

Council QA – April 20, 2021

Wednesday, April 14, 2021 5:40 PM

F. AWARDS AND RECOGNITIONS:

1. **21-0507** Proclaim April 2021 as Fair Housing Month in the City of Naperville
2. **21-0508** Proclaim April 2021 as Sikh Awareness and Appreciation Month

I. CONSENT AGENDA:

1. **21-0464** Approve the cash disbursements for the period of 03/01/2021 through 03/31/2021 for a total of \$23,947,967.82

Q:	Please provide a graph of what has been budgeted per department and what has been spent so far.	Gustin
A:	Please see the following document: 01 – 2021 Financial Report Department Budgets	Munch

2. **21-0492** Approve the regular City Council meeting minutes of April 7, 2021
3. **21-0515** Approve the release of certain designated closed session meeting minutes and continue to maintain the confidentiality of all other unreleased closed session meeting minutes
4. **21-0514** Approve the City Council meeting schedule for May, June & July 2021
5. **21-0451** Approve the award of Bid 21-133, Distributed Automation Switches - Warrenville Road, to Universal Utility Supply Company of Illinois for an amount not to exceed \$552,120
6. **21-0459** Approve the award of Cooperative Procurement 21-173, Springbrook Water Reclamation Center Administration Building Roof Replacement, to Garland/DBS Inc. for an amount not to exceed \$138,863, plus a 5% contingency
7. **21-0476** Approve the award of Option Year One of Contract 20-028, Insulated Conductors, to Okonite for an amount not to exceed \$861,763 and for a one-year term
8. **21-0511** Pass the ordinance amending Chapter 3 (Required Improvements) of Title

7 (Subdivision Regulations) regarding student generation rates for residential developments proposed within the boundaries of Indian Prairie Community Unit School District No. 204

- 9. **21-0494** Pass the ordinance approving the amended final condominium plat of survey for Central Park Place Residential Condominium (110 S. Washington) - PZC 18-1-110

Q:	Is this request adding two or three more units, from 17 condo units to 19 or 20 units? Please provide any hardship.	Gustin
A:	The request is to add the as-built measurements for two of the condo units to the approved condo plat. The as-built measurements are needed for the sale of said units. At this time, the City has approved the as-built measurements for five of the units. The petitioner will need to appear before Council to request approval of the as-built measurements for the remaining 10 units. The total number of units has not increased and remains at the approved 17.	Venard

- 10. **21-0501** Adopt the resolution authorizing the city manager to submit an application to the Regional Transportation Authority requesting a continuation of federal funding for the Ride DuPage to Work program
- 11. **21-0505** Adopt the resolution authorizing execution of a settlement agreement between Phyllis Egizio and the City of Naperville

Q:	Will approving this matter set a precedence for any future sidewalk falls? If so, why? If not, why?	Gustin
A:	No. Every sidewalk case is different and is evaluated upon its own unique facts. I'll be discussing this case during Closed Session before the Council meeting.	Foley

- 12. **21-0510** Adopt the resolution authorizing execution of a collective bargaining agreement between the City of Naperville and I.U.O.E. Local 399

L. ORDINANCES AND RESOLUTIONS:

- 1. **20-1507D** Receive the staff report regarding the property located on Lot 4 of the Nokia Campus Subdivision at the northwest corner of Naperville and Warrenville Roads, Naperville (Naper Commons) - PZC 20-1-086 (Item 1 of 6)

Q:	Does Lucent Ln. and road D meet our road specifications as far as sub soil construction and compaction, weight limits	Hinterlong
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	and blacktop standards. If not will they be reconstructed to meet our requirements and who will pay for them.	
A:	The petitioner is taking soil and pavement cores to evaluate a pavement section that will meet our City standards. All design and construction work to meet our standards will be paid for entirely by the petitioner.	Novack
Q:	In regards to side yards, all basements will only have window wells on the back side of the interior lots. What about corner lots?	Hinterlong
A:	All window wells on both the interior and corner lots will be located on the rear of the homes.	Venard
Q:	All ac condensing units will be on the back of the house?	Hinterlong
A:	All ac units will be located at the rear of the homes.	Venard
Q:	What is LP smart siding and what is it made from? What type of siding will be on the second story?	Hinterlong
A:	LP Smartside is a composite wood material (similar to Hardie board). It will be located on both the 1st and 2nd stories.	Venard
Q:	Is this development going to have sidewalks? I can't tell by the renderings.	Hinterlong
A:	Yes, sidewalks will be provided within the development.	Venard
Q:	(a) Will any of the proposed units be affordable according to IDHA and/or is the developer making a contribution to the city's affordable housing fund; (b) Approximately how many units would have to be removed in order to leave the berm in place as requested by nearby residents; (c) If some detached single family lots are removed to keep the berm in place, could more attached townhomes be added to recoup at least a portion of the lost profit?	Kelly
A:	Staff requested information from the petitioner's attorney in regards to the questions asked. Provided below is a brief summary of the information provided to staff; the petitioner's full response is attached for Council's information. (a) None of the proposed units will be affordable according to IHDA. Note: The petitioner has not indicated that they will be making a voluntary contribution to the City's affordable housing fund. (b) Per the petitioner, leaving the berm in place would require the elimination of the westernmost 10 single-family lots. (c) Per the petitioner, 10 new townhomes units would not overcome the loss of the 10 single-family lots. Furthermore, such change would also require a comprehensive redesign of the site and an additional six months of planning which cannot be accommodated within the current purchase and sale agreement with Nokia. Please see the following document, 02 - Petitioner's Response to CC Q&A for further details.	Laff

