

CITY OF WATERTOWN, NEW YORK
AGENDA
Monday, August 17, 2015

This shall serve as notice that the next regularly scheduled meeting of the City Council will be held on Monday, August 17, 2015, at 7:00 p.m. in the City Council Chambers, 245 Washington Street, Watertown, New York.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

ROLL CALL

ADOPTION OF MINUTES

COMMUNICATIONS

PRIVILEGE OF THE FLOOR

RESOLUTIONS

- Resolution No. 1 - Appointment to the Roswell P. Flower Memorial Library Board of Trustees, Leslie E. Atkinson
- Resolution No. 2 - Approving the Funding Approval/Agreement for the Fiscal Year 2015 Community Development Block Grant Program
- Resolution No. 3 - Approving the Site Plan for the Construction of a 1,659 square foot storage building at VL-3 Marble Street, Parcel 4-27-402.100
- Resolution No. 4 - Authorizing the Sale of Surplus Vehicles and Equipment
- Resolution No. 5 - Reappointing Ann M. Saunders as a Marriage Officer for the City of Watertown
- Resolution No. 6 - Adopting City of Watertown Citi-Bus Charter Policy

ORDINANCES

LOCAL LAW

PUBLIC HEARING

7:30 p.m.

Eminent Domain Procedure – Palmer Street Extension

OLD BUSINESS

STAFF REPORTS

1. 1171 Coffeen Street (Nelson's Dry Cleaning) Deed Restriction
2. 138 Court Street Asbestos
3. Projected FY 2016-17 Projected Tax Cap
4. Public Hearing for the Community Development Block Grant Program Consolidated Annual Performance and Evaluation Report

NEW BUSINESS

EXECUTIVE SESSION

To Discuss Collective Bargaining

WORK SESSION

ADJOURNMENT

**NEXT REGULARLY SCHEDULED CITY COUNCIL MEETING IS TUESDAY,
SEPTEMBER 8, 2015.**

Res No. 1

August 11, 2015

To: Members of the City Council

From: Jeffrey E. Graham, Mayor

Subject: Appointment to the Roswell P. Flower Memorial Library Board of Trustees, Leslie E. Atkinson

With the recent resignation of Matthew Doheny, I have spoken with Leslie Atkinson to serve on the Flower Memorial Library Board of Trustees to fulfill the unexpired term of Mr. Doheny, such term to expire on December 31, 2021.

I have spoken to both Library Director Yvonne Reff and Board President Stephen Gebo concerning Mrs. Atkinson, and both agree that she will bring an excellent dynamic to the Board. Attached for City Council's review is Mrs. Atkinson's resume.

I respectfully offer Mrs. Atkinson in nomination for appointment to the City Council for its consideration.

RESOLUTION

Page 1 of 1

Appointment to the Roswell P. Flower Memorial Library Board of Trustees, Leslie E. Atkinson

Council Member BURNS, Roxanne M.
 Council Member BUTLER, Joseph M. Jr.
 Council Member JENNINGS, Stephen A.
 Council Member MACALUSO, Teresa R.
 Mayor GRAHAM, Jeffrey E.

Total

YEA	NAY

Introduced by

BE IT RESOLVED by the City Council of the City of Watertown, New York, that Leslie E. Atkinson, 277 Thompson Boulevard, Watertown, New York, is hereby appointed to the Roswell P. Flower Memorial Library Board of Trustees to fulfill the unexpired term of Matthew Doheny, such term expiring on December 31, 2021.

Seconded by

LESLIE E. ATKINSON
277 Thompson Boulevard
Watertown, New York 13601
h - (315)779-9086 w - (315)785-3813
c - (315)777-2167
latkinson@watertowncsd.org

EDUCATION

- Certificate of Advanced Study:** Educational Leadership
Saint Lawrence University – 2007
- Master of Science:** S.I. Newhouse School of Public Communication
Syracuse University - 1985
- Bachelor of Arts:** Saint Lawrence University - 1981
- Certifications:** New York State School Administrator/Supervisor (SAS)
New York State Permanent 7 – 12 English

EMPLOYMENT HISTORY

- Principal:** **Watertown High School, Watertown, New York** (July 2013 – present)
- Chief Administrator of Watertown’s only public high school.
 - Responsible for the instructional oversight and direct supervision of the high school’s 1250 students.
 - Supervise the 200 member faculty and staff, including annual evaluations and performance reviews.
 - Develop and manage the district’s 9 – 12 budget.
 - Facilitate the school’s implementation of the Common Core State Standards.
 - Maintain the district’s Student Code of Conduct in adherence to New York State Education Law.
 - Represent the high school at all Superintendent’s Hearings.
 - Facilitate all faculty, department chair and curriculum meetings.
 - Orchestrate all professional development opportunities for building staff.
 - Work closely with assistant principals to maintain school discipline policy.
 - Coordinate the creation of the school’s annual Master Schedule.
 - Represent the school at meetings with outside agencies including Jefferson County Probation Department, Social Services, Jefferson Community College, Northern New York Community Foundation, Samaritan Medical Center, the Urban Mission and the United Way.
 - Serve as the media representative for all school focused press inquiries.
 - Foster a climate of collaboration and trust within our school and community.
- Assistant Principal:** **Watertown High School, Watertown, New York** (August 2010 – June 2013)
- Assist the building principal in the operation of the school.
 - Maintain discipline of approximately 1250 students in accordance with board policy and NYS law.
 - Serve on panels for interviewing and hiring staff.
 - Create the Regents and final examination schedules.
 - Assist in development of the WHS Master Schedule.
 - Perform faculty and staff evaluations and observations.
 - Work closely with district support staff including guidance counselors, psychologists, secretaries, home school coordinators and nurses.
 - Work closely with outside agencies including Military Liaisons, Jefferson County Probation Dept., Transitional Living Services and DSS.
 - Serve as Administrative Coordinator for the School Improvement Team.
 - Represent the high school at public ceremonies and events.

Principal: Watertown High School Summer School, Watertown, New York (Summer 2012)
- Directly responsible for daily operation of Regional Summer High School.
- Coordinate student registration.
- Create Master Schedule for program.
- Interview, hire and evaluate teaching staff.
- Maintain discipline in accordance with district policy.
- Coordinate and implement Regents and final examinations.

English Teacher: Watertown High School, Watertown, New York (September 2000 – July 2010)
- Teacher of English 9 Enriched, English 10, English 11 and
Advanced Placement English Literature & Composition

Adjunct Faculty Member: Jefferson Community College, Watertown, New York (2008 – 2009)
- Instructor of English Literature & Composition

COMMITTEES AND PROJECTS:

WCSD Department of Defense Education Activity Grant (DODEA)

- Facilitated the writing of a successful \$1.5 million DODEA grant application. The award specifically targets the academic, social and emotional needs of the WCSD's approximate 4200 students, 25 percent of whom are dependents of the 10th Mountain Division stationed at Fort Drum.

Northern New York Community Foundation Youth Philanthropy Council

- Administrative advisor to a panel of WHS students dedicated to philanthropy and the awarding of grant funding. Oversee students as they develop valuable skills in the areas of decision making, consensus building, group dynamics and organizational leadership.

WCSD Common Core State Standards Implementation Team

- Facilitator of committee appointed to establish goals, processes and procedures for the implementation of the new Common Core State Standards.

Freshman First Day/Freshman Advisory

- Created an orientation program designed to assist incoming freshmen with their acclimation to high school. The program provides academic and emotional support to 9th graders, helping to ensure a smooth transition from the middle to secondary environment and increasing the likelihood of success.

WHS School Quality Review Team

- Served on a district-appointed panel designed to evaluate school's designation as a School In Need of Improvement. Made recommendations for improving both the academic and social culture within the school.

WHS School Improvement Team

- Served as the administrative leader for a team of parents, faculty and students creating and implementing positive change mechanisms within the school community.

Res No. 2

August 10, 2015

To: The Honorable Mayor and City Council

From: Michael A. Lumbis, Planner

Subject: Approving the Funding Approval/Agreement for the Fiscal Year 2015
Community Development Block Grant Program

The U.S. Department of Housing and Urban Development (HUD) has approved the City's Annual Action Plan for the Fiscal Year 2015 Community Development Block Grant Program. The City Council will recall that this year's allocation is \$784,662. HUD has prepared a Funding Approval/Agreement and forwarded it for signature.

A resolution has been prepared for City Council consideration that approves the Funding Approval/Agreement and authorizes the Mayor to sign it.

RESOLUTION

Approving the Funding Approval/Agreement for the Fiscal Year 2015 Community Development Block Grant Program

Page 1 of 1

Council Member BURNS, Roxanne M.
 Council Member BUTLER, Joseph M. Jr.
 Council Member JENNINGS, Stephen A.
 Council Member MACALUSO, Teresa R.
 Mayor GRAHAM, Jeffrey E.

Total

YEA	NAY

Introduced by

WHEREAS the City of Watertown has completed its Fiscal Year 2015 Annual Action Plan for the Community Development Block Grant Program and submitted it to the U.S. Department of Housing and Urban Development (HUD), and

WHEREAS HUD has approved said Annual Action Plan and prepared a Funding Approval/Agreement which is attached and made part of this Resolution,

NOW THEREFORE BE IT RESOLVED that the City of Watertown hereby approves the Funding Approval/Agreement with the U.S. Department of Housing and Urban Development, and

BE IT FURTHER RESOLVED that the Mayor, Jeffrey E. Graham, is hereby authorized and directed to sign the Agreement on behalf of the City Council.

Seconded by

8. Special Conditions.

- (a) The period of performance for the funding assistance specified in the Funding Approval (“Funding Assistance”) shall begin on the date specified in item 4 and shall end on September 1, 2022. The Grantee shall not incur any obligations to be paid with such assistance after September 1, 2022. (Source: 31 U.S.C. 1551-1557)
- (b) If Funding Assistance will be used for payment of indirect costs pursuant to 2 CFR 200, Subpart E - Cost Principles, attach a schedule in the format set forth below to the executed Grant Agreement that is returned to HUD. The schedule shall identify each department/agency that will carry out activities with the Funding Assistance, the indirect cost rate applicable to each department/agency (including if the de minimis rate is charged per 2 CFR §200.414), and the direct cost base to which the rate will be applied. Do not include indirect cost rates for subrecipients.

<u>Administering Department/Agency</u>	<u>Indirect cost rate</u>	<u>Direct Cost Base</u>
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____

- (c) The grantee shall comply with requirements established by the Office of Management and Budget (OMB) concerning the Universal Numbering System and System for Award Management (SAM) requirements in Appendix A to 2 CFR part 25, and the Federal Funding Accountability and Transparency Act (FFATA) in Appendix A to 2 CFR part 170.
- (d) The grantee, unit of general local government or Insular Area that that directly or indirectly receives CDBG funds may not sell, trade, or otherwise transfer all or any such portion of such funds to another such entity in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under title I of the Housing and Community Development Act of 1974 (the Act). (Source: P.L. 113-235, Consolidated and Further Continuing Appropriations Act, 2015, Division K, Title II, Community Development Fund)
- (e) CDBG funds may not be provided to a for-profit entity pursuant to section 105(a)(17) of the Act unless such activity or project has been evaluated and selected in accordance with Appendix A to 24 CFR 570 - “Guidelines and Objectives for Evaluating Project Costs and Financial Requirements.” (Source - P.L. 113-235, Consolidated and Further Continuing Appropriations Act, 2015, Division K, Title II, Community Development Fund)

- (e) The grantee shall ensure that no CDBG funds are used to support any Federal, State, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use. For the purposes of this requirement, public use shall not be construed to include economic development that primarily benefits private entities. Any use of funds for mass transit, railroad, airport, seaport or highway projects as well as utility projects which benefit or serve the general public (including energy-related, communication-related, water-related and wastewater-related infrastructure), other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfield as defined in the Small Business Liability Relief and Brownfield Revitalization Act (Public Law 107-118) shall be considered a public use for purposes of eminent domain. (Source: P.L. 113-235, Consolidated and Further Continuing Appropriations Act, 2015, Division K, Title IV, General Provisions, Section 407)
- (f) **E.O. 12372-Special Contract Condition - Notwithstanding any other provision of this agreement, no funds provided under this agreement may be obligated or expended for the planning or construction of water or sewer facilities until receipt of written notification from HUD of the release of funds on completion of the review procedures required under Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, and HUD's implementing regulations at 24 CFR Part 52. The recipient shall also complete the review procedures required under E.O. 12372 and 24 CFR Part 52 and receive written notification from HUD of the release of funds before obligating or expending any funds provided under this agreement for any new or revised activity for the planning or construction of water or sewer facilities not previously reviewed under E.O. 12372 and implementing regulations.**

Res No. 3

August 11, 2015

To: The Honorable Mayor and City Council

From: Michael A. Lumbis, Planner

Subject: Approving the Site Plan for the Construction of a 1,659 Square Foot Storage Building at VL-3 Marble Street, Parcel Number 4-27-402.100.

A request has been submitted by Ron England of AI's Siding LLC for the above subject site plan approval.

Mr. England originally applied for a waiver of site plan approval but the Planning Board, at its June 2, 2015 meeting, determined that the project did not qualify for a waiver since the proposed storage building would be the first permanent structure on the parcel. Mr. England submitted a full site plan approval application and the Planning Board reviewed the request on August 4, 2015, and voted to recommend that the City Council approve the site plan subject to several conditions.

Attached are copies of the report on the request prepared for the Planning Board and an excerpt from their meeting minutes for both the June 2, 2015 and August 4, 2015 meetings.

Section 617.5 of the State Environmental Quality Review Act states that the construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility, involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls is a Type II action that requires no further review under SEQR. The proposed project meets this criterion, therefore no further action under SEQR is required and the Council need not complete an EAF prior to voting on the resolution.

The resolution prepared for City Council consideration approves the site plan submitted to the City Engineering Department on July 21, 2015, subject to the conditions recommended by the Planning Board.

RESOLUTION

Page 1 of 2

Approving the Site Plan for the Construction of a 1,659 square foot Storage Building at VL-3 Marble Street, Parcel Number 4-27-402.100

- Council Member BURNS, Roxanne M.
- Council Member BUTLER, Joseph M. Jr.
- Council Member JENNINGS, Stephen A.
- Council Member MACALUSO, Teresa R.
- Mayor GRAHAM, Jeffrey E.

Total

YEA	NAY

Introduced by

WHEREAS Ron England of Al’s Siding LLC has submitted an application for site plan approval for the construction of a 1,659 square foot storage building at VL-3 Marble Street, Parcel Number 4-27-402.100, and

WHEREAS the Planning Board of the City of Watertown reviewed the site plan at its meeting held on August 4, 2015, and recommended that the City Council of the City of Watertown approve the site plan with the following conditions:

1. The applicant shall provide an approved median between the existing edge of pavement and the property line along the entire street frontage of the property, excluding the driveway openings, to delineate the driveway access points and to provide an area for snow storage.
2. The site plan shall be amended to show existing and proposed contours at 1’ intervals and labeled with appropriate spot elevations. Existing contours should be dashed.
3. The applicant shall address all concerns of the City Engineering Department prior to the issuance of any permits.
4. The applicant shall obtain the following permits prior to any further construction: a Building Permit and a City Permit for any work within the City right-of-way.

And,

WHEREAS the City Council has determined that the project, as submitted, involves less than 4,000 square feet of gross floor area, and is consistent with local land use controls, and is thus a Type II Action under SEQRA requiring no further review,

RESOLUTION

Page 2 of 2

Approving the Site Plan for the Construction of a 1,659 square foot Storage Building at VL-3 Marble Street, Parcel Number 4-27-402.100

- Council Member BURNS, Roxanne M.
- Council Member BUTLER, Joseph M. Jr.
- Council Member JENNINGS, Stephen A.
- Council Member MACALUSO, Teresa R.
- Mayor GRAHAM, Jeffrey E.

Total

YEA	NAY

NOW THEREFORE BE IT RESOLVED that it is an express condition of this site plan approval that the applicant provide the City Engineer with a copy of any change in stamped plans forming the basis for this approval at the same time such plans are provided to the contractor. If plans are not provided as required by this condition of site plan approval, the City Code Enforcement Officer shall direct that work on the project site shall immediately cease until such time as the City Engineer is provided with the revised stamped plans. Additionally, any change in the approved plan which, in the opinion of the City Engineer, would require Amended Site Plan approval, will result in immediate cessation of the affected portion of the project work until such time as the amended site plan is approved. The City Code Enforcement Officer is requested to periodically review on-site plans to determine whether the City Engineer has been provided with plans as required by this approval, and

BE IT FURTHER RESOLVED by the City Council of the City of Watertown that site plan approval is hereby granted to Ron England of Al's Siding, LLC for the construction of a 1,659 square foot storage building at VL-3 Marble Street, Parcel Number 4-27-402.100, as depicted on the plans submitted to the City Engineer on July 21, 2015, subject to the conditions recommended by the Planning Board and listed above.

Seconded by



MEMORANDUM

CITY OF WATERTOWN PLANNING OFFICE

245 WASHINGTON STREET, ROOM 304, WATERTOWN, NY 13601

PHONE: (315) 785-7730 – FAX: (315) 782-9014

TO: Planning Board Members
FROM: Michael A. Lumbis, Planner *ML*
SUBJECT: Site Plan Approval – VL-3 Marble Street
DATE: July 29, 2015

Request: Site Plan Approval for the construction of a 1,659 square foot building at VL-3 Marble Street, Parcel Number 4-27-402.100
Applicant: Ron England of Al's Siding LLC
Proposed Use: Storage Building for Al's Siding
Property Owner: Al's Siding LLC

Submitted:

Property Survey: Yes	Preliminary Architectural Drawings: No
Site Plan: Yes	Preliminary Site Engineering Plans: No
Vehicle and Pedestrian Circulation Plan: No	Construction Time Schedule: No
Landscaping and Grading Plan: Grading (no contours)	Description of Uses, Hours & Traffic Volume: Uses and anticipated traffic are identified; hours are not.

SEQRA: Type II	County Review Required: No
----------------	----------------------------

Zoning Information:

District: Heavy Industry	Maximum Lot Coverage: 100%
Setback Requirements: All Yards – 0'	Buffer Zone Required: No

Project Overview: The applicant proposes to construct a 1,659 square foot building to serve as a storage building for his siding business. The building will be located in the center of the parcel, which consists almost entirely of crushed stone. A 22 square foot shed currently exists on the site. The applicant received a permit for and began construction on the project. A 52' by 32' foot concrete foundation was built, but construction has been halted pending the approval of the site plan. The site is 0.43 acres.

