Act No. 363 of the Public Acts of 1994 provides:

"The provisions of this amendatory act, providing that the exemption from taxes provided in section 15a of this act be limited to ad valorem property taxes, are curative expressing the original intent of the legislature that the exemption extends only to ad valorem property taxes and does not apply to the other taxes levied under Michigan law."

Administrative rules: R 125.101 et seq. of the Michigan Administrative Code.

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125.1415a	Exemption of housing project from taxes; filing certified notification of exemption with local assessing authority; annual service charge; amount; duration of exemption; distribution of payments for public services; exceptions; payment of service charge equal to full amount of taxes; reduced housing charges; "low income persons and families" defined; rules; reimbursement prohibited.	2
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CITY OF CHARLEVOIX

**ORDINANCE NO. 669 of 2001
TAX EXEMPTION ORDINANCE**

AN ORDINANCE TO PROVIDE FOR A SERVICE CHARGE IN LIEU OF PROPERTY TAXES FOR A PROPOSED MULTIPLE FAMILY DWELLING PROJECT FOR PERSONS OF LOW INCOME TO BE FINANCED OR ASSISTED PURSUANT TO THE PROVISIONS OF THE STATE HOUSING DEVELOPMENT AUTHORITY ACT OF 1966, AS AMENDED AND TO REPEAL ORDINANCE 668 OF 2001.

THE CITY OF CHARLEVOIX ORDAINS:

SECTION 1. Title.

This Ordinance shall be known and cited as the "City Tax Exemption Ordinance."

SECTION 2. Preamble

It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for its citizens of low income and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the State Housing Development Authority Act of 1966 (Act 346 of the Public Acts of 1966, as amended, MCL 125.1401, et seq, MSA 116.114(1), et seq). The City is authorized by this Act to establish or change the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under the Act at any amount it chooses, not to exceed the taxes that would be paid but for the Act. It is further acknowledged that such housing for persons of low income is a public necessity, and as the City will be benefitted and improved by such housing, the encouragement of the same by providing certain real estate tax exemption for such housing is a valid public purpose. In addition, the continuance of the provisions of this Ordinance for tax exemption and the service charge in lieu of taxes during the period contemplated in this Ordinance are essential to the determination of economic feasibility of housing developments which are constructed and financed in reliance on such tax exemption.

The City acknowledges that MERCER STREET LIMITED PARTNERSHIP, or its assigns (the "Sponsor") has offered, subject to receipt of a Mortgage Loan from the Michigan State Housing Development Authority, to erect, own and operate a housing development identified as May Street Apartments on certain property located at 1007 May Street, in the City of Charlevoix, to serve persons of low income, and that the Sponsor has offered to pay the City on account of this housing development an annual service charge for public services in lieu of all taxes.

SECTION 3. Definitions. As used in this Ordinance.

- A. "Authority" means the Michigan State Housing Development Authority.
- B. "Act" means the Michigan State Housing Development Authority Act, being Act 346 of the Public Acts of 1966, as amended.
- C. "Annual Shelter Rent" means the total collections during a calendar year from all occupants of a housing development representing rent or occupancy charges, exclusive of charges for gas, electricity, heat, or other utilities furnished to the occupants.

- D. "Housing Development" means a development which contains a significant element of housing for persons of low income and such elements of other housing, commercial recreational, industrial, communal, and educational facilities as the Authority determines improve the quality of the development as it relates to housing for persons of low income.
- E. "Mortgage Loan" means a loan to be made by the Authority to the Sponsor for the construction and/or permanent financing of the Housing Development.
- F. "Utilities" means fuel, water, sanitary sewer service and/or electrical service which are paid by the Housing Development.
- G. "Sponsor" means person(s) or entities which have applied to the Authority for a Mortgage loan to finance a Housing Development.

SECTION 4. Class of Housing Developments.

It is determined that the class of Housing Developments to which the tax exemption shall apply and for which a service charge shall be paid in lieu of such taxes must be multi-family residential developments that are financed or assisted pursuant to the Act. It is further determined that the housing development identified as "May Street Apartments" is of this class.

SECTION 5. Establishment of Annual Service Charge.

The Housing Development identified as May Street Apartments and the property on which it shall be constructed shall be exempt from all property taxes from and after the commencement of construction. The City acknowledges that the Sponsor and the Authority have established the economic feasibility of the Housing Development in reliance upon the enactment and continuing effect of this Ordinance and the qualification of the Housing Development for exemption from all property taxes and a payment in lieu of taxes as established in this Ordinance, and in consideration of the Sponsor's offer, subject to receipt of a Mortgage Loan from the Authority, to construct, own and operate the Housing Development, agrees to accept payment of an annual service charge for public services in lieu of all property taxes. The annual service charge shall be equal to 4.5% of the Annual Shelter Rents actually collected.

SECTION 6. Limitation on the Payment of Annual Service Charge.

Notwithstanding Section 5, the service charge to be paid each year in lieu of taxes for the part of the Housing Development which is tax exempt and which is occupied by other than low income persons or families shall be equal to the full amount of the taxes which would be paid on that portion of the Housing Development if the Housing Development were not tax exempt.

The term "low income persons or families" as used herein shall be the same meaning as found in Section 15(a)(7) of the Act, as amended.

SECTION 7. Contractual Effect of Ordinance.

Notwithstanding the provisions of section 15(a)(5) of the Act, as amended, to the contrary, a contract between the City and the Sponsor, with the Authority as third party beneficiary under the contract, to provide tax exemption and accept payments in lieu of taxes, as previously described, is effectuated by enactment of this Ordinance.

SECTION 8. Payment of Service Charge.

The annual service charge in lieu of taxes as determined under this Ordinance shall be payable in the same manner as general property taxes are payable to the City, except that the annual payment shall be paid on or before February 28 of each year on the Annual Shelter Rent collected in the preceding year.

SECTION 9. Duration

This Ordinance shall remain in effect and shall not terminate so long as the Mortgage Loan remains outstanding and unpaid or the Authority has any interest in the property, provided that construction of the Housing Development commences within one year of funding by the Authority.

SECTION 10. Severability.

The various sections and provisions of this Ordinance shall be deemed to be severable, and should any section or provision of this Ordinance be declared by any court of competent jurisdiction to be unconstitutional or invalid the same shall not affect the validity of the Ordinance as a whole or any section or provision of this Ordinance other than the section or provision so declared to be unconstitutional or invalid.