- 2. **21-0495** Pass the ordinance approving the preliminary plat of subdivision and owner’s acknowledgement and acceptance agreement for Naper Commons - PZC 20-1-086 (Item 2 of 6)

Please find below a revised copy of the OAA (03 - Exhibit C – OAA_signed) which includes the signature page from the OWNER & DEVELOPER. The OAA was also updated to correct an error in the NEWW pump station fee (page 6, section e). The previous version read \$133,289.70; it has been corrected to \$113,289.70. The fee is \$1,751/acre (based upon 64.7 acres.)

- 3. **21-0496** Pass the ordinance approving the preliminary planned unit development plat with certain deviations for Naper Commons - PZC 20-1-086 (Item 3 of 6)
- 4. **21-0497** Pass the ordinance approving a conditional use to permit single-family attached dwelling units in the R2 District for Naper Commons - PZC 20-1-086 (Item 4 of 6)
- 5. **21-0498** Pass the ordinance granting an exterior wall construction variance for Naper Commons - PZC 20-1-086 (Item 5 of 6)
- 6. **21-0499** Pass the ordinance granting a storm water variance for Naper Commons - PZC 20-1-086 (Item 6 of 6)

M. AWARD OF BIDS AND OTHER ITEMS OF EXPENDITURE:


- 1. **21-0306** Approve the award of Bid 21-001, 2021 Street Resurfacing Program - MFT, to K-Five Construction, for an amount not to exceed \$3,739,514.10, plus a 3% contingency (Item 1 of 2)

Q:	In the past a discussion included modifying the type of product used in resurfacing local roads to use recycled products, example companies that use recycled plastic bottles, tires and other products. Has that option been taken removed from future consideration? If I am recalling correctly the recycled road product verse asphalt offered more road longevity. There may be other considerations such as full road replacement verses resurfacing however would there be a recycle application in the future?	Gustin
A:	This contract is to use our state motor fuel dollars (MFT) to resurface cCty roadways. Certain percentages of recycled asphalt product (RAP) are allowed in the different mixes used for roadway resurfacing. The City follows the Illinois Department of Transportation (IDOT) allowances on the percentages of RAP for our MFT contract since it must be approved by IDOT. TED is continuously evaluating new and different products to use the maintenance of our roadways; working to balance effectiveness with cost savings. We are currently evaluating the use of a new roadway rejuvenator made entirely from agricultural products, which is much better than the old petroleum-based product we used over ten years ago.	Novack

- 2. **21-0431** Adopt an IDOT resolution in the amount of \$3,739,514.10 to allow expenditure of State Motor Fuel Tax dollars to fund the 2021 Street Resurfacing Program - MFT (Item 2 of 2)

O. REPORTS AND RECOMMENDATIONS:

- 1. **21-0512** Receive the Water Utilities Capital Improvement Program presentation

Q:	Approximately how much would it cost to replace all of the city's lead service lines?	Kelly
A:	<p>Our current lead count is 368, with another 138 as unknown and 26 as galvanized.</p> <p>Recent pricing indicates an average cost of approximately \$10,000 per line to replace the entire line (City and Resident Portion). \$3.68 million - \$5.32 million (worst case) if we assume that all the unknowns are lead and we also replace the galvanized.</p> <p>We are performing full lead line replacements with our construction projects. We expect to remove 30-40 this year with Naperville Heights Water Main Replacement Project and the Little Friends redevelopment.</p>	Blenniss
Q:	Please provide Naperville's water rate charges against other local DuPage communities such as Lisle, Warrenville, Aurora, etc. water rates, please break out service charges, if any?	Gustin
A:	<p>Naperville <u>Water Rate Charges:</u></p> <p><u>Residential:</u></p> <ul style="list-style-type: none"> Wholesale Lake Michigan Water Rate from DWC = \$4.97 per 1000 gallons Volumetric Rate = \$2.73 per 1000 gallons Monthly Customer Charge = \$7.63 <p><u>Non-Residential:</u></p> <p>Block One (Consumption to 100,000 cubic feet):</p> <ul style="list-style-type: none"> Wholesale Lake Michigan Water Rate from DWC = \$3.72 per 100 cubic feet Volumetric Rate = \$1.92 per 100 cubic feet <p>Block Two (Over 100,000 cubic feet):</p> <ul style="list-style-type: none"> Wholesale Water Rate from DWC = \$3.72 per 100 cubic feet Volumetric Rate = \$1.13 per 100 cubic feet <p><u>Rate Comparison:</u></p> <p>Please see the following document, 04 - Rate Comparisons</p> 	Blenniss