The applicant had previously applied for a waiver of site plan approval, which the Planning Board denied at its June 2 meeting. At that meeting, the Planning Board determined the project did not meet the criteria for a waiver because the proposed storage building would be the first permanent structure on the site.

Parking and Vehicular Circulation: Section 310-50 of the Zoning Ordinance states that areas used for storage can be subtracted from the required parking calculations; therefore no designated parking is required for the project. Section 310-49 of the Zoning Ordinance requires a 10' by 30' loading space for storage use. The applicant identifies this loading space on the site plan.

The applicant is not proposing any paved areas on the site. The site plan, as proposed, involves utilizing the existing crushed stone groundcover as a parking area. The applicant does identify two driveway entrances on the site plan. However, since the applicant also states that no landscaping will be installed, it is unclear how these driveway entrances will be delineated on the ground. This proposal is unacceptable. Access points to the property need to be controlled from the City Streets. A grassed median should be provided between the street and the proposed parking area to delineate the access points and to provide for snow storage.

Lighting: A photometric plan was not provided. The applicant states that security lighting will be installed on the exterior of the building, resulting in less than 0.5 footcandles at the property line. No other lighting, including interior lighting, is proposed anywhere on the site.

Grading, Drainage and Utilities: The applicant states that no appreciable or calculated stormwater will exit the site and that no modification to the current stormwater runoff and direction of flow is proposed. There is an existing catch basin in the center of the site that stormwater drains to. There is a storm drain within this catch basin; however it does not connect to anything underground either on or off the site and effectively functions as a pit to collect stormwater as it is absorbed into the ground. There is no impermeable paving material proposed on any part of the site.

To provide power to the security lighting, the applicant is proposing to connect to an existing overhead utility line running along the north side of Marble Street.

The site plan, while providing spot elevations at various points on the property, does not show any existing or proposed contour lines. The site plan should be amended to show existing and proposed contours at 1' intervals and labeled with appropriate spot elevations. Existing contours should be dashed.

Landscaping: The applicant is proposing the installation of shrubs and perennials in three planters/pots to be located in front of the building. Other than the planters, there is no new landscaping currently proposed for the site. When the applicant applied for a waiver of site plan approval in May, Staff had requested in its report that the applicant submit a landscaping plan as a part of his submission for full site plan approval.

The applicant has not submitted a landscaping plan and is still not proposing any landscaping for the site, contending that the entire site consists of gravel, directly over bedrock, and is therefore unsuitable for any planting or landscaping. However, prior to applying for the waiver in May, the applicant had already performed some work on the land, which resulted in the displacement of a thin layer of soil and vegetation from the surface. The displacement was evidenced by a talus pile at the eastern end of the lot, where the pre-existing surface materials were pushed.

At a minimum, the applicant should perform the landscaping action identified above in the "Parking and Vehicular Circulation" section, which is to install a grassed median between the street and the parking area. While Staff would like to see additional landscaping work performed, further landscaping at this time, other than installing the requested median, need not be a condition of site plan approval.

SEQRA: A State Environmental Review Short Environmental Assessment Form (EAF) was submitted. Section 617.5 of the State Environmental Quality Review Act states that “Construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities;” is a type II action that requires no further review under SEQRA. Therefore, no further action under SEQRA is required.

Engineering Comments: The plan should be adequately dimensioned and include radii, specifically all proposed driveway radii. The Planning Data Table should also be updated to reflect the setbacks from the proposed margin. It is unclear at this point what work is proposed within the City margin to delineate the driveways. Should a shoulder closure become necessary to complete margin work, then maintenance and protection of traffic plans and notes will be required.

Miscellaneous: There is a concurrent subdivision request before the Planning Board that is also related to this project. When the applicant applied for a waiver of site plan approval in May, Staff discovered that the metes and bounds of the applicant’s parcel extended partially into the paved footprint of Eagle Avenue. The applicant has communicated a willingness to transfer ownership of this portion of land to the City for use as public right-of-way. The City of Watertown has therefore applied for subdivision approval of Parcel 4-27-402.100 on behalf of the property owner. The Planning Board will consider that subdivision request separately and prior to considering this request for site plan approval.

The applicant should forward PDF files of the entire set of drawings to the City Engineering Department whenever any revisions are made to the drawings.

The property owner shall obtain the following permits prior to construction: a Building Permit and a City Permit for any work within the City right-of-way.

Summary: The following is a list of items that should be included in the motion recommending approval:

1. The applicant shall provide a grassed median between the existing edge of pavement and the property line along the entire street frontage of the property, excluding the driveway openings, to delineate the driveway access points and to provide an area for snow storage.
2. The site plan shall be amended to show existing and proposed contours at 1’ intervals and labeled with appropriate spot elevations. Existing contours should be dashed.
3. The applicant shall address all concerns of the City Engineering Department prior to the issuance of any permits.
4. The applicant shall obtain the following permits prior to any further construction: a Building Permit and a City Permit for any work within the City right-of-way.

cc: Robert J. Slye, City Attorney
Brian Drake, Civil Engineer II
Ron England, Al’s Siding
Edward G. Olley Jr., AIA

From the June 2, 2015 Planning Board Meeting Minutes

**WAIVER OF SITE PLAN APPROVAL
VL-3 MARBLE STREET – PARCEL # 4-27-402.100**

The Planning Board then considered a request for a waiver of site plan approval submitted by Ron England on behalf of Al's Siding for the construction of a 1,659 square foot building at VL-3 Marble Street, Parcel Number 4-27-402.100. Edward Olley of GYMO PC and Ron England of Al's Siding were in attendance to represent Al's Siding before the Planning Board.

Mr. Olley began by addressing actions of Mr. England. Mr. Olley said that Mr. England obtained the proper permits to erect a shed and to begin constructing his building, but later discovered that he must approach the planning board with the project. He produced a property survey and stated he had the proper building permits to begin construction although the Bureau of Code Enforcement had given them to Mr. England erroneously.

Ms. Capone then asked to confirm that Mr. England already received the proper permits to begin construction. Mr. Olley then confirmed that Mr. England did in fact receive the proper building permits. However, he received them in error. Mr. Lumbis agreed that the permits were given in error but the fact remains that site plan approval is still required for the project.

Mr. Davis suggested that the planning board approve the application as a site plan. Mr. Lumbis explained that this wouldn't be possible because the application was submitted as a site plan waiver and lacks the materials to be approved as a full site plan.

Mr. Lumbis then reviewed the criteria for a waiver of site plan approval as listed in the Zoning Ordinance. He stated that the Office of Planning and Community Development and Engineering Department does not recommend a site plan waiver because the structure is the first building on the parcel and therefore does not meet each of the four criteria.

Mr. Katzman then asked if City staff was likely to recommend approval if Mr. England submitted a full site plan. Ms. Capone interjected that Mr. England would have to submit a full site plan even if he didn't receive a building permit in error. Mr. Davis then said that it was not Mr. England's error that he received a building permit and he should not be punished for it.

Mr. Lumbis stated that if the Planning Board does not approve the request for a waiver of site plan approval then Mr. England will have to submit a Site Plan application at a later date. Mr. Lumbis then explained to the Planning Board that because the application was not a full site plan, City staff only reviewed and commented on what was presented. He said the full Site Plan would require a much more thorough investigation.

Ms. Capone then stated that the submitted application does not meet the criteria to waive the requirements of site plan approval and that a full site plan is required.

Mr. Neddo then moved to approve the site plan waiver for the request submitted by Ron England on behalf of Al's Siding for the construction of a 1,659 square foot building at VL-3 Marble Street, Parcel # 4-27-402.100.

The motion was seconded by Mr. Davis and defeated by a 4-1 vote with Mr. Coburn, Ms. Capone, Mr. Katzman and Mr. Neddo voting nay and Mr. Davis voting aye.

Mr. Olley then asked if a Short EAF was acceptable for the full site plan. Mr. Lumbis said that because of the small size of the building (less than 4,000 sq. ft.) SEQR review is not necessary.

Mr. Olley then asked if it would be possible to complete the building without an approval, suggesting an approval contingent on a full site plan. Mr. Katzman responded that it was not possible but suggested that Planning Board hold a special meeting for this application. The entire planning board agreed that they would be able to meet separately as soon as Mr. Olley could produce a full site plan application. Mr. Coburn stated that the Planning Board has to provide five days notice prior to a special meeting.

Mr. Olley stated that an unresolved issue is that the City's street encroaches onto his client's property. He said this issue needs to be resolved before a full site plan can be developed. Mr. Drake asked if Mr. England would be willing to contribute a section of his land to be added to the City's right-of-way. Mr. Olley said that his client would be willing to discuss the possibility. He said that until the time that the property line issue is resolved he cannot design the site and produce a full application. Mr. Drake stated that he will discuss the situation with the other City engineers and produce one as soon as possible.

From the August 4, 2015 Planning Board Meeting Minutes

**SITE PLAN APPROVAL
VL-3 MARBLE STREET – PARCEL # 4-27-402.100**

The Planning Board then considered a request for site plan approval submitted by Ron England on behalf of Al's Siding for the construction of a 1,659 square foot building at VL-3 Marble Street, Parcel Number 4-27-402.100. Edward Olley of GYMO PC and Ron England of Al's Siding were in attendance to represent Al's Siding before the Planning Board.

Mr. Olley began by saying that he had read Staff's memorandum of review on the site plan application and drew attention to the Engineering comments. Mr. Olley noted that the survey maps provided by Storino Geometrics show two entrances to the site currently. Mr. Olley then said that these entrances are more conceptual than anything else, and that you can access the site from anywhere as it is now.

Mr. Olley said that he and the applicant understand the City's desire to delineate access points to the property, but that they wanted to wait for the subdivision of the parcel to be official before moving forward with any such delineation. He then said that he and the applicant agree that the locations identified on the survey were the best places for access points.

Mr. Olley said that all of the work to delineate the access points is in the street margin and that part of an agreement between the City and the applicant should be how to handle moving the property line, setting the pins and paving an access lane in and out of the site. Mr. Olley then suggested that it should be the City's responsibility to perform this work and designate these access points in some way.

Mr. Olley noted that Staff suggested that a grassed median be planted along the street margin, but reiterated the applicant's claim that there was not any topsoil in this space and that the area was unable to support any plant growth. He then said that he thought that boulders and/or other large rocks could be placed along the margin, or perhaps concrete and chains, but that he and the applicant would like to leave the decision up to the City.

Mr. Olley then addressed the summary item on Staff's memorandum that contour lines needed to be added to the site plan. He said that there were contour lines on the parcel survey provided by Storino Geometrics. He also mentioned that since the City Code Enforcement Bureau had previously issued a building permit in error, another permit would have to be re-issued, unless the current halt in construction was only the result of a stop-work order.

Mr. Katzman, who was late arriving to the meeting joined at this time, approximately 3:20 PM.

Ms. Freda then referenced the summary item on Staff's memorandum requiring contour lines on the site plan, and asked Mr. Olley why there were contour lines only on the survey, and why the applicant had not added contour lines to the site plan as Staff requested. Mr. Coburn noted that the site looked flat.

Ms. Olley replied that no contour lines were included on the site plan because there was no drainage to compute.

Ms. Freda responded that it is a requirement of the site plan application process that contour lines be on the site plan. She then asked Mr. Olley about the lack of a photometric plan and a landscaping plan.

Mr. Olley then addressed photometrics, and directed the Planning Board's attention to the Proposed Project Engineering Report included in the cover letter for the site plan application. Mr. Olley said that report describes building-mounted lights and their footcandle outputs, which he then read from the report.

Ms. Freda then recapped the history of this application, noting that the applicant had previously applied for a waiver of site plan approval, which the Planning Board deemed inappropriate, and which resulted in the full site plan application now before the Planning Board.

Ms. Freda said that she wished to state for the record that this site plan was missing several requirements; specifically a photometric plan, landscaping plan, floor plan, building elevations and contour lines on the site plan. She reiterated that she was just noting these for the record.

Mrs. Fields then asked if there would be any signage on the site. Mr. England answered that there would not be any signage. In reference to the lack of drawn building elevations, Mr. Olley added that a photographic image was included with the application depicting what the proposed building was intended to look like.

Mr. Coburn asked if the Planning Board could grant site plan approval on the condition that the applicant adds contour lines to the site plan and address the other outstanding summary items in Staff's memorandum. Ms. Freda then asked Mr. Lumbis about landscaping requirements.

Mr. Lumbis said that Staff had looked at the site, and given some of the constraints such as exposed bedrock, conceded that it would be very difficult to get formal plantings such as shrubs and trees to grow there. He added that he did think that it would be possible to get a grassed median to grow with a little topsoil, but that something as large as street trees would be difficult.

Mr. England said that the entire site was bedrock. Mr. Olley then said that it was the City's property now anyway. Mr. Drake responded that it was not the City's property yet, as the subdivision had yet to be filed with the County Clerk. Mr. Olley granted that point to Mr. Drake, but added that as he understood it, the transfer of property was contingent upon site plan approval. Mr. Drake said that he had spoken with the City Engineer, and that he had told Mr. Drake that a grassed median was not something that the City was interested in installing. Mr. Olley then said that a certain amount of negotiation between the City and the property owner was necessary.

Ms. Fields said that she still had concerns about landscaping, but that she understood the limitations of the property. Mr. Katzman acknowledged that the existing conditions of the site are still an improvement over what it looked like before Mr. England acquired the property. Mr. Olley added that the inside corner of the parcel, the area between the two access points identified on the survey, was where snow storage was planned to occur.

Ms. Capone then noted that it seemed as though a lot of outstanding issues had been resolved since the applicant's previous appearance before the Planning Board to get down to the remaining four summary items. Mr. Drake said that the main problem before was that the previous application was submitted as a request for a waiver of site plan approval and that a regular site plan approval could not be granted when all the applicant applied for was a waiver.

Mr. Katzman then asked if the Planning Board could approve the current application with the four summary items as contingencies. Mr. Lumbis replied that the Planning Board might not want to grant such an approval with Summary Item 1 written as it is, referencing the requirement for a grassed median. Mr. Lumbis said "grass" should be stricken unless the Planning Board feels differently, but reiterated the need for an approved median.

Mr. Katzman agreed that a median was still necessary, even if it were not made of grass, and looked at the summary items on his copy of the memorandum. Mr. Katzman then made a motion recommending that City Council approve the site plan submitted by Ron England on behalf of Al's Siding for the construction of a 1,659 square foot building at VL-3 Marble Street, Parcel Number 4-27-402.100 contingent upon the following.

1. The applicant shall provide an approved median between the existing edge of pavement and the property line along the entire street frontage of the property, excluding the driveway openings, to delineate the driveway access points and to provide an area for snow storage.
2. The site plan shall be amended to show existing and proposed contours at 1' intervals and labeled with appropriate spot elevations. Existing contours should be dashed.
3. The applicant shall address all concerns of the City Engineering Department prior to the issuance of any permits.
4. The applicant shall obtain the following permits prior to any further construction: a Building Permit and a City Permit for any work within the City right-of-way.

Ms. Freda asked if Summary Item 1 could be reworded to require the approval of the Engineering Department. Mr. Drake replied that Summary Item 3 covered that. The motion was then seconded by Ms. Fields and all voted in favor. Mr. Lumbis then said that the application would go before City Council on August 17, 2015 for their consideration.

Ms. Freda then asked if the applicant would be required to resubmit his site plan prior to his application being heard by City Council. Mr. Olley stated that he did not believe so. Mr. Lumbis said that it was all right if the applicant did not resubmit all his materials before City Council considered his application.

Mr. Olley then said that the basic problem was that the City Code Enforcement Bureau issued a Building Permit in error and the partially constructed building is now out there in the elements causing the owner costs that he did not plan on. He said that the City Code Enforcement Bureau had refused to lift the stop-work order until the applicant obtained site plan approval from the Planning Board. He continued, and said that now there will be another two-week delay until City Council approval is obtained, and asked if there was some way that the City Code Enforcement Bureau could lift the stop-work order any earlier.

Mr. Katzman asked if the Planning Board could make any recommendations to that effect. Ms. Freda answered no, and said that such a decision was solely up to the City Code Enforcement Bureau. Ms. Freda then recommended that the property owner consult with Planning Staff before doing anything else in the future, and that doing so would save a lot of time and money.

Res No. 4

August 12, 2015

To: The Honorable Mayor and City Council
From: Sharon Addison, City Manager
Subject: Authorizing the Sale of Surplus Vehicles and Equipment

City of Watertown has surplus vehicles and equipment from the Department of Public Works that are no longer useful or beyond repair and therefore no longer of value.

As stated in the attached report of Purchasing Manager Amy M. Pastuf, the City is recommending that the vehicles and equipment on the attached list be sold through the Auctions International on-line website. She further recommends that the six three-wheel ATV vehicles be scrapped.

A resolution is attached for City Council consideration.

RESOLUTION

Page 1 of 1

Authorizing the Sale of Surplus
Vehicles and Equipment

Council Member BURNS, Roxanne M.
 Council Member BUTLER, Joseph M. Jr.
 Council Member JENNINGS, Stephen A.
 Council Member MACALUSO, Teresa R.
 Mayor GRAHAM, Jeffrey E.
 Total

YEA	NAY

Introduced by

WHEREAS the City of Watertown has accumulated surplus vehicles and equipment at the City Department of Public Works, and

WHEREAS these items may have some value best determined by on-line auction, and

WHEREAS the six three-wheel ATV vehicles to be scrapped to avoid liability,

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Watertown, New York, that it hereby authorizes the sale, by on-line auction, of surplus vehicles and equipment from the City Department of Public Works, the listing of which is attached and made a part of this resolution, and

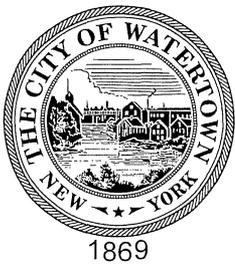
BE IT FURTHER RESOLVED that final acceptance of such bids shall constitute acceptance of the same by the City Council.

