

**KATHERINE PROPERTIES ANNEXATION  
AND PUBLIC FACILITIES AGREEMENT STATUS**

Office of Law Status Report and Recommendation

During Mr. Leahy's term, the law office stated an opinion that the developer had breached the PFA provision which required that any occupied dwellings existing on the annexed land at the time the resolution of annexation was adopted, which dwellings were served by well water and/or septic system, be connected to City water and sewer within one year after the date of the effective date of the annexation resolution. The PFA allows for extensions to be granted by the City to the developer of up to ten years. The extensions must be approved by the City. There is no documentation reflecting the grant of any extensions. There was one occupied structure on the annexed land at the time the annexation resolution was adopted. The Developer's position is that the structure was an office, not an occupied dwelling, and that the PFA provision requiring connection of occupied dwellings to City sewer and water was not at issue. There is insufficient documentation to the effect that a breach of this provision occurred. There have been discussions between the developer and the Public Works Department about future connection of structures on the annexed land.

The Crystal Springs application for planned development, which encompassed almost the entire part of the land annexed, has been withdrawn. There is now a special exception application pending submission by National Lutheran Communities and Services, to establish a continuing care retirement community (CCRC) use on a portion of the annexed land.

There have been no improvements to the annexed land since the annexation resolution was adopted. However, there is now an occupied dwelling on the annexed land. This dwelling existed at the time of the passage of the annexation resolution, but there is no clear evidence that it was occupied at that time.

The law office recommends that the PFA be amended to allow for a three year extension, effective July 10, 2017, which would take into account a reasonable time for decide the National Lutheran Communities and Services special exception application, to allow any appeals to proceed to conclusion and, if the special exception application is approved after final adjudication of appeals, if any, for the commencement of construction of infrastructure whereby existing structures on the annexed land may be connected to City water and sewer. The law office also recommends further one year written extensions on the three year extension, for good cause shown to the Planning and Zoning Director.

The original Crystal Springs PFA required the construction of a Forest Drive relief road. This was never constructed. Concerns have been expressed by members of the public about the failure to build the relief road and the absence of any requirement by the City that the developer be compelled to construct it. However, the 5 year Comprehensive Plan update, issued September 24, 2014, indicates that construction of the relief road was reconsidered and it has been determined to be not feasible. Therefore, the Office of Law recommends that the PFA be amended to eliminate the requirement for construction of a relief road.

The PFA also has a provision for a 75 acre conservation parcel on the annexed land. The conservation easement envisioned that it would be part of the entire annexed land. Since the entire annexed land is not the subject of the National Lutheran Communities and Services special exception application, the Department of Planning and Zoning will necessarily have to determine

if the conservation easement area as described in the PFA should be re-figured as to location and acreage. The law office is recommending that the PFA be amended for that purpose.

The law office is not recommending any other amendment of the PFA at this time.

The Developer is willing to execute an amendment to the PFA based on the above. Therefore, the law office recommends that no Council action be taken at this time.