Source:
 Open Data Portal
<https://data.naperville.il.us/City-Services/Residential-Water-and-Wastewater-Utility-Service-R/shs7-vewr>

2. 21-0500 Receive the April 2021 Financial Report and First Quarter Budget Review

<p>Q:</p>	<p>(a) The text shows that HRST was 16% below budget projections. Did the projection take Covid into account?;</p> <p>(b) If diversion of HRST to the General Fund winds up being unnecessary in 2021, would we simply borrow less, or would we wind up with a \$6.25 surplus, or a combination to be determined later in the year?</p>	<p>Kelly</p>
<p>A:</p>	<p>Yes, the full-year forecast for Home Rule Sales Tax did consider COVID-related declines. Monthly revenue as compared to budget projections has been down approximately 15% through the first three months of the year; however, the full-year forecast included an increase in revenue beginning in April as a result of the new online sales tax laws taking effect Jan. 1. The same revenue projection model was used across all accounts, therefore, the projection in January, February, and March did not factor in that revenue would not increase until April. That said, the April HRST revenue came in nearly identical to budget projections.</p> <p>Staff is closely monitoring General Fund revenues to determine if the diversion of HRST to that fund is necessary. Based on the increased revenue seen in sales, income, and local use taxes, it appears that HRST diversion may not be necessary, at least not to the level identified in the budget. If HRST is not diverted to the General Fund, those dollars would remain in the capital and debt service funds. This could reduce the need to borrow for capital projects in 2021. Staff would likely prepare a recommendation in the third quarter as part of our planned bond issuance.</p>	<p>Munch</p>
<p>Q:</p>	<p>In reviewing the First Quarter Budget Review staff provides a comparison against last year's pandemic numbers against this year's post-pandemic numbers, example March 2020 real estate sales against March 2021, where total sales were up 12%. Does staff recommend short snapshots? Would staff recommend a 5 year review of real estate and other tax revenues to predict future revenue numbers?</p>	<p>Gustin</p>
<p>A:</p>	<p>The April Financial Report compares February 2021 real estate sales to those from February 2020, which is before the noticeable pandemic downturn in mid-March. Under normal circumstances, staff prefers to analyze financial data over longer periods. The unique circumstances of the pandemic necessitated more real-time analysis to ensure that Council could take appropriate actions to address short-term financial concerns, if necessary. Staff typically prepares revenue projections for the annual budget using multi-year forecasting. As previously noted, revenue projections in this environment have been extremely challenging. 2021 revenue projections were established in October when it was unclear how long the pandemic may continue impacting City</p>	<p>Munch</p>

	revenues and the overall economy. For that reason, staff was intentionally conservative in forecasting revenues for this year.	
Q:	2021 February sales had a significant decline with \$75M in sales reported verses \$144M. What can the city do to gauge, project and support this vital tax revenue source?	Gustin
A:	While the February decline in real estate transfer tax is notable, staff analyzes revenue trends over a longer period as noted in the answer to the previous question. Real estate transfer tax revenue is performing very well through the first quarter and it appears sales rebounded in March. Year-to-date revenue is \$1.12 million through March versus a budget projection of \$812 thousand.	Munch
	Please see the following document, 05 - Apr Monthly Report PPT.	Munch