Seconded by

SURPLUS VEHICLES/EQUIPMENT

The following vehicles/items are surplus to the City's needs. These pieces are located at the Department of Public Works on Newell Street.

Item Description	ID #	Department	Reason
1982 Chevrolet Step Van	#1-54	Sidewalk Program	Replaced
1998 Chevrolet S10 4x4 extended cab pickup	#1-31	DPW	Replaced
1998 Chevrolet S10 4x4 extended cab pickup	#1-36	DPW	Replaced
1998 Chevrolet S10 4x4 extended cab pickup	#3-52	Parks and Recreation	Replaced
1998 Chevrolet C20 pickup truck with service body	#1-83	DPW	Replaced
2001 Ford F350 4x4 regular cab pickup w/snow plow	#1-29	DPW	Replaced
2002 Ford F350 4x4 regular cab pickup w/ snow plow	#2-15	Water Department	Replaced
Homemade trailer	#1-150	DPW	Replaced
Eight (8) foot platform body for a pickup truck with side storage boxes		DPW	Replaced
Ingersoll Rand air compressor pump		DPW	Replaced
Seven (7) metal halide 250w high bay lamps		DPW	Replaced
Hand held fluorescent work lamps with retractable cord reel		DPW	Replaced
Twelve (12) foot snow plow wings		DPW	Replaced
Eleven (11) foot front plow moldboards		DPW	Replaced
Fuel dispenser cabinet		DPW	Replaced
Four (4) Jonsered chainsaws		DPW	Replaced
One (1) STIHL pole saw		DPW	Replaced
Walk behind air blower		DPW	Replaced
Eight foot pickup box and bumper.		DPW	Replaced
Four (4) STIHL string trimmers		DPW	Replaced
One (1) Homelite blower		DPW	Replaced
Blower for John Deere 425 tractor		DPW	Replaced
John Deere 425 tractor and snow blower		Parks and Recreation	Replaced
Robin Engines w/o pump casing		DPW	Replaced
Sewer cleaner hose		DPW	Replaced
Six (6) Honda Big Red 250 ATC three wheel ATVs		DPW/Parks and Rec.	Replaced
VIN: JH3TE0402GM207235		DPW	Replaced
JH3TE0406GM223609		DPW	Replaced
JH3TE0403GM224040		DPW	Replaced
JH3TE0400GM224044		DPW	Replaced
JH3TE407GM2111291		DPW	Replaced
JH3TE0409GM210627		DPW	Replaced
Assorted obsolete parts; filters, tires, floor mats		DPW	Replaced
Honda EB2200 generator—does not run		DPW	Replaced



CITY OF WATERTOWN, NEW YORK

ROOM 205, CITY HALL
245 WASHINGTON STREET
WATERTOWN, NEW YORK 13601-3380
E-MAIL APastuf@watertown-ny.gov
☎(315) 785-7749 ☎(315) 785-7752

Amy M. Pastuf
Purchasing Manager

MEMORANDUM

TO: Sharon Addison, City Manager
FROM: Amy M. Pastuf, Purchasing Manager
SUBJECT: Surplus Sale of Vehicles and Equipment
DATE: 8/12/2015

The Purchasing Department is requesting City Council's permission to auction surplus vehicles and equipment from Public Works through the Auctions International on-line website. The Public Works Department has determined that the vehicles and equipment on the attached list are either no longer useful or beyond repair and therefore no longer of value to the City. This request is for the City Council to authorize the Purchasing Department to accept the highest offer at time of sale provided the offer meets or exceeds the estimated scrap value.

On the list are six (6) three-wheel ATV vehicles. These were gifted to the City years ago when the sale of three-wheel ATVs were outlawed due to safety concerns. In order to avoid any liability on the part of the City, these vehicles will be scrapped and the City will obtain Certificates of Salvage from a local scrap vendor.

Thank you for your consideration in this matter.

Copy: Jim Mills, City Comptroller
Eugene Hayes, Superintendent of Public Works

Enclosures

Res No. 5

August 12, 2015

To: The Honorable Mayor and City Council

From: Sharon Addison, City Manager

Subject: Reappointment of Marriage Officer

The attached resolution has been prepared for Council consideration to reappoint the City Clerk as a Marriage Officer for the City of Watertown for a four year term.

RESOLUTION

Page 1 of 1

Reappointing Ann M. Saunders as a
Marriage Officer for the City of Watertown

Council Member BURNS, Roxanne M.
 Council Member BUTLER, Joseph M. Jr.
 Council Member JENNINGS, Stephen A.
 Council Member MACALUSO, Teresa R.
 Mayor GRAHAM, Jeffrey E.

Total

YEA	NAY

Introduced by

WHEREAS Section 11-C(1) of the New York State Domestic Relations Law permits the City Council of the City of Watertown to appoint one or more Marriage Officers who shall have the authority to solemnize marriages within the City, and

WHEREAS the City Council of the City of Watertown adopted Local Law No. 2 of 2002, establishing the position of City Marriage Officer under Section 45-11.3 of the City Code of the City of Watertown, and

WHEREAS Ann M. Saunders is over the age of 18 and is a resident of the City of Watertown, as required by Section 11-C(2) of the New York State Domestic Relations Law,

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Watertown that Ann M. Saunders shall be appointed as a Marriage Officer for the City of Watertown with the duties established by Section 45-11.3 of the City Code of the City of Watertown and by Article 3 of the New York State Domestic Relations Law for a term of four (4) years commencing September 1, 2015 and expiring August 31, 2019.

Seconded by

Res No. 6

August 12, 2015

To: The Honorable Mayor and City Council
From: Sharon Addison, City Manager
Subject: Adopting Charter Bus Policy

With our recent urbanized area designation, Federal regulations allow our Citi-Bus to operate certain community-based charter services excepted under regulation 49 CFR Part 604.

As detailed in the attached report of Superintendent Eugene Hayes, he has proposed that the City of Watertown adopt a formal Citi-Bus Charter Policy establishing the protocol to respond to community requests in conformance to the Federal regulations.

The attached resolution for Council consideration adopts this policy. Staff will be present to answer any questions.

RESOLUTION

Page 1 of 1

Adopting City of Watertown Citi-Bus Charter Policy

Introduced by

Council Member BURNS, Roxanne M.

Council Member BUTLER, Joseph M. Jr.

Council Member JENNINGS, Stephen A.

Council Member MACALUSO, Teresa R.

Mayor GRAHAM, Jeffrey E.

Total

YEA	NAY

WHEREAS the City of Watertown is the recipient of Urbanized Area Formula Funding, 5307 funds, and

WHEREAS Federal regulations allow the City of Watertown to participate in certain community-based charter services excepted under regulation 49 CFR Part 604,

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown hereby adopts the City of Watertown Citi-Bus Charter Policy, a copy of which is attached and made part of this resolution.

Seconded by

City of Watertown Citi-Bus Charter Policy

I. City of Watertown Citi-Bus Charter Policy

In accordance with Federal regulation, City of Watertown Citi-Bus is allowed to operate certain community based charter services excepted under regulation 49 CFR Part 604. All requests for charter exception service must be in compliance with Federal regulations. City of Watertown Citi-Bus may deny a request based on staffing limitations and/or vehicle availability.

The Transit Director or his/her designee will handle inquiries for charter exception service and processing of requests. The Director or his/her designee will inform inquirers of the charter policy and provide a Charter Exception Request Form.

The Director or his/her designee will determine if the request is eligible for one of the approved exceptions. If the request is deemed ineligible they will be notified of the decision and the reason for the decision. If the request is deemed eligible the Director or his/her designee will confirm vehicle availability and schedule the service.

The Director or his/her designee is responsible for proper support documentation for the exception.

II. Federal Regulation Regarding Charter Service (49 CFR Part 604)

Federal regulations define charter service as follows:

- 1) Transportation provided by a recipient at the request of a third party for the exclusive use of a bus or van for a negotiated price. The following features may be characteristics of charter service:
 - i. A third party pays a negotiated price for the group;
 - ii. Any fares charged to individual member of the group are collected by a third party;
 - iii. The service is not part of the transit provider's regularly scheduled service, or is offered for a limited period of time; or
 - iv. A third party determines the origin and destination of the trip as well as scheduling; or
- 2) Transportation provided by a recipient to the public for events or functions that occur on an irregular basis or for a limited duration and:
 - i. A premium fare is charged that is greater than the usual or customary fixed route fare; or
 - ii. The service is paid for in whole or in part by a third party.

Exemptions

The charter service regulations provide for the following exemptions:

1. Transportation of Employees, Contractors and Government Officials: Grantees are allowed to transport their employees, other transit systems' employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, to or from transit facilities or projects within its geographic service area or proposed geographic service area for the purpose of conducting oversight functions such as inspection, evaluation, or

City of Watertown Citi-Bus Charter Policy

review.

2. Private Charter Operators: The prohibitions do not apply to private charter operators that receive, directly or indirectly, Federal financial assistance under the over-the-road bus accessibility program or to non-FTA funded activities of private charter operators that receive, directly or indirectly, FTA financial assistance.
3. Emergency Preparedness Planning and Operation: Grantees are allowed to transport their employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, for emergency preparedness planning and operations.
4. Section 5310, 5311, 5316 and 5317 Recipients: The prohibitions do not apply to grantees that use Federal financial assistance from FTA for program purposes, that is, transportation that serves the needs of either human service agencies or targeted populations (elderly, individuals with disabilities) under Section 5310, 5311, 5316, or 5317. Program purposes does not include exclusive service for other groups formed for purposes unrelated to the special needs of the identified targeted populations.
5. Emergency Response: Grantees are allowed to provide service for up to 45 days for actions directly responding to an emergency declared by the President, governor, or mayor or in an emergency requiring immediate action prior to a formal declaration.
6. Recipients in Non-Urbanized Areas: Grantees in non-urbanized areas may transport employees, other transit systems' employees, transit management officials, and transit contractors and bidders to or from transit training outside its geographic service area.

Exceptions

The charter regulation excepts the following community based charter services. The grantee must retain records of each charter service provided for at least three years. Charter service hours include time spent transporting passengers, time spent waiting for passengers, and "deadhead" hours (time spent getting from the garage to the origin of the trip and then the time spent from trip's ending destination back to the garage).

1. Government Officials: A grantee is allowed to provide charter service (up to 80 charter service hours annually) to government officials (Federal, state and local) for official government business, which can include non-transit related purposes, if the grantee:
 - a. Provides the service in its geographic service area
 - b. Does not generate revenue from the charter service, except as required by law.

The grantee may petition FTA for additional charter service hours.

The grantee is required to record the following information after providing such service:

- a. The government organization's name, address, phone number, and email address
- b. The date and time of service
- c. The number of government officials and other passengers

City of Watertown Citi-Bus Charter Policy

- d. The origin, destination, and trip length (miles and hours)
 - e. The fee collected, if any
 - f. The vehicle number for the vehicle used to provide the service
2. Qualified Human Service Organization (QHSO): A grantee is allowed to provide charter service to a QHSO for the purpose of serving persons:
- a. With mobility limitations related to advanced age
 - b. With disabilities
 - c. With low income

If the QHSO receives funding, directly or indirectly, from the programs listed in Appendix A of the regulation, the QHSO is not required to register on the FTA's charter registration website. Otherwise, the QHSO is required to register. The grantee may provide service only if the QHSO is registered at least 60 days before the date of the first request for charter service.

The grantee is required to record the following information after providing such service:

- a. The QHSO's name, address, phone number and email address
 - b. The date and time of service
 - c. The number of passengers
 - d. The origin, destination, and trip length (miles and hours)
 - e. The fee collected, if any
 - f. The vehicle number for the vehicle used to provide the service
3. Leasing of Equipment and Driver: A grantee is allowed to lease its FTA funded equipment and drivers to registered charter providers for charter service only if all of the following conditions exist:
- a. The private charter operator is registered on the FTA charter registration Web site
 - b. The registered charter provider owns and operates buses or vans in a charter service business
 - c. The registered charter provider received a request for charter service that exceeds its available capacity either of the number of vehicles operated or the number of accessible vehicles operated by the registered charter provider
 - d. The registered charter provider has exhausted all of the available vehicles of all registered charter providers in the grantee's geographic service area

The grantee is required to record the following information after leasing equipment and drivers:

- a. The registered charter provider's name, address, telephone number, and email address
 - b. The number of vehicles leased, type of vehicles leased, and vehicle identification numbers
 - c. The documentation provided by the registered charter provider in support of the four conditions discussed above
4. No Response by Registered Charter Provider: A grantee is allowed to provide charter service, on its own initiative or at the request of a third party, if no charter provider registered on the FTA's website responds to the notice issued:
- a. Within 72 hours for charter service requested to be provided in less than 30 days, or
 - b. Within 14 calendar days for charter service requested to be provided in 30 days or more.

City of Watertown Citi-Bus Charter Policy

The grantee is not allowed to provide charter service under this exception if a registered charter provider indicates an interest in providing the charter service described in the notice and the registered charter provider has informed the grantee of its interest in providing the service. This is true even if the registered charter provider does not ultimately reach an agreement with the customer.

If the grantee is interested in providing charter service under this exception, the grantee shall provide email notice to registered charter providers in the grantee's geographic service area by the close of business on the day the grantee received the request unless the request was received after 2:00 pm, in which case the notice shall be sent by the close of business the next business day. The email notice sent to the list of registered charter providers shall include:

- a. Customer name, address, phone number, and email address (if available)
- b. Requested date of service
- c. Approximate number of passengers
- d. Type of equipment requested (bus(es)) or van(s))
- e. Trip itinerary and approximate duration
- f. The intended fare to be charged for the service

The grantee shall retain an electronic copy of the email notice and the list of registered charter providers that were sent email notice of the requested charter service for a period of at least three years from the date the email notice was sent. If the grantee receives an "undeliverable" notice in response to its email notice, the grantee shall send the notice via facsimile. The grantee shall maintain the record of the undeliverable email notice and the facsimile sent confirmation for three years.

The grantee is required to record the following information after providing the service:

- a. The group's name, address, phone number, and email address
- b. The date and time of service
- c. The number of passengers
- d. The origin, destination, and trip length (miles and hours)
- e. The fee collected, if any
- f. The vehicle number for the vehicle used to provide the service

If a registered charter provider indicates interest in providing charter service to a particular customer and fails to negotiate in good faith with the customer, and the grantee was willing to provide the service, then the grantee can file a complaint against the registered charter provider. A form for this is provided on the FTA website.

5. Agreement with All Registered Charter Providers: The grantee is allowed to provide charter service directly to a customer consistent with an agreement entered into with all registered charter providers in the grantee's service area. The grantee is allowed to provide charter service up to 90 days without an agreement with a newly registered charter provider in the geographic service area subsequent to the initial agreement. Any parties to an agreement may cancel the agreement after providing a 90 day notice to the grantee.
6. Petition to the Administrator: The grantee may petition the Administrator for an exception to the charter service regulations to provide charter service directly to a customer for:
 - a. Events of regional or national significance. The petition shall describe how registered charter providers were consulted and will be utilized and include a certification that the

City of Watertown Citi-Bus Charter Policy

grantee has exhausted all the registered charter providers in its service area. The petition must be submitted at least 90 days before the first day of the event.

- b. Hardship (only for non-urbanized areas under 50,000 in population or small urbanized areas under 200,000 in population). The exception is only available if the registered charter providers have deadhead time that exceeds total trip time from initial pick-up to final drop-off, including wait time. The petition shall describe how the registered charter provider's minimum duration would create a hardship on the group requesting the charter service.
- c. Unique and time sensitive events (e.g., funerals of local, regional or national significance) that are in the public's interest. The petition shall describe why the event is unique and time sensitive and would be in the public's interest. Petitions to the Administrator are posted at regulations.gov, which can be accessed through the FTA charter website, so they are not reported in quarterly reports. The grantee shall retain a copy of the Administrator's approval for a period of at least three years.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
--------------------	----------------------------------	---	----------------------

ADDRESSES

City of Ritzville

Maps are available for inspection at 216 E. Main Avenue, Ritzville, WA 99169.

Unincorporated Areas of Adams County

Maps are available for inspection at 210 W. Alder, Ritzville, WA 99169.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: July 23, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8-17681 Filed 7-31-08; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 604

[Docket No. FTA-2005-22657]

RIN 2132-AA85

Charter Service

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule; response to petitions for reconsideration and amendments.

SUMMARY: This document disposes of the petitions for reconsideration filed in response to the Federal Transit Administration's (FTA) final rule on charter service published on January 14, 2008. This notice also corrects the final rule by adding an authority citation, revises Appendix B and Appendix C, and corrects Appendix D, which should have appeared in the final rule as a matrix.

DATES: *Effective Date:* August 1, 2008.

ADDRESSES: A copy of this rule and comments and material received from the public, as well as any documents indicated in the preamble as being available in the docket, are part of docket FTA-2005-22657 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12-140, Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may retrieve the rule and comments online through the Federal Document Management System (FDMS) at: <http://www.regulations.gov>. Enter docket number 22657 in the search field. The FDMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may also reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's Web page at: <http://www.gpoaccess.gov/fr/index.html>.

FOR FURTHER INFORMATION CONTACT:

Crystal Frederick, Ombudsman for Charter Services, Federal Transit Administration, 1200 New Jersey Ave., SE., Room E54-410, Washington, DC 20590, (202) 366-4063 or ombudsman.charterservice@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

The Federal Transit Administration (FTA), on January 14, 2008, issued a final rule amending 49 CFR part 604 (73 FR 2326), which governs the provision of charter service by recipients of Federal funds from FTA. FTA utilized negotiated rulemaking procedures to issue the new rule based on direction contained in the Joint Explanatory Statement of the Committee of Conference for section 3023(d), "Condition on Charter Bus Transportation Service" of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2005 (SAFETEA-LU). The final rule became effective on April 30, 2008, and clarified existing requirements; set out a new definition of "charter service"; allowed for electronic registration of private charter providers, which replaced the old "willing and able" process; included a new provision

allowing private charter operators to request a cease and desist order; and established more detailed complaint, hearing, and appeal procedures. On February 14, 2008, FTA received four petitions for reconsideration for certain provisions contained in the final rule.