Section 11. Conflicts.

All ordinances or parts of ordinances in conflict with this Ordinance are repealed to the extent of such conflict and ordinance 668 of 2001 is repealed in its entirety.

SECTION 12. Effective Date.

This Ordinance shall become effective thirty (30) days after enactment.

Ordinance No. 669 was adopted on October 15, 2001, by the Charlevoix City Council as follows:

Yeas: Councilmen Bellows, Campbell, Carlson, Chamberlain, Haggard and Witthoef.
Nays: None.
Absent: None.

State of Michigan)
) ss
City of Charlevoix)


Elizabeth A. Gooch, City Clerk


Alvin Russell, Mayor

I certify that Ordinance No. 669 that was adopted by the City Council on October 15, 2001 and published in the *Charlevoix Courier* on October 24, 2001.


Elizabeth A. Gooch, City Clerk

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Discussion Regarding Sea Scout Ship 11 Use of Marina Slip

DATE: March 4, 2013

PRESENTED BY: Tim May, Committee Vice-Chair, Sea Scout Ship 11

ATTACHMENTS: Letter from Tim May, Sea Scout Ship 11

BACKGROUND INFORMATION: Tim May, representing local Sea Scout Ship 11, would like the City to consider waiving docking fees for the summer months for the 30-foot Santana 30. See letter from Mr. May.

Harbormaster Hal Evans has been contacted on this and states that in May and early June there should be plenty of docking space for this vessel. There would also be sufficient docking space after Labor Day.

If Council chooses to waive docking fees, DNR documents state, *"The City shall request, not more than once annually, approval to vary from fee rates set by the Michigan State Waterways Commission."*

RECOMMENDATION: The Sea Scouts program is consistent with Charlevoix's maritime values and has tremendous educational and character building benefits for Charlevoix youth. The City is highly supportive of the program. The DNR provision states that *"The City shall request, not more than once annually, approval to vary from fee rates set by the Michigan State Waterways Commission"*. A request would need to be made to the DNR Waterways Commission and would be the only request that the City could make in 2013. This should negate any precedent setting decisions for other free docking requests.

Staff recommends City Council make the following motion:

"Contingent upon approval from the DNR Waterways Commission, the City of Charlevoix approves free dockage for the Sea Scouts for the 2013 Boating Season when the marina is not full."

February 13, 2013

Members of the City Council of Charlevoix,

I am writing in regards to the dockage of Sea Scout Ship 11's vessel "Korn on the Kob". Sea Scouts is a co-ed division of the Boy Scouts of America which emphasizes leadership, teamwork, citizenship, and community service through maritime activities. Any youth 14 to 20 are eligible to join. Our Ship is sponsored by the Kiwanis Club of Charlevoix. We respectfully request that the City help us once again with dockage of "Korn on the Kob". With the boat downtown we can maintain some visibility in the community and help with recruitment. Harbormaster, Hal Evans, is in full support of our organization and our continued use of the city docks. As in the past we will move the boat out during busy times so as not to take any revenue away from the City. We thank you for the use of the dockage facility in the past and hope we can continue to work together in the future.

Respectfully Yours

Tim May / Vice Chair Sea Scout Ship 11

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Discussion on Planning Commission Resolution from 2006 concerning review of City projects.

DATE: March 4, 2013

PRESENTED BY: Mike Spencer, City Planner

ATTACHMENTS: Planning Commission resolution from 2006
Legal Opinion from Bryan Graham dated February 28, 2013

BACKGROUND INFORMATION:

As you are aware Mary Eveleigh submitted documentation to City Council concerning a Planning Commission resolution from back in 2006. This documentation was included in the February 18th meeting packet, which prompted a request for a legal opinion from a member of City Council. The purpose of this agenda item is to address that Resolution that was recommended to City Council on June 12, 2006 by the Planning Commission. We are also seeking direction from Council for future policies on capital projects.

Planning Commission Resolution from 2006

The first time I became aware of this resolution was after the joint City Council-Planning Commission meeting regarding the fireplace on September 12, 2012. After Sherm Chamberlain stated that he thought the fireplace proposal should have gone to the Planning Commission I asked him why. He stated he remembered a resolution that was passed before when he was on City Council but did not know exactly when. The next day I had the City Clerk search the archives and she found the attached resolution. This resolution was reviewed and accepted, not adopted, by City Council on June 19, 2006. An adopted City Council resolution has a specific reference number, such as 2012-02-06. This resolution did not have any reference number and did not have any of the required dates, or signatures from the Clerk or Mayor. As you are aware my employment began in late 2007 and I had no idea this resolution existed. After speaking with John Hess, he stated that the resolution was in reaction to the East Park renovation project not going to the Planning Commission for review. I have spoken to colleagues at the Michigan State Extension Office, and LSL Planning Inc. who work with hundreds of other communities on planning and zoning issues. Based on that research and review of the Planning Commission resolution I would like to offer the following points:

- Planning Commission review of park features or “structures” as capital improvements within parks is not common unless it is a new park, building, or major capital improvement. Even then most communities still do not require Planning Commission review. When Planning Commissions do review new parks, buildings, roads, and other capital improvements they only look at the project to determine whether it conforms to the City’s Master Plan as required by MCL 125.3861. No City that we are aware of requires their own municipal projects to get a zoning permit or development plan approval. They may seek input from the Planning Commission, but not specific zoning approval.
- Other capital improvements in city parks have occurred and no one had mentioned this Planning Commission resolution until now. These projects include a 100 foot flag pole at Michigan Beach, two kiosks in East Park, 7 or so statues in various parks (minus one red ram), and a large “Welcome to Charlevoix” sign adjacent to the channel. The fireplace in Holland did not go through Planning Commission review, nor did any other park features in existing parks in numerous other communities I spoke with.
- Based on the language of the resolution every park bench, fire hydrant, stone wall, playground equipment, or similar “structure” would have to go through development plan review and get a zoning permit. I do not think this was the intent of the Planning Commission resolution and I do not think this practice is common or efficient government. Most City projects are in a zoning district called Public Reserve, which has no structure height, setback, lot coverage, or lot size requirements. There would be no standard for the Planning Commission to review the project against.

