

Tim Himmer

From: William Goodrich [bgood@anokalaw.com]
Sent: Monday, November 14, 2011 4:43 PM
To: Tim Himmer
Subject: Septic system repair
Attachments: Petition & Waiver Agt 100% Petition.DOC

Tim, here is an agreement I recently did for another client. As you can see, no public hearing required. This may be a change from past practice, but other cities are doing this and I see no reason not to do a similar agreement in our present instance and waive the hearing, of course if the owner will agree. We will need to verify that the "owner" is the owner of record in the County records. Let me know if questions. Thanks.

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PETITION AND WAIVER AGREEMENT

This Agreement made this ___ day of _____, 2011, by and between the **City of Ramsey**, a Minnesota municipal corporation (the "City"), and _____ (marital status) (the "Owner").

WITNESSETH:

WHEREAS, the Owner is the fee owner of certain real property (the "Subject Property") located in the City, and legally described as follows:

WHEREAS, the Owner desires to have certain improvements constructed to serve the Subject Property, specifically connection of the building sewer on the Subject Property to the City's public sewer system (hereinafter referred to as the "Improvement Project"); and

WHEREAS, the Owner wishes the City to construct the Improvement Project without notice of hearing or hearing on the Improvement Project, and without notice of hearing or hearing on the special assessments levied to finance the Improvement Project, and to levy 100 percent of the cost of the Improvement Project against the Subject Property; and

WHEREAS, the City is willing to construct the Improvement Project in accordance with the request of the Owner and without such notices or hearings, provided the assurances and covenants hereinafter stated are made by the Owner to ensure that the City will have valid and collectable special assessments as they relate to the Subject Property to finance all of the costs of the Improvement Project; and

WHEREAS, were it not for the assurances and covenants hereinafter provided, the City would not construct the Improvement Project without such notices and hearings and is doing so

solely at the behest, and for the benefit of, the Owner; and

WHEREAS, in order to construct the Improvement Project the City, its Contractors and Agents require access and entry onto the Subject Property.

NOW, THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. The Owner hereby petitions the City for construction of the Improvement Project.
2. The Owner represents and warrants that they are the owners of 100 percent of the Subject Property, that they have full legal power and authority to encumber the Subject Property as herein provided, and that as of the date hereof, they have fee simple absolute title in the Subject Property, which is not subject to any liens, interests or encumbrances, except as listed on the attached Exhibit A.
3. The Owner requests that 100 percent of the cost of the Improvement Project be assessed against the Subject Property. The Owner understands and agrees that the amount to be assessed for the Improvement Project may be as much as \$_____.00.
4. The Owner waives notice of hearing and hearing pursuant to Minn. Stat. Section 429.031, on the Improvement Project and notice of hearing and hearing on the special assessments levied to finance the Improvement Project pursuant to Minn. Stat. Section 429.061, and specifically requests that the Improvement Project be constructed and special assessments levied therefor against the Subject Property without hearings.
5. The Owner waives the right to appeal the levy of the special assessments in accordance with this Agreement pursuant to Minn. Stat. Section 429.081, or reapportionment thereof upon land division pursuant to Minn. Stat., Section 429.071, Subd. 3, or otherwise, and further specifically agrees with respect to such special assessments against the Subject Property or reapportionment that:
 - a. Any requirements of Minn. Stat., Chapter 429 with which the City does not comply are hereby waived by the Owner;
 - b. The increase in fair market value of the Subject Property resulting from construction of the Improvement Project will be at least equal to the amount specified in paragraph 3, and that such increase in fair market value is a special benefit to the Subject Property;
 - c. Assessment of 100 percent of the cost of the Improvement Project against the Subject Property is reasonable, fair and equitable and there are no other properties against which such cost should be assessed; and
 - d. The Owner further specifically waives notice and right to appeal reapportionment of such special assessments upon land division pursuant to Minn. Stat., Section

429.071, Subd. 3.

6. The Owner understands and agrees that the City may provide for the payment of such special assessments in installments bearing such interest as may be determined by the city council. However, the decision regarding the period of time over which the special assessments may be paid and the interest rate to be applied is in the absolute and sole discretion of the city council, subject only to limitations imposed by law.

7. Owner represents and warrants that the Subject Property is not so classified for tax purposes as to result in deferral of the obligation to pay special assessments; and Owner agrees that it will take no action to secure such tax status for the Subject Property during the term of this Agreement.

8. The covenants, waivers and agreements contained in this Agreement shall bind the successors and assigns of the Owner and shall run with the Subject Property and bind all successors in interest thereof. It is the intent of the parties hereto that this Agreement be in a form that is recordable among the land records of Anoka County, Minnesota; and they agree to make any changes in this Agreement which may be necessary to effect the recording and filing of this Agreement against the title of the Subject Property.

9. This Agreement shall terminate upon the final payment of all special assessments levied against the Subject Property regarding the Improvement Project, and the City shall thereupon execute and deliver such documents, in recordable form, as are necessary to extinguish its rights hereunder.

10. If Owner constructs the Improvement Project and connects the buildings on the Subject Property to the municipal sewer system in accordance with all applicable governmental codes and regulations prior to August 1, 2011, this Agreement shall be void and of no further force or effect.

11. Effective upon the date hereof, the Owner hereby grants the City and its agents, employees, contractors and invitees the right to enter upon the Subject Property for purposes of installing and constructing the Improvement Project.

12. In consideration for the right of entry, the City agrees to and shall indemnify, defend and hold harmless Owner and their heirs and personal representatives from and against any action, claim, damage, liability, loss, cost or expense (including, without limitation, attorneys fees and costs), resulting from said installation and construction of the Improvement Project on the Subject Property.

13. This Agreement may be amended by the parties hereto only by written instrument executed with the same procedures and formality followed in the execution of this agreement.

IN WITNESS WHEREOF, the parties have set their hands the day and year first written above.

CITY OF RAMSEY:

By _____
Bob Ramsey, Mayor _____, Owner

By _____
Jo Thieling, City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF ANOKA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by Bob Ramsey and Jo Thieling, the Mayor and City Clerk of the City of Ramsey, Minnesota, a municipal corporation under the laws of the State of Minnesota, on behalf of the City.

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF ANOKA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by _____, (marital status).

Notary Public