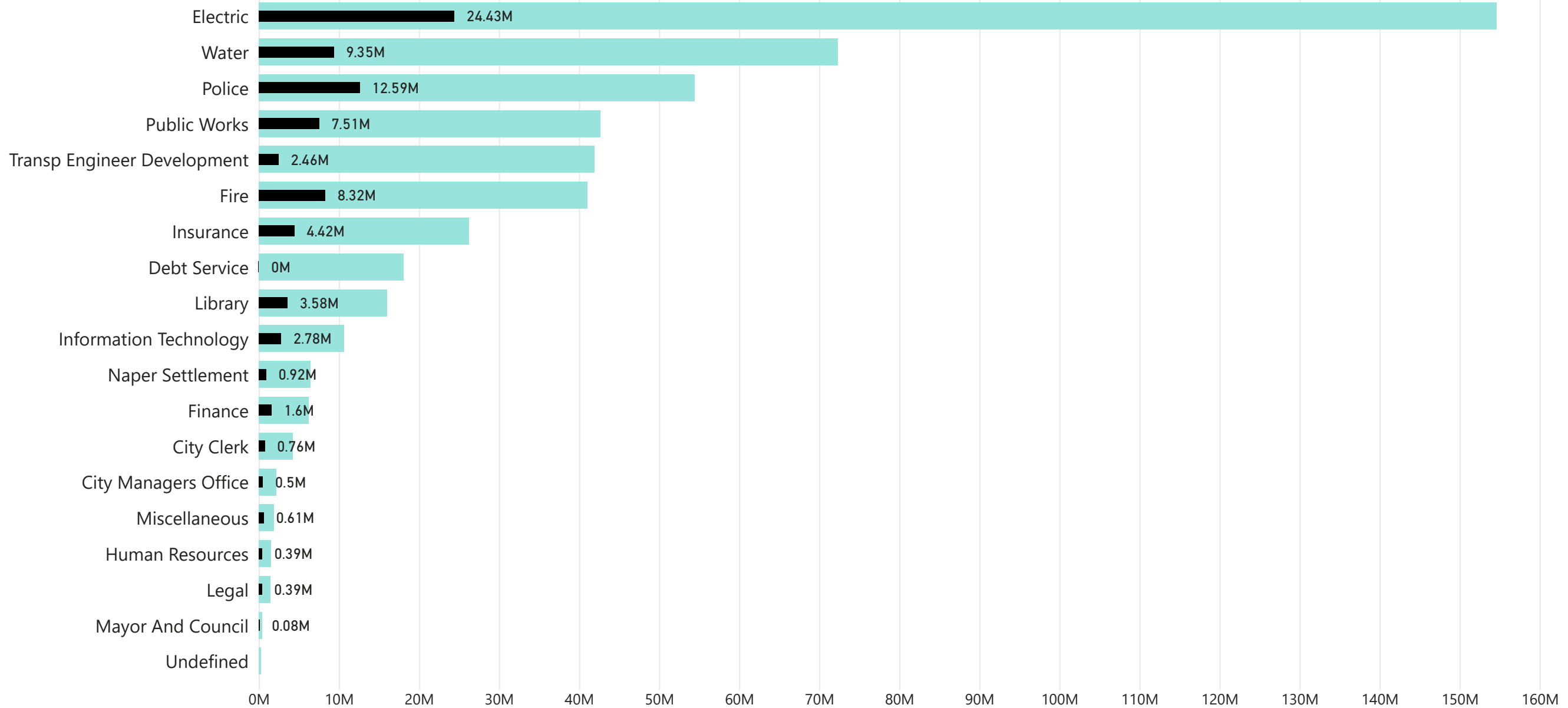
3. **21-0520** Receive the report on strategies and actions being taken and evaluated regarding loud and/or fleeing vehicles

Q:	<p>(a) For the three options listed as “under evaluation – near term potential implementation” do any of the listed options require City Council approval, or can they be implemented at any time by the police department and/or city staff?;</p> <p>(b) Do we have any data from benchmark cities (both in Illinois and non-Illinois) on whether the increases we have seen in the number of traffic stops/moving violations/loud muffler violations/feeling and eluding/etc., are more or less dramatic than other similar cities have seen?</p>	Kelly
A:	<p>(a) Can be implemented by police and/or City staff.</p> <p>(b) Benchmark communities and CLIC (Chiefs from larger Illinois cities) have been contacted and have experienced increases in disruptive driver behavior; including drag racing, excessive speeding, loud mufflers, disobeying traffic control devices and fleeing and eluding. Increases in traffic violations by groups driving cars, motorcycles and ATVs have also been noted. As a result of these contacts, strategies and actions were discussed and included within the report. The increases in disruptive driver behavior and associated violations are similar to what is currently experienced in the City of Naperville.</p>	Marshall

4. **21-0517** Waive the first reading and pass the ordinance amending Article B-12 (Towing of Unlawful Vehicles) Chapter 5 (Motor Vehicle Tows) Title 11 (Motor Vehicles and Traffic) of the Naperville Municipal Code to increase the administrative tow fee from \$300 to \$500 (requires 6 positive votes)

2021 Budget Report (Department Budget to Actual) - March

2021 YTD and 2021 Budget by Dept Name



From: Laff, Allison
Sent: Monday, April 19, 2021 12:56 PM
To: Laff, Allison
Subject: RE: CC Q&A

L1: (a) Will any of the proposed units be affordable according to IDHA and/or is the developer making a contribution to the city's affordable housing fund; (b) Approximately how many units would have to be removed in order to leave the berm in place as requested by nearby residents; (c) If some detached single family lots are removed to keep the berm in place, could more attached townhomes be added to recoup at least a portion of the lost profit?

From: Caitlin Paloian [<mailto:caitlin@rw-attorneys.com>]
Sent: Monday, April 19, 2021 12:00 PM
To: Venard, Erin <VenardE@naperville.il.us>
Cc: Russell Whitaker <russ@rw-attorneys.com>
Subject: RE: CC Q&A

CAUTION: This e-mail originated outside of the City of Naperville (@naperville.il.us).

DO NOT click links or open attachments unless you confirm the incoming address of the sender and know the content is safe.