Issues Presented in the Petitions for Reconsideration

Each of the following organizations filed a petition with FTA for reconsideration of the final rule: Coach USA, Inc., American Bus Association, Inc. (ABA), Private Sector Participants of Charter Bus Negotiated Rulemaking Advisory Committee ("the Coalition") (which includes the ABA, California Bus Association, Coach America, Coach USA, National School Transportation Association, Northwest Motorcoach Association, Taxicab, Limousine and Paratransit Association, Trailways, and United Motorcoach Association), and Adirondack Trailways (including Pine Hill Trailways and New York Trailways).

Each petition for reconsideration focused primarily on the final rule's exemption for private charter operators. The final rule states:

(c) The requirements of this part shall not apply to private charter operators that receive, directly or indirectly, Federal financial assistance under section 3038 of the Transportation Equity Act for the 21st Century, as amended, or to the non-FTA funded activities of private charter operators that receive, directly or indirectly, FTA financial assistance under any of the following programs: 49 U.S.C. 5307, 49 U.S.C. 5309, 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, or 49 U.S.C. 5317.

49 CFR 604.2(c)

Coach USA asserts that "while purporting to 'clarify' the rule, FTA introduced into its final rule at section 604.2(c) the undefined limitation that the rules would not apply to 'non-FTA funded activities of private charter operators that receive, directly or indirectly, FTA financial assistance' under a variety of specified Federal programs. By virtue of the addition of

these new regulatory terms, a private charter operator must now determine what is, and what is not, an 'FTA funded activity.' Under the proposed rule, by contrast, no such determination was required." Coach USA encourages FTA to return to the notice of proposed rulemaking (NPRM) language for this exemption. The ABA expressed similar concerns in its petition and noted that the answers provided in Appendix C "are themselves unclear, in conflict, and do not cover every possible funding scenario." Further, ABA also urged FTA to return to the NPRM language except "where a private operator has acquired a vehicle with 80% or more Federal funding * * * that federally-funded vehicle may not be used to provide charter bus service unless one of the exceptions applies." ABA also states that FTA did not properly support the change in the exemption from the NPRM to the final rule.

Adirondack Trailways expressed strong support for ABA's position on this issue and noted that "the charter regulations can be interpreted in a way that would prevent a private operator who performs commuter work Monday through Friday from operating a charter on Saturday or Sunday." The Coalition did not address this particular issue, but raised several other issues.

The Coalition raised concerns about the final rule's provisions regarding the expansion of the emergency exemption from three days to forty-five days; the expansion of the hardship exception to small urbanized areas; comments on Petitions to the Administrator; exclusion of university shuttle bus service; and the remedy matrix in Appendix D.

1. Emergency Exemption

The final rule allows a public transit agency to provide charter service in emergency situations for forty-five days after which the transit agency is required to comply with 49 CFR Part 601 Subpart D—FTA's Emergency Relief docket. The Coalition believes this change in the final rule (the NPRM proposed to allow transit agencies to provide emergency service for three days) is unnecessary because "it is extremely rare that emergency conditions requiring transit bus charter service will last for one and one-half months."

2. Expansion of Hardship Exception

Regarding the expansion of the hardship exception to small urban areas, the final rule allows small urban areas under 200,000 in population to petition the Administrator for an exception if a private carrier's deadhead time exceeds

total trip time. The Coalition opposes this expansion because "there is still no evidence in the record other than anecdotes that this exception is necessary * * * and this exception should be withdrawn from the rule or at least limited to rural areas only."

3. Petitions to the Administrator

The Coalition also expressed concern regarding the final rule's requirements for Petitions to the Administrator. The final rule allows a transit agency to petition the Administrator for an exception to the charter regulation for events of regional or national significance, hardship, or discretion. The Coalition noted that "there is no provision for the petition itself to be noticed in the docket, and no opportunity for private operators to comment on the representations and certification made by the recipient in the petition." The Coalition requests that such petitions be published in the docket and interested parties be given the opportunity to comment on the requested exceptions before the Administrator issues a decision.

4. University Shuttle Service

Regarding university shuttle service, the final rule contains an appendix with a number of questions and answers. Question 26 in the appendix asks whether university shuttle service is charter service. The answer to question 26 states that regularly scheduled university service does not meet the definition of charter service even though it is service provided at the request of a third party, for an exclusive group, and for a negotiated price. The Coalition expressed concerns about the answer to question 26 because "transit agencies may view this guidance as a license to enter service contracts with universities to provide campus service paid for by the university as long as the transit agency publishes the schedule, calls it a fixed route and allows the occasional member of the public to ride—even though it is really the university directing the terms of the service." Thus, the Coalition asks for question 26 to be stricken from the appendices, or, in the alternative, for FTA to provide a counter-example of when university shuttle service would be considered charter service.

Coach USA also commented on question 26 and asserted that "the line between legitimate transit service and charter service is crossed when the transit agency enters a contract with the university or college that provides for a subsidy and, as is typical, also specifies key terms of the service (e.g., fares, bus stop locations, schedules based on

academic calendar, times of the day served, special or no fares for members of the university community, etc.) and specifies routes that are tailored to meet unique university requirements, such as on-campus shuttle routes or shuttles between a campus and nearby stores or other off-campus facilities frequented by students.

5. Remedy Matrix in Appendix D

Finally, the Coalition also raised concerns about the inclusion of Appendix D, which was a matrix of potential remedies that may be imposed for a violation of the new charter service regulation. According to the Coalition, the figures contained in Appendix D are "undecipherable" and it requests that the appendix be stricken from the final rule.

Response to Petitions for Reconsideration

1. Private Charter Exemption

The Coalition raised concerns about FTA adding language to the private charter operator exemption and asserted that FTA's changes are not supported by the record. In the docket for this rulemaking are several comments asking for clarification of the private charter exemption. Some comments confused the many private not-for-profit agencies that provide public transit service in rural areas with the private charter operators. Other comments complained that FTA was treating recipients of Federal funds differently. In the final rule preamble, FTA responded by stating: "FTA's Over-the-Road Bus Program is specifically designed to provide Federal assistance to private charter operators so that they can retrofit their vehicles to make them accessible and comply with the Americans with Disabilities Act. This is a federally sanctioned activity, and, thus, to apply the charter regulations would run counter to this Federal program. The same argument also holds true for those private charter operators that receive Federal funds under 49 U.S.C. section 5311(f), which provides a limited amount of Federal support for running routes in rural areas." Still other comments raised concerns about transit agencies' ability to contract with private providers to provide public transportation. In response to these concerns, FTA noted in the final rule that "public transit agencies may enter into a contract with private charter operators to purchase transportation services using the private charter operator's vehicles. The fact that a private charter operator contracts with a public transit agency should not have

the unintended consequence of preventing the operator from using those vehicles, or other vehicles in its fleet, to provide charter service." FTA also noted in response to comments that "if a private charter operator provides fixed route public transportation using federally funded buses or vans under contract to a transit agency or other public entity such as a State Department of Transportation, the private charter operator stands in the shoes of the transit agency and is subject to the charter service regulations." But, FTA made sure to note that the "private charter operator, however, would not be prevented from using other vehicles in its private fleet to provide charter service."

Thus, while FTA understands the Coalition's concerns regarding the amended language in the final rule, FTA's changes in the final rule are well-supported by the record. Even so, since the ABA and Coach USA focus on questions nine and ten in Appendix C, FTA will revise those questions to better reflect FTA's intent with respect to the private charter exemption contained in 49 CFR 604.2. To be clear, the charter rules do not apply to private charter operators when providing charter services using private charter vehicles not under contract with a public transit agency. The charter regulations apply to private charter providers when providing public transportation services under contract with a transit agency receiving Federal funds whether using privately owned vehicles or federally funded vehicles. This means a private charter operator, when providing public transportation in accordance with the terms of its contract with a public transit agency, must abide by the charter regulations for those vehicles engaged in public transportation services. For example, XYZ Charter Company contracts with ABC transit agency to provide fixed route service from 7 a.m. to 6:30 p.m. Monday through Friday. At 6:31 p.m. each night, XYZ Charter Company's privately owned vehicles are available for charter and such service is not subject to the charter regulations.

Moreover, if the Garden Club asks XYZ Charter Company to perform a charter on Thursday from 10 a.m. until 12 p.m., XYZ Charter Company would have to abide by the charter service regulations if it were to use the vehicles in its fleet assigned to the provision of transit service because the event occurs during the period the private charter operator has contracted with the transit agency to provide public transportation whether the service is provided by privately owned vehicles or federally funded vehicles. XYZ Charter Company

could, however, provide charter service to the Garden Club using other privately owned vehicles in its fleet that were not required to be used under the transit contract.

Another example involves service provided under a turn-key contract, where the private operator provides and operates a dedicated transit fleet. For the transit part of its business, the private operator is in effect the transit operator, and is subject to the charter rule for the vehicles in that transit fleet. The charter rule would not apply, however, to other aspects of that private provider's business. FTA also recognizes that a private operator may use vehicles in its fleet interchangeably. So long as the operator is providing the number, type, and quality of vehicles contractually required to be provided exclusively for transit use, and is not using FTA funds to cross-subsidize private charter service, the private operator may manage its fleet according to best business practices. Stated differently, the charter rule is only applicable to the actual transit service provided by the private operator. As stated in 49 CFR 605.2(c), the rule does not apply to the non-FTA funded activities of private charter operators. The intent of this provision was to isolate the impacts of the charter rule on private operators to those instances where they stood in the shoes of a transit agency.

Related to the above issue is the issue of receipt of Federal funds used to offset the costs of preventive maintenance. The use of Federal funds to offset preventive maintenance costs does not trigger application of the charter rule. Recipients of non-urbanized area formula program (49 U.S.C. 5311(f)) funds are constrained by the charter rule only when providing public transportation. Non-FTA funded vehicles that are maintained in FTA funded facilities also do not become subject to the charter regulations. Similarly, incidental use of FTA funded facilities such as stops or terminals or joint information systems, during charter, tour, or intercity operations, does not mean the charter regulations apply to the equipment in the private operator's fleet.

Finally, when a private operator receives FTA funds through the capital cost of contracting, the only expenses attributed to FTA are those related to the transit service provided. The principle of the capital cost of contracting is to pay for the capital portion of the privately owned assets used in public transportation (including a share of preventive maintenance costs attributable to the use of the vehicle in

the contracted transit service). When a private operator uses that same privately owned vehicle in non-FTA funded service, such as charter service, the preventive maintenance and capital depreciation are not paid by FTA, so the charter rule does not apply.

Accordingly, the Coalition's request to revert to the language of the NPRM is denied, but FTA will provide further clarification to the questions and answers on this topic in Appendix C.

2. Expansion of the Emergency Exemption From 3 to 45 Days

The expansion of the emergency exemption from three to 45 days is described by the Coalition as "unnecessarily generous" and "could allow agencies to avoid reporting requirements." The Coalition requests that FTA return to the three day time period proposed in the NPRM. This request for reconsideration fails to comply with the provisions of 49 CFR 601.34 because it fails to state "why compliance with the final rule is not practicable, is unreasonable, or is not in the public interest." Even so, to support its claim, the Coalition asserts that "there is nothing in the record supporting a 45-day exemption from the normal reporting requirement."

The record for these proceedings includes not only the final rule and its preamble, but also all of the comments. In the final rule FTA specifically noted that "considering the concerns raised, we have decided to amend this section to allow for transit agencies to respond to emergencies * * * but it is necessary to provide a time limitation, and so, we are changing the three day limit to 45 days." The time change directly responds to the comments FTA received indicating concern that three days was not sufficient time to allow for transit agencies to respond to emergencies. Specifically, several comments noted that the response to Hurricanes Katrina and Rita took much longer than three days. Thus, FTA chose a 45-day limit because it would allow transit agencies to focus on providing the needed support during emergencies without having to report back to FTA in a short time frame. Accordingly, the coalition's request to return to the three day period proposed in the NPRM is denied.

3. Expansion of Hardship Exception to Small Urbanized Areas

With respect to FTA's expansion of the hardship exception to small urbanized areas, the Coalition asserts there is "still no evidence in the record other than anecdotes that this [hardship] exception is necessary" and asks that "the exception be withdrawn from the

final rule or at least limited to rural areas only.” This request for reconsideration fails to comply with the provisions of 49 CFR 601.34 because it fails to state “why compliance with the final rule is not practicable, is unreasonable, or is not in the public interest.” Even so, while the Coalition does not see a need for this exception, FTA was convinced by the comments received that rural providers have limited options and there may be instances when a transit agency will need to step in to fulfill community needs. Based on the comments received, FTA also determined that the exception could be safely expanded to areas fewer than 200,000 in population because those areas also tend to have fewer private charter choices.

Further, the Coalition incorrectly states the exception. In the final rule, FTA removed the minimum trip duration requirement. Now, the only way to qualify for a hardship exception is for the deadhead time to exceed total trip time. This change was made as an acknowledgement that many companies impose minimum trip durations as a sound business practice and allowing transit agencies to provide requested charter service simply because a private provider imposes minimum trip durations could work a disservice upon small, rural private providers. Accordingly, the Coalition’s request to remove the hardship exception is denied.

4. Comments on Petitions to the Administrator

The Coalition states in its petition that “there is no provision for the petition itself to be noticed in the docket, and no opportunity for private operators to comment on the representations and certifications made by the recipient in the petition * * *.” The Coalition requests that FTA formally establish a comment period for Petitions to the Administrator. This request for reconsideration fails to comply with the provisions of 49 CFR Section 601.34 because it fails to state “why compliance with the final rule is not practicable, is unreasonable, or is not in the public interest.” Even so, the preamble to the final rule specifically states “in response to the private charter operators’ comments, we note the establishment of a ‘Petitions to the Administrator’ docket. Private charter operators are able to view requests through this web site. * * *” Further, FTA routinely posts these petitions in the docket (FTA–2007–0022) at <http://www.regulations.gov>, which allows registered charter providers to comment on the petition.

FTA also noted in the preamble to the final rule that if a registered charter operator believes that a petition egregiously misstates facts, he or she may bring that to the attention of the ombudsman for charter service. While the final rule does not formally set a comment period for Petitions to the Administrator, there is a mechanism in place for registered charter providers to review petitions submitted to FTA and bring concerns to the agency’s attention. Accordingly, the Coalition’s request for a formal comment period for Petitions to the Administrator is denied.

5. Exclusion of Regular University Shuttle Bus Service

The questions and answers provided in Appendix C to the final rule state that regular shuttle service subsidized by a university is not charter. The Coalition argues that “much shuttle service provided by a transit agency to a university, where the university determines the routes, the schedule is adjusted according to the university’s calendar, and the university pays the fares for all of the students, faculty and staff riding the service (and charges the students a transportation or activity fee) could be considered charter service.” The Coalition requests that the question and answer pertaining to university service be removed or revised. This request for reconsideration fails to comply with the provisions of 49 CFR 601.34 because it fails to state “why compliance with the final rule is not practicable, is unreasonable, or is not in the public interest.” Even so, when drafting the final rule FTA was very cognizant of the Coalitions’ concerns regarding shuttle service to universities. FTA determined that regular shuttle service, even service that is designed to meet the needs of students during the week, is not charter because the service is provided on a regular and continuing basis as part of the transit system.

That being said, FTA recognizes that the question and answer regarding university shuttle service could be read to mean that all shuttle service to universities is not charter, which is not true. Shuttle service to events or functions of a limited duration or that occur on an irregular basis and that is subsidized by the university is charter. Further, on-campus shuttle routes provided for the exclusive use of students and faculty and not connected to a transit system’s routes could also be charter. Thus, FTA will revise the question and answer regarding university shuttle service to make clear that certain service to a university could be charter.

6. Remedy Matrix in Appendix D

The Coalition noted in its petition that the “figures in Appendix D matrix are not explained and are undecipherable.” The Coalition urges FTA to remove Appendix D altogether. This request for reconsideration fails to comply with the provisions of 49 CFR 601.34 because it fails to state “why compliance with the final rule is not practicable, is unreasonable, or is not in the public interest.” Even so, in printing the final rule, the **Federal Register** changed the original “matrix” to a table. By this notice, FTA corrects Appendix D to reflect a matrix of potential remedies for a violation of the charter service regulations.

7. Revision to Appendix B

This notice also provides additional guidance to affected parties regarding what FTA may consider when determining whether a party has acted in “bad faith.” Currently, Appendix B defines bad faith as “actual or constructive fraud or a design to mislead or deceive another or a neglect or refusal to fulfill a duty or contractual obligation.” In addition, to this definition, FTA will also consider the time it takes for a registered charter provider to contact a customer or provide a customer with a reasonable quote. It is not reasonable for a registered charter provider to wait to contact the customer until the event is only a few weeks away. It is also not reasonable for a registered charter provider to delay providing a customer with a reasonable price quote for the requested charter service. Thus, it is FTA’s intention to review situations in which the registered charter provider delays either contacting the customer or providing a reasonable price quote to the customer.

Additionally, since the rule’s effective date, some registered charter providers have provided quotes that include several hours of deadhead time for a two or three hour around-the-town charter trip. Such a quote is not reasonable given the fact that the customer should not have to pay for inordinate hours of deadhead time in order to receive service. Further, such actions seem unreasonable if the transit agency is able to provide the trip because there are no local private charter operators interested in providing the trip.

8. Revision to Appendix C

In response to the many questions FTA received regarding its final rule, we have revised Appendix C to provide additional guidance regarding issues that seem most important to affected

parties. Thus, FTA added several new questions and answers and revised some of the old questions and answers to add more clarity to certain issues. The new Appendix C incorporates, as appropriate, and replaces the old Appendix C.

9. Authority Citation Correction

In the final rule published January 14, 2008, the authority citation for part 604 was inadvertently omitted from the text of the regulation. This notice corrects that omission.

List of Subjects in 49 CFR Part 604

Charter service.

■ Accordingly, 49 CFR part 604 is amended as follows:

■ 1. Add the following authority citation for part 604 to read as follows:

Authority: 49 U.S.C. 5323(d); 3023(d), Pub. L. 109–59; 49 CFR 1.51.

■ 2. Revise Appendix B to part 604 to read as follows:

Appendix B to Part 604—Reasons for Removal

The following is guidance on the terms contained in section 604.26(d) concerning reasons for which FTA may remove a registered charter provider or a qualified human service organization from the FTA charter registration Web site.

What is bad faith?