RECOMMENDATION:

I will certainly take any municipal project, regardless of size and location, to the Planning Commission for review provided that I am aware of such requirement, the types of projects are clearly defined, and standards are clear and measurable.

- What is the goal of Planning Commission review? Is it only to provide another round of public input before Council review? Is it to protect views in parks? Is it to meant to reduce or prevent ongoing maintenance costs? Ensure high environmental standards? Do we need to require review of any new park bench or fire hydrant, or should these items be excluded? Etc.

These are the questions that we need to have answered in order to come up with an appropriate City policy. Staff is seeking approval from Council to work with the Planning Commission create an clear, well defined Resolution which would be reviewed and adopted by City Council, that clarifies the specific size and scope of capital improvement projects that warrant Planning Commission review.

YOUNG, GRAHAM, ELSENHEIMER & WENDLING. P.C.

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Bellaire, Michigan 49615
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ATTACHMENT

Bryan E. Graham
Peter R. Wendling

Lori A. Lockett
Eugene W. Smith

James G. Young, Of Counsel

MEMORANDUM

TO: Mayor Norman L. Carlson, Jr. **VIA EMAIL**
and City Council Members

FROM: James G. Young and
Bryan E. Graham

DATE: February 28, 2013

SUBJECT: City projects and city zoning requirements

At the last city council meeting we were requested to address documents provided by Mary Eveleigh concerning city projects complying with city zoning ordinance requirements. In June, 2006 the city planning commission adopted a resolution recommending to the city council that "all city projects required by the zoning ordinance to obtain a zoning permit or site plan approval shall apply for and receive the same." In response to this planning commission resolution, then city planner Gerry Harsch wrote a memo outlining the reasons why city projects should not seek or obtain zoning approval under the city zoning ordinance. However, when the planning commission recommendation was submitted to the city council on June 19, 2006, the council passed the following motion: "Motion by Councilmember Gabe Campbell, seconded by Councilmember Bill Haggard, to accept the Planning Commission's motion regarding City project administration compliance as printed on p. 27 [of the packet]."

It is important to note at the outset that the above city council motion was adopted in June, 2006. Since that time there has been a complete change in the membership of the city council and a change of city manager and city planner. As a result, it is understandable that current city staff was not aware of this prior city council motion. It is also important to note that the 2006 motion reflects the policy decision of the then city council. Because the membership on the city council has completely changed since the 2006 motion was adopted, the current city council has not expressed its policy decision on this question. Finally, it is important to note that because the 2006 motion was not included in a city ordinance, it does not have the force of law, but merely reflects the policy choice of the then city council.

Because the current city council has not addressed this policy question, let us begin with an explanation of Michigan law concerning whether a city project is required to

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comply with the city's zoning ordinance. Michigan courts have clearly ruled that a municipal project completed in furtherance of a governmental function is exempt from that municipality's zoning ordinance requirements. *Morrison v City of E. Lansing*, 255 Mich App 505 (2003); *Keiswetter v Petoskey*, 124 Mich App 590 (1983). A governmental function is an activity authorized by law. For example, a home rule city, such as the City of Charlevoix, is authorized to establish parks pursuant to MCL 141.322(3). There are many other statutes authorizing various city functions.

In the context of a park project, because the city is authorized by statute to establish parks, the projects developed within a city park are in furtherance of a governmental function and therefore exempt from the city's zoning ordinance requirements, including obtaining zoning permits and site plan approval.

Now that the current city council is aware of the 2006 motion, it should express its policy choice on this question. There are various options for the city council:

1. It can elect to follow Michigan law, which exempts city projects completed in furtherance of a governmental function from city zoning ordinance requirements. As the memo from Mr. Harsch makes clear, exempting such a city project from city zoning requirements does not mean that the public will not have an opportunity to have input on that city project. Because the city project must be approved by the city council, and in some instances by the DDA, at a public meeting, the public will have ample opportunities to address the project before final approval.
2. It can elect to implement the 2006 policy and require that all city projects comply with city zoning ordinance requirements, even when such compliance is not required under Michigan law.
3. It can adopted a revised policy, such as not only requiring that city projects follow Michigan law, but also that such projects should be consistent with the city master plan.

If there are questions concerning the legal issues involved in this manner or questions involving the options for city council, please contact either of us.

BEG

**cc: Rob Straebel, City Manager (via email)
Michael Spencer, City Planner (via email)**

MEMORANDUM

To: Michael Wiesner, City Manager
From: Gerry Harsch, City Planner
Date: 6/14/06
Subject: Planning Commissions Motion Regarding City Project Administrative Compliance in Accord with the Zoning Ordinance.

After reviewing my comments regarding the Planning Commissions resolution the Commission continued to ask that the resolution be forwarded to the City Council. A copy of the Commissions resolution and my comments are attached.

2. Consideration of the proposed "Whereas" statement

Motion by Hodgson

Supported by Kusina

To send the proposed "whereas" statement to City Council for approval.

Ayes: Hess, Cross, Cole, Kusina, Rankl, Hodgson

Nays: None

Motion Carried

WHEREAS: It has come to the attention of the City of Charlevoix Planning Commission that the City of Charlevoix does not apply for or receive zoning permits or site plan approvals for any of its projects within the City.

WHEREAS: The City of Charlevoix expects all private citizens, other governmental units and quasi-governmental units to apply for and receive zoning permits and site plan approval for their projects.

WHEREAS: The City of Charlevoix Planning Commission understands that legal staff have informed the City that they do not have to comply with their own ordinance.

WHEREAS: The City of Charlevoix should be in the forefront of zoning and planning and put its best foot forward. ("What's good for the Goose is Good for the Gander").

AND WHEREAS: It is just good policy to follow ones own rules.

THEREFORE BE IT RESOLVED THAT: The Charlevoix City Planning Commission recommends that all city projects required by the zoning ordinance to obtain a zoning permit or site plan approval shall apply for and receive the same. If ZBA approval is required then the City shall apply for and receive the same.

BE IT FURTHER RESOLVED THAT: This policy should not preclude work on structures or other projects of an emergency nature.