Hi Erin,

See below from Russ:

There are a couple of different questions here. I'll address each of them individually:

- A. No subsidized or restricted housing is proposed as part of Naper commons. However, the development will add a lot of diversity to the City's north-Naperville housing stock. Townhomes (66 units) will be offered in ranch and 2-story configurations with pricing starting in the low 300's. The Meadows Series (118 lots) will include both ranch and two-story configurations with pricing starting in the mid-400's. The Estates Series (43 lots) will reach the higher end of the market with homes starting in the mid 500's but still provides extraordinary value given the location of the property and pricing of north Naperville homes. We surveyed the north Naperville market (59 to Naperville Road/75th Street to I-88) as part our preparation for Plan Commission. At that time, the least expensive home in the market that was constructed in the last 10 years was \$985,000.00. The diverse pricing options at Naper Commons will provide a unique and extraordinary opportunity for a broad spectrum of Naperville buyers.
- B. Context is critically important to any question with respect to the berm. The berm was constructed in the early 2000's when Lucent was constructing an expansive surface parking lot behind the existing Fairmeadow residences. Per ORI zoning requirements, a 100' buffer yard is required where a side or rear lot line is adjacent to a residential district. In addition, where a parking lot abuts property zoned for residential use, a solid wood fence, wall, or comparable barrier (i.e. berm) shall be provided across 100% of the parking lot to a minimum height of six

feet. These yard and buffer requirements are reflective of the City's intent to establish a transition between incompatible uses (ORI vs residential). Where residential is adjacent to residential (Naper Commons adjacent to Fairmeadow) there is zero buffer requirement per Code. The adjacent residential uses are compatible, even where they may be different (no buffer required between Fairmeadow and adjacent to Danada Townhomes). The base of the existing berm ranges from approximately 115' to 120' from Nokia's west property line. The landscape atop the berm is sparse and generally in poor condition. To accommodate neighbor objections, Pulte has shifted the westernmost section of homes to maintain a 55' outlot adjacent to the Fairmeadow residences. The outlot will include an undulating berm ranging from 3-4' in height. To accommodate the berm and handle stormwater, Pulte will build an additional layer of storm sewer through the berm that is worth 10's of thousands of dollars. The berm will be heavily landscaped with 2-3 layers of trees (deciduous, ornamental and evergreen) to provide significant separation between subdivisions- though no separation is recommended or required by Code.

- C. Pulte's original plan was 100% compliant with density limits in the Code. Since our original iteration of the plan Pulte has eliminated 17 units. Preserving the berm would require the elimination of the westernmost 10 single family units. 10 new townhomes units would not overcome the cost of this change, but equally important, would require comprehensive redesign of the site and take another six months in planning. The project cannot bear the cost of additional lot losses. Moreover, Pulte does not have time under its purchase and sale agreement with Nokia to entertain wholesale site reconfiguration after 7 months in the city's zoning process (Plans were originally submitted to the City in September 2020).

Thanks,

Caitlin Csuk

Rosanova & Whitaker, Ltd
127 Aurora Avenue
Naperville, Illinois 60540
(630) 355-4600 ext. 104

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PROPERTY ADDRESS:

Lot 4 of the Nokia Campus
Northwest Corner of Naperville Rd.
and Warrenville Rd., Naperville, IL

P.I.N.S

05-32-300-014 [Milton Township]
08-05-027-036 [Lisle Township]

RETURN TO:

City of Naperville
City Clerk's Office
400 South Eagle Street
Naperville, IL 60540

**OWNER'S ACKNOWLEDGEMENT AND ACCEPTANCE AGREEMENT
FOR NAPER COMMONS**

This Owners' Acknowledgement and Acceptance Agreement ("**Agreement**") for the Naper Commons subdivision ("**Naper Commons**" or "**Naper Commons Subdivision**") to be located on Lot 4 of the Nokia Campus as described herein, is entered into by and between the City of Naperville, a home rule unit of local government under the Constitution and laws of the State of Illinois ("**CITY**"), with an address of 400 South Eagle Street, Naperville, Illinois 60540, and Pulte Home Company, LLC, with offices at 1900 East Golf Road, Suite 300, Schaumburg Illinois 60173, ("**OWNER AND DEVELOPER**"). The CITY and the OWNER AND DEVELOPER are together hereinafter referred to as the "**Parties**" and sometimes individually as "**Party**".

RECITALS

A. This Agreement pertains to approximately sixty-five (65) acres of real property generally located at the northwest corner of Naperville Road and Warrenville Road within the corporate limits of the City of Naperville, Illinois and is commonly referenced as Lot 4 of the Nokia Campus legally described on **Exhibit A** and depicted on **Exhibit B** attached hereto ("**SUBJECT PROPERTY**").

B. The Subject Property is currently improved with a surface parking lot that once served the Nokia Campus.

C. The OWNER AND DEVELOPER petitioned the CITY for approval of the following preliminary entitlements ("**Preliminary Entitlements**") under the Naperville Municipal Code ("**City Code**" or "**Code**"):

- i. Preliminary Planned Unit Development Plat per Section 6-4-5 (PUD Plat Procedures) of the City Code with the following deviations:
 - a. Reduction of the required front yard setback from 25' to 20 per Section 6-6C-7:1 (R2 District: Yard Requirements); and