Bad faith is the actual or constructive fraud or a design to mislead or deceive another or a neglect or refusal to fulfill a duty or contractual obligation. It is not an honest mistake. Black's Law Dictionary, Revised Fourth Edition, West Publishing Company, St. Paul, Minn., 1968.

For example, it would be bad faith for a registered charter provider to respond to a recipient's notification to registered charter providers of a charter service opportunity stating that it would provide the service with no actual intent to perform the charter service. It would also be bad faith if the registered charter provider fails to contact the customer or provide a quote for charter service within a reasonable time. Typically, if a registered charter provider fails to contact a customer or fails to provide a price quote to the customer at least 14 business days before an event, then FTA may remove the registered charter provider from the registration Web site, which would allow a transit agency to step back in to provide the service because the registered charter provider's response to the email would no longer be effective because it is not registered.

Further, it would be bad faith for a registered charter provider to submit a quote for charter services knowing that the price is three to four times higher because of the distance the registered charter provider must travel (deadhead time). In those situations, FTA may interpret such quotes as bad faith because they appear to be designed to

prevent the local transit agency from providing the service.

On the other hand, FTA would not interpret an honest mistake of fact as bad faith. For example, if a registered charter provider fails to provide charter service in response to a recipient's notification when it honestly mistook the date, place or time the service was to be provided. It would not be bad faith if the registered charter provider responded affirmatively to the email notification sent by the public transit agency, but then later learned it could not perform the service and provided the transit agency reasonable notice of its changed circumstances.

What is fraud?

Fraud is the suggestion or assertion of a fact that is not true, by one who has no reasonable ground for believing it to be true; the suppression of a fact by one who is bound to disclose it; one who gives information of other facts which are likely to mislead; or a promise made without any intention of performing it. Black's Law Dictionary, Revised Fourth Edition, West Publishing Company, St. Paul, Minn., 1968.

Examples of fraud include but are not limited to: (1) A registered charter provider indicates that it has a current state or Federal safety certification when it knows that it does not in fact have one; (2) a broker that owns no charter vehicles registers as a registered charter provider; or (3) a qualified human service organization represents that it serves the needs of the elderly, persons with disabilities, or lower-income individuals, but, in fact, only serves those populations tangentially.

What is a lapse of insurance?

A lapse of insurance occurs when there is no policy of insurance in place. This may occur when there has been default in payment of premiums on an insurance policy and the policy is no longer in force. In addition, no other policy of insurance has taken its place. Black's Law Dictionary, Revised Fourth Edition, West Publishing Company, St. Paul, Minn., 1968.

What is a lapse of other documentation?

A lapse of other documentation means for example, but is not limited to, failure to have or loss or revocation of business license, operating authority, failure to notify of current company name, address, phone number, email address and facsimile number, failure to have a current state or Federal safety certification, or failure to provide accurate Federal or state motor carrier identifying number. Black's Law Dictionary, Revised Fourth Edition, West Publishing Company, St. Paul, Minn., 1968.

What is a complaint that does not state a claim that warrants an investigation or further action by FTA?

A complaint is a document describing a specific instance that allegedly constitutes a violation of the charter service regulations set forth in 49 CFR 604.28. More than one complaint may be contained in the same document. A complaint does not state a claim that warrants investigation when the allegations made in the complaint, without

considering any extraneous material or matter, do not raise a genuine issue as to any material question of fact, and based on the undisputed facts stated in the complaint, there is no violation of the charter service statute or regulation as a matter of law. Based on Federal Rules of Civil Procedure, Rule 56(c).

Examples of complaints that would not warrant an investigation or further action by FTA include but are not limited to: (1) A complaint against a public transit agency that does not receive FTA funding; (2) a complaint brought against a public transit agency by a private charter operator that is neither a registered charter provider nor its duly authorized representative; (3) a complaint that gives no information as to when or where the alleged prohibited charter service took place; or (4) a complaint filed solely for the purpose of harassing the public transit agency.

■ 3. Revise Appendix C to part 604 to read as follows:

Appendix C to Part 604—Frequently Asked Questions

(a) Applicability (49 CFR Section 604.2)

(1) Q: If the requirements of the charter rule are not applicable to me for a particular service I provide, do I have to report that service in my quarterly report?

A: No. If the service you propose to provide meets one of the exemptions contained in this section, you do not have to report the service in your quarterly report.

(2) Q: If I receive funds under 49 U.S.C. Sections 5310, 5311, 5316, or 5317, may I provide charter service for any purpose?

A: No. You may only provide charter service for "program purposes," which is defined in this regulation as "transportation that serves the needs of either human service agencies or targeted populations (elderly, individuals with disabilities, and/or low income individuals) * * * 49 CFR Section 604.2(e). Thus, your service only qualifies for the exemption contained in this section if the service is designed to serve the needs of targeted populations. Charter service provided to a group, however, that includes individuals who are only incidentally members of those targeted populations, is not "for program purposes" and must meet the requirements of the rule (for example, an individual chartering a vehicle to take his relatives including elderly aunts and a cousin who is a disabled veteran to a family reunion).

(3) Q: If I am providing service for program purposes under one of the FTA programs listed in 604.2(e), do the human service organizations have to register on the FTA Charter Registration Web site?

A: No. Because the service is exempt from the charter regulations, the organization does not have to register on the FTA Charter Registration Web site.

(4) Q: What if there is an emergency such as an apartment fire or tanker truck spill that requires an immediate evacuation, but the President, Governor, or Mayor never declares it as an emergency? Can a transit agency still assist in the evacuation efforts?

A: Yes. One part of the emergency exemption is designed to allow transit

agencies to participate in emergency situations without worrying about complying with the charter regulations. Since transit agencies are often uniquely positioned to respond to such emergencies, the charter regulations do not apply. This is true whether or not the emergency is officially declared.

(5) Q: Do emergency situations involve requests from the Secret Service or the police department to transport its employees?

A: Generally no. Transporting the Secret Service or police officers for non-emergency preparedness or planning exercises does not qualify for the exemption under this section. In addition, if the Secret Service or the police department requests that a transit agency provide service when there is no immediate emergency, then the transit agency must comply with the charter service regulations.

(6) Q: Can a transit agency provide transportation to transit employees for an event such as the funeral of a transit employee or the transit agency's annual picnic?

A: Yes. These events do not fall within the definition of charter, because while the service is exclusive, it is not provided at the request of a third party and it is not at a negotiated price. Furthermore, a transit agency transporting its own employees to events sponsored by the transit agency for employee morale purposes or to events directly related to internal employee relations such as a funeral of an employee, or to the transit agency's picnic, is paying for these services as part of the transit agency's own administrative overhead.

(7) Q: Is sightseeing service considered to be charter?

A: "Sightseeing" is a different type of service than charter service. "Sightseeing" service is regularly scheduled round trip service to see the sights, which is often accompanied by a narrative guide and is open to the public for a set price. Public transit agencies may not provide sightseeing service with federally funded assets or assistance because it falls outside the definition of "public transportation" under 49 U.S.C. Section 5302(a) (10), unless FTA provides written concurrence for that service as an approved incidental use. While, in general, "sightseeing" service does not constitute charter service, "sightseeing" service that also meets the definition of charter service would be prohibited, even as an incidental use.

(8) Q: If a private provider receives Federal funds from one of the listed programs in this section, does that mean the private provider cannot use its privately owned equipment to provide charter service?

A: No. A private provider may still provide charter services even though it receives Federal funds under one of the programs listed in this section. The charter regulations only apply to a private provider during the time period when it is providing public transportation services under contract with a public transit agency.

(9) Q: What does FTA mean by the phrase "non-FTA funded activities"?

A: Non-FTA funded activities are those activities that are not provided under contract or other arrangement with a public transit agency using FTA funds.

(10) Q: How does a private provider know whether an activity is FTA-funded or not?

A: The private provider should refer to the contract with the public transit agency to understand the services that are funded with Federal dollars.

(11) Q: What if the service is being provided under a capital cost of contracting scenario?

A: When a private operator receives FTA funds through capital cost of contracting, the only expenses attributed to FTA are those related to the transit service provided. The principle of capital cost of contracting is to pay for the capital portion of the privately owned assets used in public transportation (including a share of preventive maintenance costs attributable to the use of the vehicle in the contracted transit service). When a private operator uses that same privately owned vehicle in non-FTA funded service, such as charter service, the preventive maintenance and capital depreciation are not paid by FTA, so the charter rule does not apply.

(12) Q: What if the service is provided under a turn-key scenario?

A: To the extent the private charter provider is standing in the shoes of the public transit agency, the charter rules apply. Under a turn-key contract, where the private operator provides and operates a dedicated transit fleet, then the private provider must abide by the charter regulations for the transit part of its business. The charter rule would not apply, however, to other aspects of that private provider's business. FTA also recognizes that a private operator may use vehicles in its fleet interchangeably. So long as the operator is providing the number, type, and quality of vehicles contractually required to be provided exclusively for transit use and is not using FTA funds to cross-subsidize private charter service, the private operator may manage its fleet according to best business practice.

(13) Q: Does FTA's rule prohibit a private provider from providing charter service when its privately owned vehicles are not engaged in providing public transportation?

A: No. The charter rule is only applicable to the actual public transit service provided by the private operator. As stated in 49 CFR 604.2(c), the rule does not apply to the non-FTA funded activities of private charter operators. The intent of this provision was to isolate the impacts of the charter rule on private operators to those instances where they stood in the shoes of a transit agency.

(14) Q: May a private provider use vehicles whose acquisition was federally funded to provide private charter services?

A: It depends. A private provider, who is a sub-recipient or sub-grantee, when not engaged in providing public transit using federally funded vehicles, may provide charter services using federally funded vehicles only in conformance with the charter regulations. Vehicles, whose only federal funding was for accessibility equipment, are not considered to be federally funded vehicles in this context. In other words, vehicles, whose lifts are only funded under FTA programs, may be used in charter service.

(15) Q: May a public transit agency provide "seasonal service" (e.g., service May through September for the summer beach season)?

A: "Seasonal service" that is regular and continuing, available to the public, and controlled by the public transit agency meets the definition of public transportation and is not charter service. The service should have a regular schedule and be planned in the same manner as all the other routes, except that it is run only during the periods when there is sufficient demand to justify public transit service; for example, the winter ski season or summer beach season. "Seasonal service" is distinguishable from charter service provided for a special event or function that occurs on an irregular basis or for a limited duration, because the seasonal transit service is regular and continuing and the demand for service is not triggered by an event or function. In addition, "seasonal service" is generally more than a month or two, and the schedule is consistent from year to year, based on calendar or climate, rather than being scheduled around a specific event.

(b) Definitions (49 CFR Section 604.3)

(16) Q: The definition of charter service does not include demand response services, but what happens if a group of individuals request demand response service?

A: Demand response trips provide service from multiple origins to a single destination, a single origin to multiple destinations, or even multiple origins to multiple destinations. These types of trips are considered demand response transit service, not charter service, because even though a human service agency pays for the transportation of its clients, trips are scheduled and routed for the individuals in the group. Service to individuals can be identified by vehicle routing that includes multiple origins, multiple destinations, or both, based on the needs of individual members of the group, rather than the group as a whole. For example, demand response service that takes all of the members of a group home on an annual excursion to a baseball game. Some sponsored trips carried out as part of a Coordinated Human Services Transportation Plan, such as trips for Head Start, assisted living centers, or sheltered workshops may even be provided on an exclusive basis where clients of a particular agency cannot be mixed with members of the general public or clients of other agencies for safety or other reasons specific to the needs of the human service clients.

(17) Q: Is if charter if a demand response transit service carries a group of individuals with disabilities from a single origin to a single destination on a regular basis?

A: No. Daily subscription trips between a group living facility for persons with developmental disabilities to a sheltered workshop where the individuals work, or weekly trips from the group home to a recreation center is "special transportation" and not considered charter service. These trips are regular and continuous and do not meet the definition of charter.

(18) Q: If a third party requests charter service for the exclusive use of a bus or van, but the transit agency provides the service free of charge, is it charter?

A: No. The definition of charter service under 49 CFR Section 604.3(c) (1), requires a negotiated price, which implies an exchange of money. Thus, free service does not meet the negotiated price requirement. Transit agencies should note, however, that a negotiated price could be the regular fixed route fare or when a third party indirectly pays for the regular fare.

(19) Q: If a transit agency accepts a subsidy for providing shuttle service for an entire baseball season, is that charter?

A: Yes. Even though there are many baseball games over several months, the service is still to an event or function on an irregular basis or for a limited duration for which a third party pays in whole or in part. In order to provide the service, a transit agency must first provide notice to registered charter providers.

(20) Q: If a transit agency contracts with a third party to provide free shuttle service during football games for persons with disabilities, is that charter?

A: Yes. Even though the service is for persons with disabilities, the transit agency receives payment from a third party for an event or function that occurs on an irregular basis or for a limited duration. In order for a transit agency to provide the service, it must provide notice to the list of registered charter providers first.

(21) Q: What if a business park pays the transit agency to add an additional stop on its fixed route to include the business park, is that charter?

A: No. The service is not to an event or function and it does not occur on an irregular basis or for a limited duration.

(22) Q: What if a university pays the transit agency to expand its regular fixed route to include stops on the campus, is that charter?

A: No. The service is not to an event or function and it does not occur on an irregular basis or for a limited duration.

(23) Q: What if a university pays the transit agency to provide shuttle service that does not connect to the transit agency's regular routes, is that charter?

A: Yes. The service is provided at the request of a third party, the university, for the exclusive use of a bus or van by the university students and faculty for a negotiated price.

(24) Q: What if the university pays the transit agency to provide shuttle service to football games and graduation, is that charter?

A: Yes. The service is to an event or function that occurs on an irregular basis or for a limited duration. As such, in order to provide the service, a transit agency must provide notice to the list of registered charter providers.

(25) Q: What happens if a transit agency does not have fixed route service to determine whether the fare charged is a premium fare?

A: A transit agency should compare the proposed fare to what it might charge for a similar trip under a demand response scenario.

(26) Q: How can a transit agency tell if the fare is "premium"?

A: The transit agency should analyze its regular fares to determine whether the fare

charged is higher than its regular fare for comparable services. For example, if the transit agency proposes to provide an express shuttle service to football games, it should look at the regular fares charged for express shuttles of similar distance elsewhere in the transit system. In addition, the service may be charter if the transit agency charges a lower fare or no fare because of a third party subsidy.

(27) Q: What if a transit agency charges a customer an up front special event fare that includes the outbound and inbound trips, is that a premium fare?

A: It depends. If the transit agency charges the outbound and inbound fares up front, but many customers don't travel both directions, then the fare may be premium. This would not be true generally for park and ride lots, where the customer parks his or her car, and would most likely use transit to return to the same lot. Under that scenario, the transit agency may collect the regular outbound and inbound fare up front.

(28) Q: What if a transit agency wishes to create a special pass for an event or function on an irregular basis or for a limited duration that allows a customer to ride the transit system several times for the duration of the event, is that charter?

A: It depends. If the special pass costs more than the fare for a reasonable number of expected individual trips during the event, then the special pass represents a premium fare. FTA will also consider whether a third party provides a subsidy for the service.

(29) Q: Is it a third party subsidy if a third party collects the regular fixed route fare for the transit agency?

A: Generally no. If the service provided is not at the request of a third party for the exclusive use of a bus or van, then a third party collecting the fare would not qualify the service as charter. But, a transit agency has to consider carefully whether the service is at the request of an event planner. For example, a group offers to make "passes" for its organization and then later work out the payment to the transit agency. The transit agency can only collect the regular fare for each passenger.

(30) Q: If the transit agency is part of the local government and an agency within the local government pays for service to an event or function of limited duration or that occurs on an irregular basis, is that charter?

A: Yes. Since the agency pays for the charter service, whether by direct payment or transfer of funds through internal local government accounts, it represents a third party payment for charter service. Thus, the service would meet the definition of charter service under 49 CFR Section 604.3(c) (1).

(31) Q: What if an organization requests and pays for service through an in-kind payment such as paying for a new bus shelter or providing advertising, is that charter?

A: Yes. The service is provided at the request of a third party for a negotiated price, which would be the cost of a new bus shelter or advertising. The key here is the direct payment for service to an event or function. For instance, advertising that appears on buses for regular service does not make it charter.

(32) Q: Under the definition of "Government Officials," does the

government official have to currently hold an office in government?

A: Yes. In order to take advantage of the Government Official exception, the individual must hold currently a government position that is elected or appointed through a political process.

(33) Q: Does a university qualify as a QHSO?

A: No. Most universities do not have a mission of serving the needs of the elderly, persons with disabilities, or low income individuals.

(34) Q: Do the Boy Scouts of America qualify as a QHSO?

A: No. The Boy Scouts of America's mission is not to serve the needs of the elderly, persons with disabilities, or low income individuals.

(35) Q: What qualifies as indirect financial assistance?

A: The inclusion of "indirect" financial assistance as part of the definition of "recipient" covers "subrecipients." In other words, "subrecipients" are subject to the charter regulation. FTA modified the definition of recipient in the final rule to clarify this point.

(c) Exceptions (49 CFR Subpart B)

(36) Q: In order to take advantage of the Government Officials exception, does a transit agency have to transport only elected or appointed government officials?

A: No, but there has to be at least one elected or appointed government official on the trip.

(37) Q: If a transit agency provides notice regarding a season's worth of service and some of the service will occur in less than 30 days, does a registered charter provider have to respond within 72 hours or 14 days?

A: A transit agency should provide as much notice as possible for service that occurs over several months. Thus, a transit agency should provide notice to registered charter providers more than 30 days in advance of the service, which would give registered charter provider 14 days to respond to the notice. Under pressure to begin the service sooner, the transit agency could provide a separate notice for only that portion of the service occurring in less than 30 days.

(38) Q: Does a transit agency have to contact registered charter providers in order to petition the Administrator for an event of regional or national significance?

A: Yes. A petition for an event of regional or national significance must demonstrate that not only has the public transit agency contacted registered charter providers, but also demonstrate how the transit agency will include registered charter providers in providing the service to the event of regional or national significance.

(39) Q: Where does a transit agency have to file its petition?

A: A transit agency must file the petition with the ombudsman at ombudsman.charterservice@dot.gov. FTA will file all petitions in the Petitions to the Administrator docket (FTA-2007-0022) at <http://www.regulations.gov>.