Planning Staff Draft 6/7/06

Staff Response to Proposed Resolution Regarding Zoning Permits and Site Plan Approvals

1. Not all other governmental unit projects are required to go through these procedures, certain ones are excluded by State law from local regulation.
2. City public projects are undertaken for the benefit of the entire public. It is in the public interest to receive the greatest benefit for the public resources expended. There may be occasions when it is not to the greatest public benefit to meet all of the requirements of the zoning ordinance.
3. Public projects undergo a great deal of public scrutiny and approval prior to implementation during which the public benefit and appropriateness of the project is established.
 - (a) community planning process - public hearings required
DDA planning process
 - (b) community budgeting process including council goal setting - public hearings required
 - (c) project design process - public scrutiny, meetings involved
4. The zoning permitting process is the only mechanism whereby the community is able to regulate projects undertaken in the private sector or as may be build in the community by other units of government. Non discretionary standards are of necessity to assure equal protection under the law for the land owner.
5. In Charlevoix most public projects are built in the PR, Public Reserve District which has no yard, lot area, height or floor area regulations to be reviewed.
6. The City Council would be approving its own development plans which would be a highly redundant activity since it would have already gone through a long process, including significant public scrutiny, having the plans prepared.

Example: Construction of the new facilities in Downtown Park (East Park). This project has undergone years of intensive public debate and scrutiny. The landside improvements were the subject of a vote of the citizens of the community. The final plans must be approved by the DDA and the City Council in a public format which allows for open public input. There are no zoning regulations in the PR District which set any standards for development.

CITY OF CHARLEVOIX
REGULAR CITY COUNCIL MEETING MINUTES
Monday, June 19, 2006 — 7:00 p.m.
210 State Street, City Hall, 2nd Floor Council Chambers, Charlevoix, MI

The meeting was called to order at 7:01 p.m. by Mayor Norman L. Carlson, Jr.

I. Invocation (Pledge of Allegiance)

II. Roll Call of Members Present

Mayor: Norman L. Carlson, Jr.
City Attorney: Jim Young
City Treasurer: Rick Brandt (standing in for vacationing City Manager Michael Wiesner)
City Clerk: Carol A. Ochs
Members Present: Council members Sherm Chamberlain, Shirley Gibson, Bill Haggard, Bob Timms, Gene Beer, and Gabe Campbell
Absent: None

III. Inquiry Regarding Possible Conflicts of Interest

None

IV. Consent Agenda

The following items were approved and filed:
A. Approval of Minutes—June 5, 2006 Regular Meeting
B. Accounts Payable Check Register—June 16, 2006
C. Payroll Check Register—June 14, 2006

V. Public Hearings

VI. Reports

A. Introduction of New City Employees
The City Treasurer introduced new Street Superintendent Pat Elliott. Water and Wastewater Treatment Plant Superintendent Jim Caldwell introduced new employees Nick Hilling and Jeff Lampi. Police Chief Gerard Doan introduced new officers Adam Dzwik and Sarah Cooper.

VII. Requests, Petitions and Communications and Actions Thereon

A. Proposed Contract with Charlevoix Area Community Pool
The Mayor reviewed the item for Council.

Motion by Councilmember Sherm Chamberlain, seconded by Councilmember Bob Timms, to enter an agreement with the Charlevoix Area Pool as outlined on pp. 22-23 of the packet.

Yeas: Council members Chamberlain, Gibson, Haggard, Timms, Beer, and Campbell
Nays: None
Absent: None

B. Golf Course Equipment Purchase Request—Bunker Rake
Golf and Grounds Director Tom Heid was available to present the item and answer questions for Council.

Motion by Councilmember Gabe Campbell, seconded by Councilmember Sherm Chamberlain, to accept the purchase request for the bunker rake as outlined on p. 25 [of the packet].

Yeas: Council members Chamberlain, Gibson, Haggard, Timms, Beer, and Campbell
Nays: None
Absent: None

C. Planning Commission's Motion Regarding City Project Administrative Compliance
The Mayor reviewed the item for Council. Planning Commissioner John Hess and City Planner Gerry Harsch also discussed the item with Council.

Motion by Councilmember Gabe Campbell, seconded by Councilmember Bill Haggard, to accept the Planning Commission's motion regarding City project administration compliance as printed on p. 27 [of the packet].

Yeas: Council members Chamberlain, Gibson, Haggard, Timms, Beer, and Campbell
Nays: None
Absent: None

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: 2013 Power Line Trimming Contract

DATE: March 4, 2013

PRESENTED BY: Don Swem

ATTACHMENTS: Bid Tabulation

BACKGROUND INFORMATION:

The last time we had a contractor hired for power line trimming was 2009. We intended to cut back enough clearance to last roughly five years until needing to be redone. This is a very approximate approach and this year most of the circuits need to be cleared again, so we at least lasted four years. This item is included in the budget for \$120,000.

This work is very different from normal tree trimming. The contractor's vehicles, tools, and employees must be fully qualified to meet MIOSHA requirements for power line trimming. To my knowledge none of the local area bidders are fully qualified for this work so we sent bid packages to three national companies that are fully qualified and normally do work in this area.

Bids were received from two of the three companies. The results are put together in a way that would represent a typical week's work, and the associated bill. The totals from this calculation are shown:

Asplundh Tree Expert Co. \$ 3,053.20

Nelson Tree Service, Inc. \$ 4,625.20

Asplundh is the low bidder. Their price is only a few cents more than the low bid from 2009 (Nelson was low bidder in 2009). We have no items of concern regarding Asplundh's work.

RECOMMENDATION:

It is recommended that the 2013 Power Line Trimming Contract be awarded to Asplundh Tree Expert Co. for an amount up to \$120,000.