- b. Reduction of the required interior yard setback from 16' total for 2 side yards and 8' minimum per side to 14' total for 2 side yards and 6' minimum per side for the sixty-four foot (64') wide lots (the "Estates") per Section 6-6C-7:1 (R2 District: Yard Requirements); and
 - c. Reduction of the required interior yard setback from 16' total for 2 side yards and 8' minimum per side to 12' total for 2 side yards and 6' minimum per side for the fifty-one foot (51') wide lots (the "Meadows") per Section 6-6C-7:1 (R2 District: Yard Requirements); and
 - d. Reduction of the required interior yard setback from 16' total for 2 side yards and 8' minimum per side to 10' total for 2 side yards and 5' minimum per side for the ranch-style Meadows lots per Section 6-6C-7:1 (R2 District: Yard Requirements); and
 - e. Permit the eaves of the ranch-style homes to encroach 6" into the required 5' side yard easement per Section 6-2-3:3.3 (Yard Requirements: Permitted Obstructions); and
- ii. Preliminary Plat of Subdivision in order to develop sixty-six (66) townhomes and one hundred and sixty-one (161) single-family detached homes for a total of two hundred and twenty-seven (227) dwelling units per Section 7-2-2 (Subdivision Plat Procedures); and
 - iii. Conditional use to permit single-family attached dwelling units per Section 6-6C-3:5 (R2 District: Conditional Uses); and
 - iv. Variance to eliminate the masonry requirement for the single-family attached dwelling units per Section 5-2C-3 (Exterior Wall Construction); and
 - v. Deviation to increase the maximum depth of the storage in the storm water basin from the permitted 6.0' to 7.4 per Section 2.5.4.3 of the Design Manual for Public Improvements.

D. On April 20, 2021 the Naperville City Council approved OWNER AND DEVELOPER'S requests as set forth in Recital C above and passed the following ordinances ("**Naper Commons Ordinances**") which will take effect upon recordation with the Office of the DuPage County Recorder. If said ordinances are not recorded **on or before October 29, 2021**, they provide by their terms that they will automatically become void and without further force or effect without any action being taken by either OWNER AND DEVELOPER or the CITY:

- 21-_____ An Ordinance approving the Preliminary Plat of Subdivision for Naper Commons ("**Preliminary Plat of Subdivision**") (attached hereto as **Exhibit B**) and the Owner's Acknowledgement and Acceptance Agreement for Naper Commons;
- 21-_____ An Ordinance approving a preliminary planned unit development plat ("**Preliminary PUD Plat**") with certain deviations for Naper Commons.
- 21-_____ An Ordinance approving a conditional use to permit single-family attached dwelling units in the R2 District for Naper Commons.
- 21 _____ An Ordinance granting a variance from Section 5-2C-3 (Exterior Wall Construction) for Naper Commons
- 21- _____ An Ordinance granting a variance to permit a Storm Water Deviation

E. The SUBJECT PROPERTY is part of property commonly referenced as the Nokia Campus ("Nokia Campus") created by a Preliminary/Final Plat of Subdivision approved by the Naperville City Council on April 7, 2020 as Ordinance Number 20-035.

F. In addition to the Naper Commons Ordinances above, development of the SUBJECT PROPERTY shall also be subject to compliance with this Agreement, the Naperville Municipal Code then in effect, and with final approved plans, including but not limited to final engineering plans, a final storm water report, a final engineer's cost estimate, a final landscape plan, a final tree preservation plan, a final subdivision plat, a final planned unit development plat, approved preliminary elevations for the single-family attached units, and the approved preliminary elevations for the single-family detached units.

The provisions of the Naperville Municipal Code, as amended from time to time, shall govern the Subject Property; provided that where there is a clear and direct conflict between the Naperville Municipal Code and the provisions of this Agreement or the Naper Commons Ordinances where such provisions cannot be read together, the provisions of this Agreement and the Naper Commons Ordinances shall prevail. In the event of any conflict between the provisions of this Agreement and the Naper Commons Ordinances, the Naper Commons Ordinances shall prevail.

G. By entering into this Agreement, the CITY is acting pursuant to its home rule authority under the Constitution and laws of the State of Illinois.

NOW THEREFORE, in consideration of the mutual promises and agreements set forth herein, and subject to the terms and conditions set forth and referenced herein, the Parties agree as follows:

- 1. Recitals Incorporated.** The foregoing Recitals are incorporated herein as though fully set forth in this Section 1.
- 2. Ongoing Compliance.** In the development and operation of the SUBJECT PROPERTY, the OWNER AND DEVELOPER shall be subject to and shall fulfill all conditions set forth or referenced herein associated with the SUBJECT PROPERTY, including but not limited to: (i) the terms of this Agreement; (ii) the provisions of the Naperville Municipal Code, as amended from time to time; (iii) all Ordinances and resolutions passed or adopted by the Naperville City Council related to the SUBJECT PROPERTY, including but not limited to the Naper Commons Ordinances as those terms are defined herein.
- 3. School Donation.**

3.1 A portion of the SUBJECT PROPERTY is located in Community Unit School District #203 and a portion of the SUBJECT PROPERTY is located in Community Unit School District #200.

3.2 OWNER AND DEVELOPER agrees to abide by the school land-cash donation provisions set forth in Section 7-3-5 (Dedication of Park Lands and School Sites or for Payments of Fees in Lieu of) of the Naperville Municipal Code as amended from time to time and as set forth herein.