(40) Q: What qualifies as a unique and time sensitive event?

A: In order to petition the Administrator for a discretionary exception, a public transit agency must demonstrate that the event is unique or that circumstances are such that there is not enough time to check with registered charter providers. Events that occur on an annual basis are generally not considered unique or time sensitive.

(41) Q: Is there any particular format for quarterly reports for exceptions?

A: No. The report must contain the information required by the regulations and clearly identify the exception under which the transit agency performed the service.

(42) Q: May a transit agency lease its vehicles to one registered charter provider if there is another registered charter provider that can perform all of the requested service with private charter vehicles?

A: No. A transit agency may not lease its vehicles to one registered charter provider when there is another registered charter provider that can perform all of the requested service. In that case, the transit vehicles would enable the first registered charter provider to charge less for the service than the second registered charter provider that uses all private charter vehicles.

(43) Q: Where do I submit my reports?

A: FTA has adapted its electronic grants making system, TEAM, to include charter rule reporting. Grantees should file the required reports through TEAM. These reports will be available to the public through FTA's charter bus service Web page at: <http://ftateamweb.fta.dot.gov/Teamweb/CharterRegistration/QueryCharterReport.aspx>. State Departments of Transportation are responsible for filing charter reports on behalf of its subrecipients that do not have access to TEAM.

(d) Registration and Notification (49 CFR Subpart C)

(44) Q: May a private provider register to receive notice of charter service requests from all 50 States?

A: Yes. A private provider may register to receive notice from all 50 States; however, a private provider should only register for those states for which it can realistically originate service.

(45) Q: May a registered charter provider select which portions of the service it would like to provide?

A: No. A registered charter provider may not "cherry pick" the service described in the notice. In other words, if the e-mail notification describes service for an entire football season, then a registered charter provider that responds to the notice indicating it can provide only a couple of weekends of service would be non-responsive to the e-mail notice. Public transit agencies may, however, include several individual charter events in the e-mail notification. Under those circumstances, a registered charter provider may select from those individual events to provide service.

(46) Q: May a transit agency include information on "special requests" from the customer in the notice to registered charter providers?

A: No. A transit agency must strictly follow the requirements of 49 CFR Section 604.14, otherwise the notice is void. A transit agency

may, however, provide a generalized statement such as "Please do not respond to this notice if you are not interested or cannot perform the service in its entirety."

(47) Q: What happens if a transit agency sends out a notice regarding charter service, but later decides to perform the service free of charge and without a third party subsidy?

A: If a transit agency believes it may receive the authority to provide the service free of charge, with no third party subsidy, then it should send out a new e-mail notice stating that it intends to provide the service free of charge.

(48) Q: What happens if a registered charter provider initially indicates interest in providing the service described in a notice, but then later is unable to perform the service?

A: If the registered charter provider acts in good faith by providing reasonable notice to the transit agency of its changed circumstances, and that registered charter provider was the only one to respond to the notice, then the transit agency may step back in and provide the service.

(49) Q: What happens if a registered charter provider indicates interest in providing the service, but then does not contact the customer?

A: A transit agency may step back in and provide the service if the registered charter provider was the only one to respond affirmatively to the notice.

(50) Q: What happens if a registered charter provider indicates interest in providing the service, contacts the customer, and then fails to provide a price quote to the customer?

A: If the requested service is 14 days or less away, a transit agency may step back in and provide the service if the registered charter provider was the only one to respond affirmatively to the notice upon filing a complaint with FTA to remove the registered charter provider from the FTA Charter Registration Web site. If the complaint of "bad faith" negotiations is not sustained by FTA, the transit agency may face a penalty, as determined by FTA. If the requested service is more than 14 days away, and the transit agency desires to step back in, then upon filing a complaint alleging "bad faith" negotiations that is sustained by FTA, the transit agency may step back in.

(51) Q: What happens if a transit agency entered into a contract to perform charter service before the effective date of the final rule?

A: If the service described in the contract occurs after the effective date of the final rule, the service must be in conformance with the new charter regulation.

(52) Q: What if the service described in the notice requires the use of park and ride lots owned by the transit agency?

A: If the transit agency received Federal funds for those park and ride lots, then the transit agency should allow a registered charter provider to use those lots upon a showing of an acceptable incidental use (the transit agency retains satisfactory continuing control over the park and ride lot and the use does not interfere with the provision of public transportation) and if the registered charter provider signs an appropriate use and indemnification agreement.

(53) Q: What if the registered charter provider does not provide quality charter service to the customer?

A: If a registered charter provider does not provide service to the satisfaction of the customer, the customer may pursue a civil action against the registered charter provider in a court of law. If the registered charter provider also demonstrated bad faith or fraud, it can be removed from the FTA Charter Registration Web site.

(e) Complaint & Investigation Process

(54) Q: May a trade association or other operators that are unable to provide requested charter service have the right to file a complaint against the transit agency?

A: Yes. A registered charter operator or its duly authorized representative, which can include a trade association, may file a complaint under section 604.26(a). Under the new rule, a private charter operator that is not registered with FTA's charter registration Web site may not file a complaint.

(55) Q: Is there a time limit for making complaints?

A: Yes. Complaints must be filed within 90 days of the alleged unauthorized charter service.

(56) Q: Are there examples of the likely remedies FTA may impose for a violation of the charter service regulations?

A: Yes. Appendix D contains a matrix of likely remedies that FTA may impose for a violation of the charter service regulations.

(57) Q: When a complaint is filed, who is responsible for arbitration or litigation costs?

A: FTA will pay for the presiding official and the facility for the hearing, if necessary. Each party involved in the litigation is responsible for its own litigation costs.

(58) Q: What affirmative defenses might be available in the complaint process?

A: An affirmative defense to a complaint could state the applicability of one of the exceptions such as 49 CFR Section 604.6, which states that the service that was provided was within the allowable 80 hours of government official service.

(59) Q: What can a transit agency do if it believes that a registered charter provider is not bargaining in good faith with a customer?

A: If a transit agency believes that a registered charter provider is not bargaining in good faith with the customer, the transit agency may file a complaint to remove the registered charter provider from FTA's Charter Registration Web site.

(60) Q: Does a registered charter provider have to charge the same fare or rate as a public transit agency?

A: No. A registered charter provider is not under an obligation to charge the same fare or rate as public transit agency. A registered charter provider, however, must charge commercially reasonable rates.

(61) Q: What actions can a private charter operator take when it becomes aware of a transit agency's plan to engage in charter service just before the date of the charter?

A: As soon as a registered charter provider becomes aware of an upcoming charter event that it was not contacted about, then it should request an advisory opinion and cease and desist order. If the service has already occurred, then the registered charter provider may file a complaint.

(62) Q: When a registered charter provider indicates that there are no privately owned vehicles available for lease, must the public transit agency investigate independently whether the representation by the registered charter provider is accurate?

A: No. The public transit agency is not required to investigate independently whether the registered charter provider's representation is accurate unless there is reason to suspect that the registered charter provider is committing fraud. Rather, the public transit agency need only confirm that the number of vehicles owned by all registered charter providers in the geographic service area is consistent with the registered charter provider's representation.

(63) Q: How will FTA determine the remedy for a violation of the charter regulations?

A: Remedies will be based upon the facts of the situation, including but not limited to, the extent of deviation from the regulations and the economic benefit from providing the charter service. See section 604.47 and Appendix D for more details.

(64) Q: Can multiple violations in a single finding stemming from a single complaint constitute a pattern of violations?

A: Yes. A pattern of violations is defined as more than one finding of unauthorized charter service under this part by FTA beginning with the most recent finding of unauthorized charter service and looking back over a period not to exceed 72 months. While a single complaint may contain several allegations, the complaint must allege more than a single event that included unauthorized charter service in order to establish a pattern of violations.

(f) Miscellaneous

(65) Q: If a grantee operates assets that are locally funded are such assets subject to the charter regulations?

A: It depends. If a recipient receives FTA funds for operating assistance or stores its vehicles in a FTA-funded facility or receives indirect FTA assistance, then the charter regulations apply. The fact that the vehicle was locally funded does not make the recipient exempt from the charter regulations. If both operating and capital funds are locally supplied, then the vehicle is not subject to the charter service regulations.

(66) Q: What can a public transit agency do if there is a time sensitive event, such as a presidential inauguration, for which the transit agency does not have time to consult with all the private charter operators in its area?

A: 49 Section 604.11 provides a process to petition the FTA Administrator for permission to provide service for a unique and time sensitive event. A presidential inauguration, however, is not a good example of a unique and time sensitive event. A presidential inauguration is an event with substantial advance planning and a transit agency should have time to contact private operators. If the inauguration also includes ancillary events, the public transit agency should refer the customer to the registration list.

(67) Q: Are body-on-van-chassis vehicles classified as buses or vans under the charter regulation?

A: Body-on-van-chassis vehicles are treated as vans under the charter regulation.

(68) Q: When a new operator registers, may recipients continue under existing contractual agreements for charter service?

A: Yes. If the contract was signed before the new private operator registered, the arrangement can continue for up to 90 days. During that 90 day period, however, the public transit agency must enter into an agreement with the new registrant. If not, the transit agency must terminate the existing agreement for all registered charter providers.

(69) Q: Must a public transit agency continue to serve as the lead for events of regional or national significance, if after consultation with all registered charter providers, registered charter providers have enough vehicles to provide all of the service to the event?

A: No. If after consultation with registered charter providers, there is no need for the public transit vehicles, then the public transit agency may decline to serve as the lead and allow the registered charter providers to work directly with event organizers. Alternatively, the public transit entity may retain the lead and continue to coordinate with event organizers and registered charter providers.

(70) Q: What happens if a customer specifically requests a trolley from a transit agency and there are no registered charter providers that have a trolley?

A: FTA views trolleys as buses. Thus, all the privately owned buses must be engaged in service and unavailable before a transit agency may lease its trolley. Alternatively, the transit agency could enter into an agreement with all registered charter providers in its geographic service area to allow it to provide trolley charter services.

(71) Q: How does a transit agency enter into an agreement with all registered charter providers in its geographic service area?

A: A public transit agency should send an email notice to all registered charter providers of its intent to provide charter service. A registered charter provider must respond to the email notice either affirmatively or negatively. The transit agency should also indicate in the email notification that failure to respond to the email notice results in concurrence with the notification.

(72) Q: Can a registered charter provider rescind its affirmative response to an email notification?

A: Yes. If after further consideration or a change in circumstances for the registered charter provider, a registered charter provider may notify the customer and the transit agency that it is no longer interested in providing the requested charter service. At that point, the transit agency may make the decision to step back in to provide the service.

(73) Q: What happens after a registered charter provider submits a quote for charter services to a customer? Does the transit agency have to review the quote?

A: Once a registered charter provider responds affirmatively to an email notification and provides the customer a commercially reasonable quote, then the transit agency may not step back in to perform the service. A transit agency is not responsible for reviewing the quote submitted by a registered charter provider. FTA recommends that a registered charter provider include in the quote an expiration date for the offer.

■ 4. Revise Appendix D to part 604 to read as follows:

Appendix D to Part 604—Table of Potential Remedies

Remedy Assessment Matrix

EXTENT OF DEVIATION FROM REGULATORY REQUIREMENTS

	Major	Moderate	Minor
Economic Benefit:			
Major	\$25,000/violation to 20,000	\$19,999/violation to 15,000	\$14,999/violation to 11,000.
Moderate	\$10,999/violation to 8,000	\$7,999/violation to 5,000	\$4,999/violation to 3,000.
Minor	\$2,999/violation to 1,500	1,499/violation to 500	\$499/violation to 100.

FTA's Remedy Policy

— This remedy policy applies to decisions by the Chief Counsel, Presiding Officials, and final determinations by the Administrator.
 — Remedy calculation is based on the following elements:

- (1) The nature and circumstances of the violation;
- (2) The extent and gravity of the violation ("extent of deviation from regulatory requirements");
- (3) The revenue earned ("economic benefit") by providing the charter service;
- (4) The operating budget of the recipient;
- (5) Such other matters as justice may require; and

(6) Whether a recipient provided service described in a cease and desist order after issuance of such order by the Chief Counsel.

Issued this 24th day of July, 2008.

James S. Simpson,

Administrator.

[FR Doc. E8-17487 Filed 7-31-08; 8:45 am]

BILLING CODE 4910-57-P

	<h1>MEMORANDUM</h1>	E.P. Hayes Superintendent
	<h2>Dept. Public Works</h2>	Date: 07-22-15 Ref: PW 011-15
To:	Sharon Addison, City Manager	
Subject:	Citi-Bus Charter Bus Policy Federal Transit Administration Formal Policy Requirement	

Over the past several months staff has been actively engaged in preparing for the official FTA Triennial Review now scheduled for August 31, 2014. Mandated by Congress in 1982, the Triennial Review is one of the Federal Transit Administration's management tools for examining how recipients of Urbanized Area Formula Program funds meet statutory and administrative requirements concentrating on 17 specific areas. The purpose of this memorandum is review and addresses item 13: Charter Bus.

The Federal regulations allow the City of Watertown Citi-Bus to operate certain community based charter services excepted under regulation 49 CFR Part 604. While not required to participate in these services, should a request be received then a formal Charter Bus Policy would need to be in place prior to further consideration. An familiar example of such a request would be the annual Northern Choral Society's Christmas Service off-site parking lot bus shuttle request.

Attached for Council's consideration is the proposed formal City of Watertown's Citi-Bus Charter Policy establishing the protocol to respond to such requests in conformance to the federal regulations contained in 49 CFR Part 604. As you will note, we are not obligated to honor requests received and may deny a request based on staffing limitations and/or vehicle availability.

It is my recommendation that Council formally adopt the Charter Bus Policy so that we are in a position to respond to any such requests received that are in compliance with the Federal regulations

Should you have any questions concerning this recommendation please do not hesitate to contact me at your convenience.

cc: Matt Roy, Confidential Assistant to the City Manager
James Mills, City Comptroller
Amy Pastuf, City Purchasing Manager
Christine Cratsenberg, Transit Supervisor
DPW files: Citi-Bus Charter Bus Policy

7:30 p.m. – Public Hearing

August 13, 2015

To: The Honorable Mayor and City Council

From: Sharon Addison, City Manager

Subject: Palmer Street Acquisition Process

A Public Hearing has been scheduled for 7:30 p.m. on the Palmer Street acquisition process.

Attached is the material previously provided to the City Council at the July 20, 2015 meeting.

SLYE & BURROWS

MEMORANDUM

TO: Sharon Addison, City Manager
FROM: Robert J. Slye
DATE: July 13, 2015
RE: Palmer Street Extension

This memorandum is given in conjunction with Mr. Wood's memorandum outlining the acquisition process for Palmer Street. My purpose, here, is to recommend that you ask for the scheduling of a public hearing concerning the proposed taking pursuant to Article 2 of the Eminent Domain Procedure Law. The purpose of the public hearing is to "inform the public and to review the public use to be served by the proposed project and the impact on the environment and residents of the locality where such project will be constructed. . . ."

Under §202(A) of the Eminent Domain Procedure Law, not less than (10) nor more than thirty (30) days prior to the public hearing, the City must publish notice in at least five (5) successive issues of the City's official newspaper. We also will be required to provide direct notice to any affected property owners.

In general, this "taking" is as against the heirs of A. Palmer Smith and Timothy A. Smith. No attempt at direct mailing will be made for those heirs, and the issue of due process will be addressed by the Court when the City ultimately files its Order to Show Cause seeking the taking. A separate, and very small, taking is being proposed for a small "wedge" of land owned by Frank and Debra Battista from tax parcel no. 8-12-104.001. In the City's conversations with Mr. Battista, City representatives

have generally discussed a “swap” of small triangles of land, seeking lands from the Battistas’ property to the east in exchange for a similar-sized parcel to the west, which would abut their properties on the west side of the road. Those discussions have been very fruitful, but in order to avoid any misunderstanding and/or to avoid filing two separate petitions for taking in the event a settlement cannot be finally reached, it will be necessary to name the Battistas in the eminent domain proceeding and to give them actual notice of the public hearing.

Given the strictures of the public hearing, I respectfully suggest that the hearing be scheduled for Monday, August 17, 2015.

Once the Council has set the public hearing date, we will proceed to prepare the notice and to publish it as required by the statute.



CITY OF WATERTOWN
ENGINEERING DEPARTMENT
MEMORANDUM

DATE: 13 July 2015

TO: Sharon Addison, City Manager

FROM: Justin Wood, City Engineer

SUBJECT: Palmer Street Acquisition Process

The following memo is intended to provide a brief outline of the steps necessary for the City to acquire all of the lands encompassing Palmer Street, from Arsenal Street to Wealtha Avenue. This process entails essentially three steps:

- Step 1: Acquire Palmer Street "Extension" (733 ± feet in length)
- Step 2: Subdivide and exchange property with F. Battista (VL-8 Palmer St.)
- Step 3: Acquire a section of Palmer St. across the lands of 224 Palmer St, Palmer Street Apartments (670 ± in length)

The City took ownership of a portion of Palmer Street from Arsenal Street to a point 966 feet north thereof, in 1879. The street boundary is 33 feet in width, with an asphalt width of approximately 20', intermittent concrete sidewalk, and is served by public water and sanitary sewer.

The subsequent 1,400 linear feet (LF) of Palmer Street, which is not owned by the City, has been the subject of acquisition by City Council, to provide a wholly City owned connection from Arsenal St. to Wealtha Ave.

The last leg of what is considered to be Palmer St, a 400 foot section between Wealtha Ave. and Palmer St Apartments, lies on property owned by the City. In March 1986, City Council agreed to maintain this section of road for public use as part of the Palmer Street Apartments approval process.

Step 1 – Acquire Palmer Street "Extension":

A 733 foot section of Palmer Street, which is depicted as 33 feet in width in the original subdivision map and City tax maps, was never conveyed to the City. While there is much history in the debate of ownership for this section of street which I will not go into detail here, what is clear now is that the City has conducted research, and has not been able to identify an owner or heir to the original owner of the property. Therefore, the street must be acquired through a court process. Subsequent to Council directive to initiate the process, staff proceeded with the mapping and deed descriptions and obtained a final abstractor's opinion on title in the names of A. Palmer Smith and Timothy A. Smith. All of this work needed to be completed before the City could begin the process of commencing eminent domain proceedings. We are now ready to commence the eminent domain proceedings, and will initiate this step with the holding of a public hearing.