2013 Power Line Trimming Contract
 Bid Tabulation

2/26/2013

	Asplundh Tree Expert Co.	Nelson Tree Service, Inc.	Davey Tree Expert Co.
Labor:			
Foreman:	\$26.20	\$43.64	No Bid
Journeyman Trimmer:	\$22.86	\$38.27	
Groundman:	\$19.68	\$27.54	
Other (Eq. Operator):			
Equipment:			
Aerial Lift:	\$15.89	\$20.00	
Chipper:	\$4.80	\$8.00	
Dump Truck:	\$15.00	\$14.00	
Other (split dump):	\$10.50		
OT Rates:			
Foreman:	\$43.49	\$61.10	
Journeyman Trimmer:	\$37.95	\$53.58	
Groundman:	\$32.67	\$38.56	
Other:			

Typical Work Comparison:

The above bid hourly rates were applied to a typical week of work for one crew with the following results*:

Total for 1 Typical Week:	\$3,053.20	\$4,625.20	No Bid
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* Typical week based on 20 hours Foreman, 40 hours for Journeyman, Groundman, Aerial Lift and Chipper

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Purchase Medium Range Directional Drilling System

DATE: March 4, 2013

PRESENTED BY: Don Swem

ATTACHMENTS:

BACKGROUND INFORMATION:

The electric department is doing more underground construction every year, and a major part of this construction involves use of the boring machine (which is another name for horizontal directional drilling machine). The machine we have is 13 years old and is getting less and less reliable. We overhaul the unit yearly and this year we have ordered an entire set of new rods to use with it as the old ones are unusable. The machine still runs and can still do bores on a limited basis, and we plan on keeping it and continuing to use it. It will not, however, handle the amount of boring that needs to be done in the future. We are presently limited to a 3" bore, but we frequently need as large as 6", which we have to contract out. A more powerful machine is needed to get through the more difficult ground conditions in several areas. The purchase of a new drilling system has been delayed the past three years. It is in the budget for 2013-2014.

For these reasons requests for bids were sent to two manufacturers for supplying a new larger horizontal directional drilling system, which includes the machine, bore rods, tanks, pumps, hoses and a trailer for mounting the system. There are only two manufacturers that service this area, so only two packages were sent out. We could have tried for a third but feel that based on past experience a local parts and service department is vital to keeping the system running. The bids are complicated by the fact that the machines made by these manufacturers are not equal. The general size and power of machines manufactured by one company does not match the sizes available from competing companies. Therefore we decided on a minimum size to look at and wrote the specification for that or anything larger. The result is that we have two fairly close bids but they are for different size machines, which complicates the comparison. The bid results are tabulated below.

DITCH WITCH \$113,758.88

VERMEER \$128,000.00

Both companies have been on site to demo their systems for us in the past two years. Both machines were put through some very difficult conditions and did a very good job. Everyone in the department ended up rating the Vermeer higher than the Ditch Witch. The reasons given were that it had more power, a better control layout, better electronics, and an efficient setup. So then the question is whether the Vermeer would be worth the extra money.

The Ditch Witch is a “12,000 pound” machine while the Vermeer is a “16,000 pound” machine. This basically means that the Vermeer is rated for 16,000 lbs. of thrust and pullback and the Ditch Witch is rated at 10,000 lbs. thrust and 12,000 lbs. pullback, or at least that is what is stated in the literature. Despite the fact that the Ditch Witch sales people have argued that the machines are equal it is clear to us that the Vermeer had significantly more power. Increased power can make a significant difference in the success of a bore.

The control layout on the Vermeer is much more suited for operation of the unit in the field – it seems to be built more with the operator in mind. The rest of the controls as well as the accessories, pumps, tanks, hose rack and trailer are all built with efficient operation in mind.

The electronics package that was bid by Vermeer is the same package they used for the demo unit, which was quite superior to the Ditch Witch electronics. Since that was not required by the specification then Ditch Witch bid their standard electronics package. They have since informed me that it would take another \$4,474 to supply electronics equal to Vermeer’s bid, which would put their price at \$118,232.88 or 8% lower than Vermeer’s bid (this was quoted to me days after the bids were opened and published).

Perhaps the most important difference between these two manufacturers is their service. We have been having some serious issues with Ditch Witch parts and service for quite a few years now, and there has been no real improvement. On the other hand current Vermeer owners tell us that their service is excellent. This is a major issue when equipment breaks down in the middle of a project.

In summary, if the electronics is added to the Ditch Witch, the difference in price is about 8%. The Vermeer delivers more power, better layout and efficiency, and superior service. This item was budgeted for \$225,000 based on estimates given to me two years ago by Ditch Witch, so I believe these bids represent significant savings. If Council approves the purchase of the more expensive Vermeer we will still be \$97,000 under budget.

RECOMMENDATION:

It is requested that Council make a motion to approve the purchase of the Medium Range Directional Drilling System from Vermeer in the amount of \$128,000.

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Purchase Recloser
DATE: March 4, 2013
PRESENTED BY: Don Swern
ATTACHMENTS: Quote from Cooper Power Systems

BACKGROUND INFORMATION:

On February 11th a squirrel got into the Industrial Park Substation on Martin Road and climbed up on a recloser. It then touched the wrong parts and essentially blew both itself and the recloser up. The recloser is the device that opens a circuit whenever there is a fault on that circuit. By opening it protects the equipment both upstream and downstream of the recloser. In this case damage was done to the recloser itself. This particular recloser is on the circuit feeding the Industrial Park. For now we have temporarily rerouted the power to the Industrial Park from a different direction and this will work until loads start to grow in late spring. By then we need to replace the damaged recloser or else the Industrial Park will be exposed to more blinks and outages than normal.

We presently have oil-filled reclosers at this substation, so we got a price to replace the damaged one with an exact replacement (oil-filled) but we also got a price for a vacuum operated recloser, which does the exact same job but without any oil. Over the life of the device the oil is to be periodically drained so the internals can be checked and maintained, which adds significantly to the cost of the maintenance. A vacuum unit can be tested just by taking the side of the unit off to inspect internals, so it is much cheaper. Therefore although the initial price is higher, over the life of the device the vacuum unit is more economical.

The prices are on the attached quote:

Oil-filled Unit	\$ 9,871.50
Vacuum Unit	\$11,348.90

It is requested that approval be given to purchase the Vacuum Unit for a price of \$11,348.90. It is also requested that a 10% contingency be approved for shipping, handling and possible costs for adding an alarm contact to the unit.

RECOMMENDATION:

It is recommended that approval be given to spend up to \$12,483.79 (\$11,348.90 plus 10%) to purchase a replacement recloser from Cooper Power Systems.