3.3. OWNER AND DEVELOPER has elected to pay a cash-in-lieu of a contribution of land for the required school donation pursuant to the "Per Permit Payment" provisions set forth in Section 7-3-5:5.2.2 of the Naperville Municipal Code. Said Per Permit Payment shall be calculated

based on the school donation table set forth in Section 7-3-5 of the Naperville Municipal Code in effect at the time of the issuance of each building permit and shall be paid prior to issuance of said building permits.

3.4 Notwithstanding the foregoing, OWNER AND DEVELOPER reserves its right to file an objection challenging the accuracy of the fair market land value set forth in 7-3-5 of the City Code for purposes of calculating the school land-cash donation due to Community Unit School District #200 hereunder.

4. Park Donation:

4.1 OWNER AND DEVELOPER agrees to abide by the park donation provisions set forth in Section 7-3-5 (Dedication of Park Lands and School Sites or for Payments of Fees in Lieu of) of the Naperville Municipal Code, as amended from time to time and as set forth herein.

OWNER AND DEVELOPER will work with the Naperville Park District (“**Park District**”) to come to an agreement (“**Development Agreement**”) setting forth their respective responsibilities regarding the design, construction, timing, and payment of the Linear Park improvements, as Linear Park is defined below, and payment of any remaining cash contribution.

4.1.1 **Linear Park Site Donation.** As part of the Development Agreement, OWNER AND DEVELOPER shall donate an approximately 2.06 acre parcel of land, depicted as Outlot D on the Preliminary Plat of Subdivision attached hereto as Exhibit B, (“**Linear Park**”) to the Park District subject to the terms and conditions set forth herein.

The Linear Park is an integral part of OWNER AND DEVELOPER’S proposal for development of the SUBJECT PROPERTY and constitutes a significant component of the development’s creative element as required in the City Code for a planned unit development.

In a letter from the Park District dated April 7, 2021 (attached hereto as **Exhibit C**), the Park District indicated its willingness to enter into a Development Agreement with the OWNER AND DEVELOPER, and further indicated its agreement to the concept park design (attached as page 2 to Exhibit C) as to the size and character of the Linear Park with certain exceptions.

The Development Agreement shall be subject to City Council approval as a negotiated land-cash agreement permitted under Section 7-3-5 of the Code to be considered for approval in conjunction with the first final plat of subdivision for Naper Commons.

The Parties anticipate that the Development Agreement will set forth an alternative basis for calculating and paying the required park contribution. A total park contribution may be negotiated based on the total number of dwelling units and assumed bedroom counts therefore, with Pulte making a lump sum payment of the total park contribution (less credits for land donation and park improvements constructed by Pulte) to the park district upon the Park District’s completion of the park improvements as specified in the Development Agreement.

A fully executed version of the approved Development Agreement shall be provided to the Zoning Administrator prior to recordation of the first final plat of subdivision for Naper Commons.

4.1.1.1 Conveyance of Linear Park OWNER AND DEVELOPER shall convey the Linear Park to the CITY for subsequent conveyance to the Naperville Park District by a plat of dedication within sixty (60) days of a written request to do so from the CITY , which shall not occur until after acceptance of the Linear Park by the Park District in accordance with the procedures and requirements of the CITY and the Park District. Said sixty (60) day timeframe may be modified by written agreement of the City Engineer. Easements shall be reserved on the Linear Park as set forth in Section 16.3 hereof.

4.1.1.2 Relocation of Storm Sewer. A storm sewer is currently located under the Linear Park. OWNER AND DEVELOPER agrees to work with the Park District regarding relocation of said storm sewer to a location that will result in minimized interference with Park District activities. Said relocation shall be at the sole cost of OWNER AND DEVELOPER, shall be reflected on the first final plat of subdivision for Naper Commons, and shall be accomplished in conjunction with the Linear Park Improvements.

4.1.2 Real Estate Taxes. OWNER AND DEVELOPER shall be liable to pay in full all real estate property taxes on the Linear Park accruing through the date of acceptance of the Linear Park by City Council action. OWNER AND DEVELOPER shall pay such taxes within fifteen (15) calendar days of notice thereby issued by the CITY. Notwithstanding the foregoing, OWNER AND DEVELOPER may opt to object to a required tax payment in which case OWNER AND DEVELOPER shall be solely responsible for payment of all taxes deemed owed and any associated fees and penalties therefor within seven (7) calendar days of issuance of a final decision on such objection. OWNER AND DEVELOPER agrees that failure to pay all real estate property taxes in accord with the provisions set forth above shall result in the CITY'S ability to pay such taxes and place a lien therefor against the SUBJECT PROPERTY, or any portion thereof as determined by the CITY , plus interest, attorney's fees and costs and recording costs, or alternatively for the CITY to cease issuance of permits related to development of the SUBJECT PROPERTY.