Step 2 - Subdivide and exchange property with F. Battista (VL-8 Palmer St.).

Once Step 1 is complete and Palmer Street Extension is acquired, the City must address an issue with the location of the actual street pavement, relative to the street boundary. A portion of the existing street pavement, north of Emmett St., lies outside the street boundary to be acquired. In lieu of relocating the street, the City can simply exchange property with the owner of the land where the actual street lies. I have already met with the owner, Mr. Frank Battista, and reviewed the maps which have been prepared to convey a sliver of Palmer St Ext. to Mr. Battista, in exchange for him conveying a sliver of his property at VL-8 Palmer St to the City. He is supportive of this action and will sign off accordingly when the City is ready to take this step, which will also be submitted to the City Planning Board for Subdivision Approval.

Step 3 - Acquire a section of Palmer St. across the lands of 224 Palmer St

Approximately 640 feet of Palmer Street lies on property at 224 Palmer St, otherwise known as Palmer Street Apartments. The street and a 50 foot wide strip of land across this parcel were proposed to be dedicated to the City when the site was developed in 1985. While another long history of events ensued on that topic which resulted in construction of a substandard street without dedication to the City, the current the owner, Brian Murray, has expressed a willingness to convey the 50 foot wide parcel to the City. A Bill of Sale and Agreement with the owner can be drawn up and executed to complete this step.

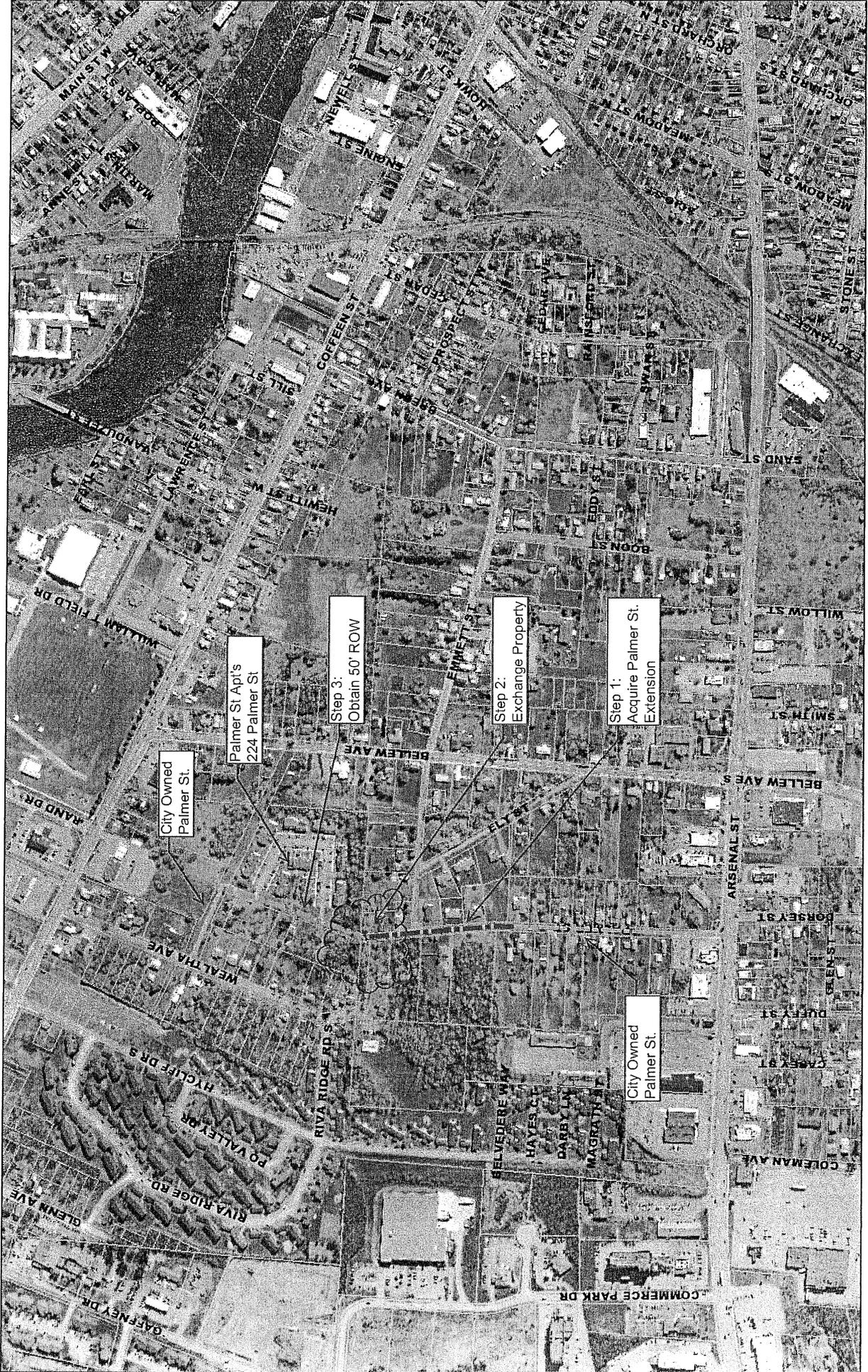
Conclusion

Once the necessary parcels are acquired, City Council would have to determine what level of reconstruction of Palmer Street, if any, is desired. The purpose of ownership is presumably to put the City in a position to make improvements, and to maintain the street at some minimum acceptable level. Will the street pavement be partially repaired or fully reconstructed? If so, at what width, will it include sidewalks, will it include utility extensions of water and sanitary sewer? These questions are important, and will require due diligence and serious consideration. The answers will define the scope of work and rough order of magnitude (ROM) cost. The section of Palmer Street in obvious need of pavement reconstruction is approximately 1,300 linear feet. \$570,000 is currently budgeted for reconstruction of Palmer Street in the Capital Budget for FY 18-19. The scope of work at this budgeted amount covers reconstruction of pavement at a substandard width and storm sewer installation only. Depending on the scope of work, reconstruction of this street will very easily be discussed in the \$1 plus Million range.

Cc. Ken Mix, Planning and Community Development Coordinator
Gene Hayes, Department of Public Works Superintendent
Jim Mills, City Comptroller
Robert Slye, City Attorney

PALMER STREET ACQUISITION PROCESS

City of Watertown
GIS Division
2023.09.27



1 inch = 400 feet



Mayor Graham said the fire department, for instance, is a \$9 million department and you cannot achieve \$900,000 without cutting pay or laying off people.

Palmer Street Reconstruction Options

Mayor Graham said this has various costs attached to it and asked if Council wished to discuss it.

Council Member Burns said she would prefer to have more time to digest the information but appreciates staff doing the work.

Council Member Jennings asked if there was any movement on who owns the property.

Attorney Slye replied that they have not been asked to continue the search with Brownell so there has been nothing done further to determine the ownership.

Mayor Graham said this property does not appear on the assessment maps as a parcel that anyone owns or pays taxes on. The City has decided to use the property for its own purposes and maintain it at a level that is not satisfactory to some. What stops a municipality from drawing a deed that follows the boundary measurements and filing the deed, he asked.

Attorney Slye said a deed from whom to whom is the question. Currently we know the City does not own it, he said, and if the assessor knew who owned it, he would like to put the name on the tax roll. He added in a three year period of time, the City would effect the same result as it would as a result of a condemnation, because no one would pay taxes on it. The City cannot take property under the eminent domain procedure law unless, to the best of the City's and abstractor's knowledge, we can identify who the heirs of the last known owners are. Once that is known, the City can put those people on notice. There is no one now to give the City a deed, so the City has to apply to a court to have them tell us it is now the City's. Attorney Slye said from the best he can tell, and according to the abstractor, lots were sold on either side of this imaginary line and described abutting Palmer Street, which never was a street given to the City, and remained in the ownership of the original Smith family. The Smith family, he said, owns it and the heirs own it.

Mayor Graham asked about the area where the purported road is, is not on any piece of land that currently has taxes paid on it. The individual who owns the apartment buildings said he was donating land, he said.

Attorney Slye explained there is Palmer Street and Palmer Street Extension and to his understanding the particular roadway that is near the apartments is owned by the apartment complex.

Mayor Graham inquired if that is part of the parcel in which the apartments are located.

Attorney Slye said he believes it is.

Mayor Graham added that in order to proceed, a description of the property is needed then the City would prepare a deed for that portion.

Attorney Slye mentioned that a few years ago, Kurt Hauk, City Engineer, prepared some charts on the issue which identified which portion was owned by Palmer Street apartments.

Mr. Hauk said there are several different pieces that make up Palmer Street as people would recognize it; mentioning the portion that has technically been on the City's books since 1897 which is about 600 feet off of Arsenal Street. There is a section from there to the property line which was just being discussed, which would be considered the Palmer Street Extension, and the owner of that section is unknown. In addition, there is a portion that falls on the parcel of the housing development and yet another that is located on a sewer easement that the City has for the Western Outfall Trunk Sewer, in total making Palmer Street consist of four sections.

Mayor Graham asked if the part that turns left and goes toward Wealtha Avenue is owned by the City.

Mr. Hauk replied that section is on the Western Outfall Trunk Sewer easement, owned by the City, which is 50 feet wide. The easement itself extends from Wealtha to Bellew Avenues, he said, and it just so happens that Palmer Street turns and follows a City-owned sewer easement.

Mayor Graham questioned if the City built that section of roadway.

Mr. Hauk noted that he has not seen any information that shows the City built any of it. There was talk in the 1980s of building a parallel access road from the apartments to what is called Palmer Street, and it has been an unknown since then.

Mayor Graham commented that one usually thinks of the planning process being more diligent, but at the time there was a lot of political pressure to build the apartments. He added that he still thinks it is a good idea to pursue acquisition of that stretch of land.

Council Member Macaluso noted that she does not want to invest a lot of money in something the City does not own. She added that she does not want it to come back in a negative way on the City and everyone who owns private streets will want the same thing.

Mayor Graham said he is suggesting the City own it then decide if something will be done with it.

Council Member Jennings said acquisition is the first step and the street is a disaster. He added that the City should move to acquire it and fix it.

Council Member Macaluso noted there are sections that are bad, by Wealtha Avenue and by Emmett but the middle section of that street seems fine and added that she drove down there today. People in the City will argue that their street is worse than that street and much more traveled, she said. She asked about a car count.

Mr. Hauk replied that he has some older counts that were taken prior to November of 2011. Traffic on the north leg above Emmett Street was 520 cars a day and the south leg saw 965 cars, he said.

Council Member Burns asked if that was before much of the new construction took place but after the apartments were constructed. She asked how long the section in question has been utilized as part of the

street. Council Member Burns said Brownell Abstract did some work on the matter, and asked what year the research was traced back to, prior to the City starting to use that section.

Attorney Slye responded the last deed out from Palmer Smith was 1884, from his recollection. He stated that it is unlikely that the City will know who the heirs are, even with publication notice by court order in the newspaper and as long as the appropriate constitutional guidelines are followed, the City will have met the requirements.

Just for the benefit of the public, Council Member Burns said she does not believe there has been anyone since approximately 1884 that has wanted to claim that portion of the street.

Mayor Graham said he thinks the first step is to either make that City property and maintain it as such or stop maintaining it and stop spending taxpayer money on private property. He added that he thinks the majority would like to see that process commence. If it is not a street, he said, then the City should not allow people to traverse it.

Attorney Slye noted another street, due to its physical constraints, the City did a lot of water and storm sewer work was Riggs Avenue. It is by no means a dedicate-able City street because of its width, he said. He said his recommendation is two-fold, first the City does not have to do something to the width of a 50 foot wide City right-of-way, as Riggs serves as a good example of that. Secondly, he said, he would caution Council that taking title should go hand in hand with the plan to do something with it. Just to take title, he said, and not then proceed and do the work is an invitation to liability. If the City is not prepared to do the work, the moment it takes title, he would not recommend the City take title.

Council Member Butler responded that from his standpoint, he has not been getting calls from constituents regarding Palmer Street. If title is taken, he asked when will it be done and he questioned how it will be paid for as there are other streets that are in the five year capital plan, such as Factory Street and Flower Avenue East, Harrison Street, Newell, Michigan Avenue and Bronson. He said he has been receiving calls from constituents on Flower Avenue East for four or five years, given the amount of water line breaks that occur there. East Avenue is awful, he said, and mentioned the traffic counts on other streets, and calls are being placed from people on those same streets. He asked how Council can represent the interest of the citizens if Palmer Street is put ahead of these other ones. He added that he thinks Palmer Street should be done but put it out in the five year plan. He said he agrees with Attorney Slye on the liability issue as well.

Council Member Burns said she would not suggest putting Palmer Street ahead of other streets and said there are no talks of a total reconstruction plan or new infrastructure, curbs or that degree of improvement. Her impression is that the City could just go in and do some remedial work so it is at least somewhat safe and passable and noted it will not be built to the standard of other City streets. It is an area where there has been a lot of new construction and added she thinks the people who have invested in that area should have a passable street. City crews have cut back some of the brush which has made it much safer and passable, she said.

Mayor Graham noted that three members want to move ahead with the acquisition process and asked if that was sufficient and if a resolution is needed on the matter.

Attorney Slye said he would recommend it.

Council Member Butler commented that there may be three votes on moving forward for the acquisition, but questioned how it will be paid for and reminded the Mayor that a bond needs four votes to pass.

Mayor Graham mentioned that the City spruces up streets every year using CHIPS funds so not everything is a bonded project. He mentioned trying to make improvements internally within DPW and have City staff do the work so there would be no need to bond for the project.

The following resolution was offered:

Introduced by Mayor Graham

BE IT RESOLVED that the City Council of the City of Watertown hereby authorizes City staff to move ahead with the acquisition of the corridor for what is now known as Palmer Street Extension and the unnamed areas that connect to Wealtha Avenue.

Seconded by Council Member Jennings

Rules were waived by Council Member Burns, seconded by Council Member Jennings and carried with Council Member Burns, Council Member Jennings and Mayor Graham voting yea, and Council Member Butler and Council Member Macaluso voting nay.

At the call of the chair vote was taken on the foregoing Resolution and carried with Council Member Burns, Council Member Jennings and Mayor Graham voting yea, and Council Member Butler and Council Member Macaluso voting nay.

The following reports were available for Council to review:

Request for Crosswalks – Samaritan Medical Center

Community Action Planning Council of Jefferson County

Job Career Expo Bus Shuttle

WTP Dosing Station Dam Rehab Phase II

Sales Tax Revenue – February 2014

Emerald Ash Borer Management Plan from Tree Watertown

Letter from Washington Street Properties

NEW BUSINESS

Ornamental Light Poles

Council Member Burns wished to bring to the City Manager's and staff's attention the condition of some of the ornamental light poles due to the harsh weather conditions over the winter. She explained that some of the light fixtures are actually listing to one side or another and suggested DPW keep an eye on them.

August 11, 2015

To: The Honorable Mayor and City Council
From: Kenneth A. Mix, Planning & Community Development Coordinator
Subject: 1171 Coffeen Street (Nelson's Dry Cleaning) Deed Restriction

In 1945, a deed restriction was placed on the sale of 1171 Coffeen Street, P.N. 8-18-312.100. It restricts the use of the property to a residence or a dry cleaning business.

The deed states that the covenant is enforceable by neighboring property owners or the City of Watertown. It is unusual for the City to be listed as an enforcer of a deed restriction. Typically the City's role in controlling land use is limited to exercising its police power with the Zoning Ordinance. The property is currently in a Neighborhood Business District.

The current owner, Augustine Romeo, is attempting to mortgage the property, but the bank will not loan money with the restriction in place. As stated in the attached letter, Christina Stone, on behalf of Mr. Romeo, is requesting that the City of Watertown release the deed restriction. They are requesting the same from all of the neighboring property owners.

If the City Council wishes to consider this request, a resolution will be drafted for the September 8th meeting.

SLYE & BURROWS

ATTORNEYS AT LAW

104 WASHINGTON STREET

WATERTOWN, NEW YORK 13601

ROBERT J. SLYE
JAMES A. BURROWS
CHRISTINA E. STONE

(315) 786-0266
FAX: (315) 786-3488

July 29, 2015

City of Watertown
245 Washington Street
Watertown, New York 13601

Attn: Kenneth Mix

**Re: Augustine Romeo (Nelson's Dry Cleaning)
1171 Coffeen Street; Tax Map No. 8-18-312.100**

Dear Mr. Mix:

Pursuant to our recent telephone conversation, this letter is an attempt to provide you with additional information with regards to the deed restriction placed on real property known as 1171 Coffeen Street, Tax Map No. 8-18-312.100. Augustine Romeo acquired the real property that houses Nelson Dry Cleaning from his parents. It has been a dry cleaning business for over 50 years. The real property contains a deed restriction which restricts the property for use a residence or for a dry cleaning business. It prohibits any other business or commercial purposes. This deed restriction dates back to a deed dated November 24, 1945, when Karl Hynes transferred the property to Nelson and Irene Castro.

Mr. Romeo is obtaining a blanket mortgage from Watertown Savings Bank. Before Watertown Saving Bank will provide him with a loan, it requires the deed restriction be removed. I have circulated a Release of Deed Restriction Agreement to and among all of the neighbors in the area. I am providing a copy to you. At this time on behalf of Augustine Romeo we would request that City release the deed restriction as a property owner as well as an enforcer. The Deed Restriction further states that Corporation Counsel of the City of Watertown can institute or prosecute a proceeding which violates the deed restriction. I am also attaching a copy of the deed from Irene Castro to Augustine and Concetta Romeo, which further outlines the deed restriction in full.

By copy of this letter I am also sending a copy to Sharon Addison, City Manager. I am requesting that the City Council allow the removal of said deed restriction.



Mr. Kenneth Mix
July 29, 2015
Page 2

If you should have any questions, please feel free to contact me.