Cooper Power Systems, LLC
 Customer Support Center
 1319 Lincoln Ave
 Waukesha, WI 53186
 Phone: (262)-524-3300
 www.cooperpower.com

Sold-to address
 CITY OF CHARLEVOIX
 PO BOX 550
 CHARLEVOIX MI 49720-0550
 US

Ship-to address
 CITY OF CHARLEVOIX
 210 STATE STREET
 CHARLEVOIX MI 49720
 US

Incoterms: Pre-Paid FOB PLANT - FREIGHT
 PREPAID
Payment Terms: Net 30 Days

Quotation Number	Date	
BED2341712	02/21/2013	
Cust. purchase order no.		Cust. no.
CITY OF CHARLEVOIX		61236
Prepared By		
Sharon Latus		
Validity period		
02/22/2013 to 03/24/2013		
Bid Date		
02/22/2013		
Sales Representative		
900001115 / RON CHAPMAN		
Customer Service Contact		
MARGI HERRIOT	Tele: 800-354-6183	Fax: 770-268-7547

THIS DOCUMENT INCORPORATES AND IS SUBJECT TO THE ATTACHED TERMS AND CONDITIONS.

Item	Quantity	UOM	Description	Material No	Price	Ext. Value
Cust.item Catalog Number						
Cust.Material Number						
10	1	EA	Type WE Three-Phase Recloser, 15kV Commodity code 8535210000	KWE RECLOSER 1.000 Country of origin US	9,871.50	9,871.50
Quoted Lead-time in Weeks - 8 Weeks						
Additional Product Group Characteristics						
			WE GROUP Basic Types	KWE WE Type Recloser		
			Closing Coil Code	8 250 Vdc		
			Low Voltage Closing Options,WE	KA742R4 240Vac Close		
			Switch Options	KA369R3 Auxiliary Sw. 3 Stage		
			Servicing Accy Options	KA161W Oil-Level Sight Gauge		
			Miscellaneous Accy. Options KA1190R2 Ground Pad Accy (2)			
			Inspection Options:	No Customer Inspection Req'd		
			Kyle Product Packaging Opts:	Domestic Shipment		
			Domestic Packaging	KIE594 Std Dom Pkg		
20	1	EA	Type VWE Three-Phase Recloser, 15kV Commodity code 8535210000	KVWE RECLOSER 1.000 Country of origin US WI Z120	11,348.90	11,348.90
Quoted Lead-time in Weeks - 8 Weeks						
Additional Product Group Characteristics						
			VWE GROUP Basic Types	KVWE VWE Type Recloser		
			Closing Coil Code	8 250 Vdc		
			Low Voltage Closing Option,VWE	KA742R8 240Vac Close		
			Switch Options	KA369R3 Auxiliary Sw. 3 Stage		
			Servicing Accy Options	KA161W Oil-Level Sight Gauge		
			Miscellaneous Accy. Options KA1190R2 Ground Pad Accy (2)			
			Inspection Options:	No Customer Inspection Req'd		
			Kyle Product Packaging Opts:	Domestic Shipment		
			Domestic Packaging	KIE594 Std Dom Pkg		

Cooper Power Systems, LLC
Customer Support Center
1319 Lincoln Ave
Waukesha, WI 53186
Phone: (262)-524-3300
www.cooperpower.com

Quotation no./Date
BED2341712 / 02/21/2013

Product Subtotal	21,220.40
Final amount in USD	21,220.40

Cooper Power Systems, LLC
Customer Support Center
1319 Lincoln Ave
Waukesha, WI 53186
Phone: (262)-524-3300
www.cooperpower.com

Quotation no./Date
BED2341712 / 02/21/2013

Sales Contact: RON CHAPMAN / 317-578-7724

Terms and Conditions

1. Applicable Terms and Conditions

(a) These terms and conditions of sale establish the rights, obligations, and remedies of Buyer and Seller that apply to any order issued by Buyer for the purchase of Seller's products and/or services (#Products#). No additional or different terms or conditions, whether contained in Buyer's purchase order form or in any other document or communication pertaining to Buyer's order, will be binding on Seller unless accepted in writing by an authorized representative of Seller. Seller expressly objects to and rejects any additional or different terms and conditions, which shall be ineffective.

(b) If Seller's order acknowledgment, invoice, other document, or electronic transmittal including or attaching these terms and conditions is found to be an acceptance of an offer, acceptance is expressly made conditional upon Buyer's assent solely to these terms and conditions, and acceptance of any part of Products delivered by Seller shall be deemed to constitute such assent by Buyer. If the order acknowledgment, invoice, other document, or electronic transmittal including or attaching these terms and conditions constitutes an offer, Buyer's acceptance of the offer is hereby limited to the terms of the offer.

2. Price, Payment Terms, and Title

(a) All prices represent those in effect at the time of quotation and are subject to change without notice. Unless prices are bid or quoted as "firm," Seller reserves the right to invoice at prices in effect at the date of shipment, regardless of any prior bid and whether notice was received by Buyer. Unless otherwise indicated, prices are stated in United States dollars and are exclusive of shipping, handling, shipping insurance, duties, and sales, use, excise or similar taxes. Export packaging or any other special handling requested by Buyer will be at Buyer's expense. A service charge of \$25 will be assessed for any order less than \$250. Seller requires a minimum \$100 emergency handling charge for all orders that require shipment the same day or next day.

(b) Buyer acknowledges that the pricing of the Products has been set based on the agreed allocation of risks contained in these terms and conditions. If, notwithstanding the provisions of these terms and conditions, a court of competent jurisdiction determines that Buyer's terms and conditions apply to an order, then Seller shall have the right to either (i) modify the prices (including retroactively) according to the additional level of risk and responsibility that Buyer's terms and conditions require Seller to undertake; or (ii) cancel the order any time after such a determination without liability for the termination other than for the Products already delivered on these terms and conditions.

(c) Unless different credit terms have been extended to Buyer in writing by Seller, payment terms are net 30 days after delivery or date of invoice, whichever first occurs, in the currency invoiced. Seller reserves the right to modify or withdraw credit terms at any time without notice. If Buyer fails to fulfill the terms of payment, Seller may defer further shipments to Buyer or, at its option, cancel the unshipped portions of Buyer's orders. Buyer agrees to pay interest on all past due invoices at the lesser of 18% per annum, compounded monthly, or the highest contractual rate allowable under the law.

(d) Until full payment of all obligations of the Buyer for an order, Seller reserves the title (but not the risk of loss) to all Products furnished under that order. If the Buyer defaults in payment or performance or becomes subject to insolvency, receivership or bankruptcy proceedings or makes an assignment for the benefit of creditors, or without the consent of Seller voluntarily or involuntarily sells, transfers, leases or permits any lien or attachment on the Products, Seller may treat all amounts then or thereafter owing by Buyer to be immediately due and payable and Seller at its election may repossess Products for which Buyer has not paid in full. In the event of repossession of Products under this section or under the section entitled "Security Interest," Buyer agrees that Seller may enter the premises where the Products may be located and remove them without notice and without being liable to Buyer for such repossession. Buyer will not set off invoiced amounts or any portion thereof against sums that are due or may become due from Seller, its parents, affiliates, or subsidiaries. Buyer grants Seller a security interest in Products for which title has passed to Buyer, products in which Products are incorporated, and Products that Seller sells (including all Products acquired hereafter from Seller, and all accessions, substitutions, replacements, and additions, and any proceeds from sale or disposition of Products), as security for performance by Buyer of all of its payment obligations under these terms and conditions (including obligations regarding future advances). Buyer consents to Seller's execution of any documents to evidence and perfect this security interest, and agrees to execute the same if requested by Seller.

3. Delivery and Risk of Loss

(a) Unless otherwise agreed in writing, all deliveries of Products will be EXW (Incoterms 2000) Seller's facility. Products will be packed in Seller's standard commercial shipping packages. Charges for shipping may not reflect net transportation costs paid by Seller. Buyer shall reimburse Seller for all costs of storage and handling incurred by Seller after the date that Seller is prepared to make shipment.

(b) Delivery and shipping dates are approximate and represent Seller's best estimate of the time required to make delivery or shipment. Time is not of the essence with respect to the transactions covered by these terms and conditions, except with respect to Buyer's obligation to make all related

payments. Seller's obligations under these terms and conditions will be dependent upon Seller's ability to obtain necessary raw materials and components. Seller shall have the right to make partial deliveries and to ship up to forty (40) days in advance of shipping date.

4. Acceptance

Acceptance shall occur, if not before, when Buyer fails to reject within ten (10) days after delivery of the Products. Buyer may rightfully reject only when a reasonable inspection shows that the Products fail to conform substantially to the specifications for the Products. Buyer waives any right to revoke acceptance. Buyer's remedies for any nonconformity detected after acceptance are limited to those expressly provided in these terms and conditions for breach of warranty.

5. Limited Warranty

(a) Seller warrants to each original Buyer of Products that Products are, at the time of delivery to the Buyer, in good working order and conform to Seller's official published specifications, provided that no warranty is made with respect to any Products, component parts, or accessories manufactured by others but supplied by Seller.

(b) Seller's obligation under this warranty for any Product proved not to be as warranted within the applicable warranty period is limited to, at its option, replacing the Product, refunding the purchase price of the Product, or using reasonable efforts to repair the Product during normal business hours at any authorized service facility of Seller. All costs of transportation of any Product claimed not to be as warranted and of any repaired or replacement Product to or from such service facility shall be borne by Buyer.

(c) Seller may require the return of any Product claimed not to be as warranted to one of its facilities as designated by Seller, transportation prepaid by Buyer, to establish a claim under this warranty. The cost of labor for removing a Product and for installing a repaired or replacement Product shall be borne by Buyer. Replacement parts provided under the terms of this warranty are warranted for the remainder of the warranty period of the Products in which they are installed to the same extent as if such parts were original components. Warranty services provided under these terms and conditions do not assure uninterrupted operations of Products; Seller shall not be liable for damages caused by any delays involving warranty service.

(d) The warranty period for Products is the shorter of twelve (12) months from the date of installation or eighteen (18) months from the date of shipment unless otherwise agreed by Seller in writing.

(e) EXCEPT FOR THE EXPRESS WARRANTY SET FORTH ABOVE, SELLER PROVIDES PRODUCTS AS-IS AND MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE PRODUCTS, THEIR FITNESS FOR ANY PARTICULAR PURPOSE, THEIR MERCHANTABILITY, THEIR QUALITY, THEIR NONINFRINGEMENT, OR OTHERWISE. IN NO EVENT SHALL SELLER BE LIABLE FOR THE COST OF PROCUREMENT OR INSTALLATION OF SUBSTITUTE GOODS.

6. LIMITATION OF LIABILITY

IN NO EVENT WILL SELLER BE LIABLE FOR ANY SPECIAL DAMAGES, CONSEQUENTIAL DAMAGES, INDIRECT DAMAGES, INCIDENTAL DAMAGES, STATUTORY DAMAGES, EXEMPLARY OR PUNITIVE DAMAGES, LOSS OF PROFITS, LOSS OF REVENUE, LIQUIDATED DAMAGES, OR LOSS OF USE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. SELLER'S LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO A PRODUCT SHALL IN NO CASE EXCEED THE PURCHASE PRICE OF THE PRODUCT FROM WHICH THE CLAIM ARISES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS AND EXCLUSIONS WILL APPLY WHETHER SELLER'S LIABILITY ARISES OR RESULTS FROM BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE, GROSS NEGLIGENCE, MALICE, OR INTENTIONAL CONDUCT), STRICT LIABILITY, BY OPERATION OF LAW, OR OTHERWISE.

7. Cancellation and Return of Products

Orders shall not be subject to cancellation or modification either in whole or in part without Seller's written consent and then only with terms that will reimburse Seller for all applicable costs incurred by virtue of the sale, including costs of purchased materials, engineering costs and a reasonable allowance for profit. Seller's written consent must be given in advance of Buyer's return of Products for credit. Seller reserves the right to cancel any sale of Products without liability to Buyer (except for refund of monies already paid), if the manufacture or sale of the goods is or becomes technically or economically impractical.

8. Force Majeure

Seller shall not be liable for any failure to perform or delay in performing its obligations resulting directly or indirectly from or contributed to by any acts of God, acts of Buyer or those under Buyer's control, acts of government or other civil or military authorities, priorities, strikes, or other labor disputes, fires, accidents, floods, epidemics, war, riot, embargoes, delays in transportation, lack of or inability to obtain raw materials, components, labor, fuel or supplies, or other circumstances beyond Seller's reasonable control ("Force Majeure Event"). If Seller elects, the time for performance shall be extended by a period of time equal to the time lost because of any delays caused by reasons of a Force

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Majeure Event. Should Seller be prevented from completing Buyer's order or any part thereof because of any Force Majeure Event, then Buyer agrees promptly upon request and upon receipt of invoice therefor, to pay Seller for any Product or Products then completed.