Very truly yours,

SLYE & BURROWS

By: 
Christina E. Stone

CES/sf
Enclosures

cc: Sharon Addison, City Manager
(w/enclosures)

STATE OF NEW YORK

COUNTY OF JEFFERSON SS

Recorded on the 3rd day of

May 1962 at 2:34 o'clock

P. M. (in Book No. 692)

at Page 111

CLERK

This Indenture,

Made the 3rd day of April 1964
Nineteen Hundred and Sixty

Between IRENE M. CASTRO, glen Avenue, City of Watertown, County of Jefferson,
State of New York

ward 233 Breen Ave. Watertown

part y of the first part, and

AUGUSTINE and CONCETTA ROMEO, husband and wife as tenants by the
entirety, 233 Breen Avenue, City of Watertown, County of Jefferson
State of New York

Witnesseth that the party of the first part, in consideration of One Dollar

Dollar (\$ 1.00)

lawful money of the United States,
paid by the parties of the second part, do es hereby grant and release unto the
parties of the second part, their distributees and assigns forever, all

THAT TRACT OR PARCEL OF LAND situate in the City of Watertown, County of
Jefferson, and State of New York, being lots Nos. 21, 22, and 159 according to a
map placed on file in the Jefferson County Clerk's Office December 22, 1890, of
lands conveyed by Willard Ives and wife to William H. Smith by deed recorded in the
Jefferson County Clerk's Office in Liber 263 of Deeds at page 37, said map being
filed in said clerk's office in book 1 of maps at page 63.

Being the same premises conveyed by Carl J. Hynes to Nelson A. Castro
and Irene M. Castro, his wife, by Warranty Deed dated November 24, 1945, Recorded
January 24, 1946 in Liber 456 of Deeds at page 75

This deed is subject to the covenants contained in the deed from Carl J.
Hynes to Nelson A. Castro and Irene M. Castro, his wife, dated November 24, 1945 in
Liber 456 of Deeds at page 75, which recites as follows:

The grantees herein covenant and agree that the premises hereby
conveyed shall be used for residence purposes only except the grantees
shall have the right to maintain upon said premises an establishment
for the operation of dry cleaning business but for no other business
or commercial purpose whatever.

The grantees covenant and agree that the above restriction
and condition shall be inserted in all deed of conveyance hereafter
made by the said grantees; their successors or assigns; it being
understood and agreed that the said restrictions shall be deemed a
covenant running with the land and that the premises hereby conveyed
are and shall be burdened therewith.

It is further understood and agreed that it shall be lawful
not only for the grantor above named and his successors and assigns,
but also for the owner or owners of any lot or lots adjoining the
premises of the grantees, or for the owner or owners of any lots or
premises in the neighborhood of the premises hereby granted, or for
the City of Watertown and its proper municipal boards or agencies,

LIBER 692 Page 112

or for the Corporation Counsel of the said City of Watertown, to institute or prosecute any proceedings at law or in equity against the grantees, their successors in interest or assigns; or against any person or corporation deriving any interest in the said premises by or their said grantees, their successors in interest or assigns, violating or threatening to violate the above covenant of restrictions, it being understood and agreed that the said City of Watertown and the said persons owning lots or premises adjoining those hereby conveyed or in the general neighborhood thereof have an interest in maintaining the residential character of the neighborhood and in preventing the maintenance of any commercial activity thereon except as herein above stated.

WARRANTY DEED

Ack'd May 3, 1960

Rec'd May 3, 1960

Liber 692 of Deeds at page 111.

MEMO: Information provided to Brownell Abstract by Augustine A. Romeo, son of Augustine and Concetta Romeo, shows that Augustine Romeo, the grantee in the above deed, died in 1987. We find no record of his death or estate in the Jefferson County Surrogate's Office.

RELEASE OF DEED RESTRICTION

This Agreement made the ___ day of _____, 2015 between and among Augustine Romeo (“Romeo”) as owner of certain lands known as 1171 Coffeen Street, Tax Map No. 8-18-312.100, in the City of Watertown, New York and the Neighbors (“Neighbors”) in the blocks of Coffeen Street, Vista Avenue, Glenn Avenue and Gaffney Drive which are set forth in the attached Schedule A.

WHEREAS, Romeo acquired his real property from his parents, Augustine and Concetta Romeo in 1995. Said real property was transferred to the Romeos by Warranty Deed from Irene Castro in 1960. The transfer was subject to a Deed Restriction placed on real property from Castros’ predecessor in title, Carl J. Hynes, when he transferred the property to Nelson A. Castro and Irene M. Castro by deed dated November 24, 1945 and recorded in Liber 456 of Deeds at Page 75 in the Jefferson County Clerk’s Office. The deed restricted the property’s use to residential or dry cleaning purposes only. No other business or commercial use is allowed on the real property pursuant to the deed restriction said Deed Restriction is attached as Schedule B to this Agreement.

The purpose of maintaining the residential character of the neighborhood as defined in the Deed Restrictions is no longer necessary. The character of the neighborhood has been altered overtime. The zoning has changed has from Residential to Neighborhood Business and/or Residential C. Various businesses currently operate in the neighborhood

NOW, upon the considerations contained herein and other good and valuable consideration, the receipt of which is hereby mutually acknowledged, the parties heretofore themselves and their heirs, legal representatives, successors and assigns hereby agree and consent that the 1945 Deed Restriction affecting the real property known as 1171 Coffeen Street

in the City of Watertown, New York are no longer applicable and the same should be released and be extinguished as of record and no longer be a restriction placed on the real property.

The parties further agree that this Agreement should be recorded in the real property records in the County Clerk's Office of Jefferson County and a notation made on the original Deed recorded in the Jefferson County Clerk's Office referencing this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the date first above mentioned. This Agreement can be signed in counterparts.

Dated: _____

Augustine Romeo
1171 Coffeen Street
Watertown, New York 13601

Dated: _____

Dale S. Porter
1155 Coffeen Street and
446 Glenn Avenue
Watertown, New York 13601

Dated: _____

John Van Brocklin

C. Van Brocklin
454 Glenn Avenue
Watertown, New York

Dated: _____

Thomas L. Leeder
432 Glenn Avenue
Watertown, New York 13601

Dated: _____

Anhtuyet Nguyen
418 Glenn Avenue
Watertown, New York 13601

Dated: _____

John P. Lamon
423 Glenn Avenue
Watertown, New York 13601

Dated: _____

Cecil Typhair

Beverly A. Typhair
430 Glenn Avenue
Watertown, New York 13601

Dated: _____

Gaetano Williams

Julie Williams
433 Glen Avenue
Watertown, New York 13601

Dated: _____

Paul Thompson

Jane Thompson
414 Glenn Avenue
Watertown, New York 13601

Dated: _____

CITY OF WATERTOWN

By:

Dated: _____

WGS HOUSING ARSENAL
ASSOCIATES, LLC

By:
207 Wealtha Avenue
Watertown, New York 13601

Dated: _____

JEFFERSON HOSTELS, INC.

By:
438 Glenn Avenue
Watertown, New York 13601

Dated: _____

JEFFERSON COMMUNITY MENTAL
RETARDATION SERVICE COMPANY, INC.

By:
420 Gaffney Drive
Watertown, New York 13601

STATE OF NEW YORK)
) SS.:
COUNTY OF JEFFERSON)

On _____, 2015, before me, personally appeared C. VAN BROCKLIN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity and that by her signature on the instrument, the individual or person upon whose behalf the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) SS.:
COUNTY OF JEFFERSON)

On _____, 2015, before me, personally appeared THOMAS LEEDER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual or person upon whose behalf the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) SS.:
COUNTY OF JEFFERSON)

On _____, 2015, before me, personally appeared ANHTUYET NGUYEN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual or person upon whose behalf the individual acted, executed the instrument.

Notary Public

August 13, 2015

To: The Honorable Mayor and City Council
From: Kenneth A. Mix, Planning & Community Development Coordinator
Subject: 138 Court Street Asbestos

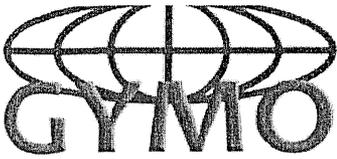
During the Work Session on July 13, 2015, the City Council directed staff to obtain an asbestos survey and abatement estimate for 138 Court Street.

GYMO completed the survey and a copy of their estimate is attached. They have estimated that it will cost \$237,000 to remove the asbestos. It is estimated that it will cost another \$5,000 to secure the windows after the caulking is removed. Also the roof decking will be exposed after the roofing is removed.

GYMO has also estimated that the cost of demolition, including site and adjoining building restoration, will be \$260,000 added to the asbestos removal for a total of \$497,000. Alternatively, they have also estimated the cost for abating the friable asbestos and demolishing the non-friable asbestos in place. That method is estimated at \$410,000, but assumes that we are able to obtain a variance from the NYS Department of Labor.

Does the City Council wish to undertake asbestos abatement before selecting the Preferred Developer?

The responders are asking about the status of their proposals. The process outlined in the Request for Proposals was that the selected developer would put down a deposit of \$3,000 for a 6-month option. The 6-month period is intended to give the developer time to secure financing before the building is sold.



ARCHITECTURE
ENGINEERING
ENVIRONMENTAL
LAND SURVEYING

Edward G. Olley, Jr., AIA
William P. Plante, PLS
Patrick J. Scordo, PE
Ryan G. Churchill, PE
Scott W. Soules, AIA

Gregory F. Ashley, PLS
Brandy W. Lucas, MBA

In Consultation
Leo F. Gozalkowski, PLS
Stephen W. Yaussi, AIA

August 6, 2015

Mr. Shawn McWayne
City of Watertown
245 Washington Street
Watertown, NY 13601

Re: Court Street – Cost Estimate

Dear Mr. McWayne :

The cost estimate for the asbestos removal of the identified materials in and on the Court Street building is as follows;

Asbestos Abatement

Interior – floor tile, sheet linoleum, thermal insulations, floor mastic, etc..	\$185,000
Exterior – roof and window glazing	\$ 20,000
Project Air Monitor including variance(s)	\$ 32,000

Please contact me with any questions or concerns you may have.

Sincerely,
GYMO Architecture, Engineering & Land Surveying, D.P.C.

William P. Plante, P. L. S.
Principal, Director of Environmental Services

WPP/sjh

McWayne, Shawn

From: Bill Plante [Bill@gymopc.com]
Sent: Tuesday, August 11, 2015 3:33 PM
To: McWayne, Shawn
Subject: Demo Cost, Court St

Shawn

The demo cost for Court are as follows;

Asbestos.....\$230,000 (all inclusive)

Demolition.....\$180,000

Restoration of adjoining buildings and site.....\$80,000

Restoration includes backfill, waterproofing adjoining basements, minor structural stabilization and EFIS

Bill



William P. Plante, P.L.S.
Principal, Director of Environmental Services

220 Sterling Street
Watertown, NY 13601
tel. (315) 788-3900
fax (315) 788-0668
bill@gymopc.com

Mix, Kenneth

From: McWayne, Shawn
Sent: Thursday, August 13, 2015 1:37 PM
To: Mix, Kenneth
Subject: FW: Court Street - Friable Abatement/Demo Estimate

Ken
Here you go.
Shawn

From: Brad Arthur [<mailto:brad@gymopc.com>]
Sent: Thursday, August 13, 2015 1:30 PM
To: McWayne, Shawn
Cc: Bill Plante
Subject: Court Street - Friable Abatement/Demo Estimate

Shawn,

For the Court St. project, if friable ACM was removed first followed by the demolition of the structure with non-friable in place, the cost estimate would be as follows.

Abatement of the friable asbestos only - \$100,000
Demolition with non-friable in place - \$220,000
Site Restoration - \$60,000
Variance preparation and Air Monitoring - \$30,000

Please let me know if you have any questions.

Best regards,

Brad

August 12, 2015

To: The Honorable Mayor and City Council
From: James E. Mills, City Comptroller
Subject: Projected FY 2016-17 Projected Tax Cap

The NYS Department of Taxation and Finance has released the tax base growth factor that will be used in the City's Fiscal Year 2016-17 tax cap calculation. The tax base growth factor is applied to the prior year's tax levy and represents the physical and/or quantity changes to property in the City. The factor set for the City for FY 2016-17 is 1.0077 as compared to 1.0038 for FY 2015-16.

Recently the NYS Office of the Comptroller released the Inflation and Allowable Levy Growth Factor for municipalities with fiscal years beginning January 1, 2016. The factor that will be used for those municipalities is 0.73%. Although this is not the exact rate for the City it does give an indication of where our rate will be. The following chart shows that the projected tax cap calculation for the City's FY 2016-17 General Fund Budget will provide for a maximum **\$127,803 or 1.52%** increase to the current tax levy if no over-riding legislation is passed.

City of Watertown
Projected Fiscal Year 2016-17 Budget
Property Tax Cap Calculation

		<u>FY 2016-17</u>	<u>FY 2015-16</u>	<u>FY 2014-15</u>	<u>FY 2013-14</u>	<u>FY 2012-13</u>
	Prior Year Adopted Tax Levy	\$ 8,414,664	\$ 8,259,585	\$ 7,520,705	\$ 7,373,612	\$ 7,300,409
Multiply By	Tax Base Growth Factor (provided by NYS Dept. of Taxation and Finance)	<u>1.0077</u>	<u>1.0038</u>	<u>1.0105</u>	<u>1.0124</u>	<u>1.0051</u>
	Subtotal	\$ 8,479,457	\$ 8,290,971	\$ 7,599,672	\$ 7,465,045	\$ 7,337,641
Plus	PILOTs Receivable from Prior Year	<u>152,000</u>	<u>139,125</u>	<u>147,850</u>	<u>153,111</u>	<u>154,991</u>
Equals	Subtotal	8,631,457	8,430,096	7,747,522	7,618,156	7,492,632
Multiply By	Allowable Levy Growth Factor (provided by NYS Office of the State Comptroller)	<u>0.73%</u>	<u>1.62%</u>	<u>1.46%</u>	<u>2.00%</u>	<u>2.00%</u>
Equals	Subtotal	8,694,467	8,566,664	7,860,636	7,770,519	7,642,485
Less	PILOTs Receivable for Current Year	<u>(152,000)</u>	<u>(152,000)</u>	<u>(139,125)</u>	<u>(147,850)</u>	<u>(144,300)</u>
Plus	Available Carryover from Prior Year	<u>-</u>	<u>-</u>	<u>116,027</u>	<u>112,473</u>	<u>-</u>
Equals	Tax Levy Limit Before Adjustments / Exclusions	\$ 8,542,467	\$ 8,414,664	\$ 7,837,538	\$ 7,735,142	\$ 7,498,185
Less	Costs Incurred from Transfer of Local Government Functions	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Plus	Savings Realized from Transfer of Local Government Functions	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Equals	Tax Levy Limit (Adjusted for Transfer of Local Government Functions)	\$ 8,542,467	\$ 8,414,664	\$ 7,837,538	\$ 7,735,142	\$ 7,498,185
Plus	Tax Levy Necessary for Pension Contribution Expenditures Caused by Growth in the Employees Retirement System Average Actuarial Contribution Rate in Excess of 2 Percentage Points	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>47,800</u>
Plus	Tax Levy Necessary for Pension Contribution Expenditures Caused by Growth in the Police and Fire Retirement System Average Actuarial Contribution Rate in Excess of 2 Percentage Points	<u>-</u>	<u>-</u>	<u>-</u>	<u>113,430</u>	<u>210,074</u>
Plus	Available Carryover (if any, up to a maximum of 1.5%)	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Equals	Tax Levy Limit (Adjusted for Transfers and Exclusions)	\$ 8,542,467	\$ 8,414,664	\$ 7,837,538	\$ 7,848,572	\$ 7,756,059
	Tax Levy Increase Allowable per Tax Cap Calculation	\$ 127,803	\$ 155,079	\$ 316,833	\$ 474,960	\$ 455,650
	Percent Tax Levy Increase Allowable per Tax Cap Calculation	1.52%	1.88%	4.21%	6.44%	6.24%
	ACTUAL LEVY INCREASE	?	1.88%	10.40%	2.00%	1.00%

Town of	Schuyler	1.0009
Town of	Stark	1.0055
Town of	Warren	1.0054
Town of	Webb	1.0062
Town of	Winfield	1.0046

Jefferson County

Town of	Adams	1.0062
Town of	Alexandria	1.0057
Town of	Antwerp	1.0040
Town of	Brownville	1.0081
Town of	Cape Vincent	1.0113
Town of	Champion	1.0096
Town of	Clayton	1.0084
Town of	Ellisburg	1.0096
Town of	Henderson	1.0032
Town of	Hounsfield	1.0040
Town of	Le Ray	1.0156
Town of	Lorraine	1.0062
Town of	Lyme	1.0079
Town of	Orleans	1.0102
Town of	Pamelia	1.0279
Town of	Philadelphia	1.0004
Town of	Rodman	1.0080
Town of	Rutland	1.0103
Town of	Theresa	1.0085
City of	Watertown	1.0077
Town of	Watertown	1.0118
Town of	Wilna	1.0006
Town of	Worth	1.0129

Lewis County

Town of	Croghan	1.0040
Town of	Denmark	1.0060
Town of	Diana	1.0059
Town of	Greig	1.0069
Town of	Harrisburg	1.0139
Town of	Lewis	1.0060
Town of	Leyden	1.0101
Town of	Lowville	1.0048
Town of	Lyonsdale	1.0029
Town of	Martinsburg	1.0169
Town of	Montague	1.0101
Town of	New Bremen	1.0047
Town of	Osceola	1.0071

August 10, 2015

To: The Honorable Mayor and City Council

From: Michael A. Lumbis, Planner

Subject: Public Hearing for the Community Development Block Grant Program
Consolidated Annual Performance and Evaluation Report

As part of the City's Community Development Block Grant (CDBG) Program, the City Council is required to hold at least two public hearings annually to obtain public input and comments on our program. The first public hearing, typically held in March, is conducted as we prepare to write our Annual Action Plan. A second public hearing must be held in September, after the conclusion of our program year, to allow the public to comment on the City's annual performance.

The September public hearing coincides with the submission of the City's Consolidated Annual Performance and Evaluation Report (CAPER) to the U.S. Department of Housing and Urban Development (HUD). Federal regulations require that the City submit the CAPER within 90 days of the close of the program year, which is September 30. At least fifteen days prior to the public hearing, the CAPER will be available for public review.

It is therefore recommended that the City Council schedule a public hearing to hear public comments on the City's Community Development Block Grant Consolidated Annual Performance and Evaluation Report for 7:30 p.m. on Monday, September 21, 2015.