9. Work Product

"Work Product" shall include, without limitation, all designs, discoveries, creations, works, devices, masks, models, work in progress, service deliverables, inventions, products, special tooling, computer programs, procedures, improvements, developments, drawings, notes, documents, business processes, information and materials made, conceived or developed by Seller alone or with others that result from or relate to the Products. All Work Product shall at all times be and remain the sole and exclusive property of Seller. Buyer hereby agrees to irrevocably assign and transfer to Seller and does hereby assign and transfer to Seller all of its worldwide right, title and interest in and to the Work Product including all associated intellectual property rights. Buyer hereby waives any and all moral and other rights in any Work Product or any other intellectual property created, developed or acquired in respect of the Products. Seller will have the sole right to determine the treatment of any Work Product, including the right to keep it as trade secret, execute and file patent applications on it, to use and disclose it without prior patent application, to file registrations for copyright or trademark in its own name or to follow any other procedure that Seller deems appropriate. All tools and equipment supplied by Buyer to Seller shall remain the sole property of Seller.

10. Confidentiality

(a) Buyer may acquire knowledge of Seller Confidential Information (as defined below) in connection with Products and/or its performance hereunder and agrees to keep Seller Confidential Information in confidence during and following termination or expiration of this Agreement. "Seller Confidential Information" includes but is not limited to all information, whether written or oral, in any form, including, without limitation, information relating to the research, development, products, methods of manufacture, trade secrets, business plans, customers, vendors, finances, personnel data, Work Product, and other material or information considered proprietary by Seller relating to the current or anticipated business or affairs of Seller that is disclosed directly or indirectly to Buyer. In addition, Seller Confidential Information means any third party's proprietary or confidential information disclosed to Buyer in the course of providing Products to Buyer.

(b) Buyer agrees not to copy, alter or directly or indirectly disclose any Seller Confidential Information. Additionally, Buyer agrees to limit its internal distribution of Seller Confidential Information to Buyer's employees who have a need to know, and to take steps to ensure that the dissemination is so limited. In no event will Buyer use less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care to prevent the unauthorized use of Seller Confidential Information. Buyer may disclose Seller Confidential Information that is required to be disclosed pursuant to a requirement of a government agency or law but only after Buyer provides prompt notice to Seller of such requirement and gives Seller the opportunity to challenge or limit the scope of the disclosure.

(c) Buyer further agrees not to use Seller Confidential Information except in the course of performing hereunder and will not use such Seller Confidential Information for its own benefit or for the benefit of any third party. All Seller Confidential Information is and shall remain the property of Seller. Upon Seller's written request, Buyer shall return, transfer or assign to Seller all Seller Confidential Information, including all Work Product, and all copies containing Seller Confidential Information.

11. Patent Indemnity

In the event any Product is made in accordance with drawings, samples or manufacturing specifications designated by Buyer, Buyer agrees to indemnify, defend, and hold Seller harmless from any and all damages, costs and expenses (including attorney's fees) relating to any claim arising from or relating to the design, distribution, manufacture, marketing, sale, or use of the Product or arising from or relating to a claim that such Product furnished to Buyer by Seller, or the use thereof, infringes any claim of any patent, foreign or domestic, and Buyer agrees at its own expense to undertake the defense of any suit against Seller brought upon such claim or claims.

12. Changes in Product Design or Manufacture

Seller shall have the right to change, discontinue or modify the design and construction of any of its products and to substitute material equal to or superior to that originally specified.

13. Software License

Software, if included with a Product, is hereby licensed and not sold. The license is nonexclusive, and is limited to use with the Product with which it is included. No other use is permitted and Seller retains for itself (or, if applicable, its suppliers) all title and ownership to any software delivered hereunder, all of which contains confidential and proprietary information and which ownership includes without limitation all rights in patents, copyrights, trademarks and trade secrets. Buyer shall not attempt any sale, transfer, sublicense, reverse compilation or disassembly (save to the extent expressly permitted by law) or redistribution of the software. Buyer shall not copy, disclose or display any such software, or otherwise make it available to others.

14. Compliance with Laws

Buyer shall comply with all laws and regulations applicable to Products including all applicable import and export laws and regulations. Buyer and Buyer's Agent shall provide all information requested by Seller relating to Seller's voluntary or mandatory compliance with any law or regulation, and Buyer shall indemnify Seller for any losses incurred by Seller arising from Buyer's or Buyer's Agent's failure to provide the information requested by Seller.

15. Waiver

No waiver of any provision of these terms and conditions (or any right or default hereunder) shall be effective unless in writing and signed by an authorized representative Seller. Any such waiver shall be effective only for the instance given, and shall not operate as a waiver with respect to any other rights or obligations under these terms and conditions or applicable law in connection with any other instances or circumstances.

16. Language

The parties have expressly required that these terms and conditions be prepared in the English language. Les parties aux présentes ont expressément exigé que les présents termes et les bons de commandes émis aux termes des présentes soient rédigés en langue Anglaise.

17. Choice of Law and Dispute Resolution

Except as set forth below, these terms and conditions shall be governed by and construed in accordance with the laws of the State of Texas, without reference to its choice of law rules. If both Seller and Buyer are incorporated under the laws of Canada or a province of Canada, these terms and conditions shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada. If Buyer is incorporated in the United States, any claim or litigation arising out of or relating to Products shall be brought exclusively in a court of competent jurisdiction in Harris County, Texas. If Buyer is incorporated outside of the United States, any dispute will be resolved by arbitration in Houston, Texas, by three arbitrators and under the International Chamber of Commerce Rules of Arbitration. The language of the arbitration will be English. In all cases, Buyer and Seller expressly exclude from application the United Nations Convention on Contracts for the International Sale of Goods.

18. Assignment

Buyer may not assign, transfer or subcontract the performance of its services, or any of its rights and/or obligations hereunder, without Seller's prior written consent.

19. Severability

If any provision of these terms and conditions is determined to be illegal, invalid, or unenforceable, the validity and enforceability of the remaining provisions of these terms and conditions will not be affected and, in lieu of such illegal, invalid, or unenforceable provision, there will be added, as part of these terms and conditions, one or more provisions as similar in terms as may be legal, valid and enforceable under applicable law. CPS 121010