- 5. Fees Due.** OWNER AND DEVELOPER shall pay all fees (which fees shall not be paid under protest or otherwise objected to as set forth or referenced herein and required by the Naperville Municipal Code as amended from time to time (except as specifically set forth in Section 3.4 hereof). (Note: a revised schedule of CITY fees, entitled "An Ordinance Amending Articles E (Annexation Fees), F (Development, Zoning and Subdivision Fees) and H (Fees for Construction and New Development), Chapter 9 (Municipal Finances), of Title 1 (Administration) of the Municipal Code" was approved by the Naperville City Council on July 21, 2020 by Ordinance 20-067, effective January 1, 2021 revising the prior fee schedule. The revised fee schedule shall be applicable to all aspects of the Naper Commons development.)

Fees which are due include, but are not limited to the following:

- a. **Engineering Review Fee.** The Engineering Review Fee for final engineering will be \$150 per page for Final Engineering Review. This fee is due prior to release of

City staff's final engineering plan review comments for the SUBJECT PROPERTY.

- b. **Site Permit Fee.** The Site Permit Fee will be determined based on 1.5% of the approved engineer's cost estimate. This fee is due prior to pre-construction meeting for the SUBJECT PROPERTY.
- c. **Infrastructure Availability Charges and User Fees.** Upon a request for connection and service to the CITY'S water* system, OWNER AND DEVELOPER shall pay for all infrastructure availability charges and user fees in accordance with Title 8 of the Naperville Municipal Code as amended from time to time, as are applicable to that portion of the SUBJECT PROPERTY for which connection and service is requested.

(*Sanitary service for the SUBJECT PROPERTY is not provided through the City of Naperville.)
- d. **Facility Installation Charges and User Fees.** Upon a request for connection and service to the City of Naperville electric system, the OWNER AND DEVELOPER shall pay for all Facility Installation Charges (FIC) and user fees in accordance with the provisions of Title 8 of the Naperville Municipal Code then in effect and the Electric Service Rules and Policies as amended from time to time, as are applicable to that portion of the SUBJECT PROPERTY for which connection and service is requested.
- e. **Northeast Waterworks Pump Station.** A recapture fee of \$113,289.70 (\$1,751.00/per acre) shall be paid to the CITY by the OWNER AND DEVELOPER for the Northeast Waterworks Pump Station prior to the recordation of the first final plat of subdivision for Naper Commons.
- f. **Other Fees.** Any resubmission fees, or other applicable fees not listed in (a) through (e) above, shall be charged in accord with the fee schedule in Section 1-9F (Municipal Finances: Development, Entitlement and Other Required Application Process Fees) and Section 1-9H (Municipal Finances: Fees for Construction and New Development) as effective on January 1, 2021.

6. Tree Preservation and Landscape Requirements.

6.1 Tree Preservation. OWNER AND DEVELOPER shall preserve those existing trees as depicted on the Preliminary Tree Preservation Plans prepared by Signature Design Group, dated September 14, 2020, last revised February 24, 2021 ("**Preliminary Tree Preservation Plans**").

Prior to City approval of final engineering, OWNER AND DEVELOPER shall submit a final tree preservation plan ("**Final Tree Preservation Plan**") which shall be approved in writing by the City Forester so long as conforms to the Preliminary Tree Preservation Plans. The Final Tree Preservation Plan shall be attached to and incorporated as an exhibit to the CITY ordinance approving the Final Planned Unit Development Plat for the Naper Commons Subdivision.

During development of the Naper Commons Subdivision, OWNER AND DEVELOPER shall cause those trees to be preserved which are depicted on the Final Tree Preservation Plan. If, during development of the SUBJECT PROPERTY, trees are removed that should have been preserved as required by the Final Tree Preservation Plan, OWNER AND DEVELOPER shall cooperate with reasonable direction by the City Forester relative to replacement or "mitigation" trees and shall further be subject to the compensation and fine provisions of Section 5-10-5:5.5.3 and 5-10-5:6 of the Naperville Municipal Code then in effect. Failure of the OWNER AND DEVELOPER to timely comply with direction by the City Forester or to comply with the above-referenced Code provisions shall result in the CITY having the option to cease issuance of building permits, occupancy permits, and/or other permits related to the SUBJECT PROPERTY or any part thereof.

6.2 Landscape Plan. A preliminary landscape plan ("**Preliminary Landscape Plan**") was approved as part of the Ordinance approving the Preliminary Planned Unit Development with certain deviations for Naper Commons. A final landscape plan ("**Final Landscape Plan**") shall be approved with the ordinance approving the Final Planned Unit Development for the SUBJECT PROPERTY and shall be used in the development of the Naper Commons Subdivision and as referenced herein.

7. Buffer Between the FPD of DuPage County and Naper Commons Residences.

7.1 OWNER AND DEVELOPER shall create one or more outlots around the perimeter of the SUBJECT PROPERTY where the SUBJECT PROPERTY is adjacent to property owned by the Forest Preserve District of DuPage County which shall provide vacant buffer space between the real property owned by the Forest Preserve District of DuPage County and the rear property line of adjacent residential properties located on the SUBJECT PROPERTY ("FPD Buffer"). Said FPD Buffer shall generally be not less than twenty-five feet (25') in width as depicted on the Preliminary Plat of Subdivision (noting that there is one point where its width is reduced circa lot 114 to approximately ten feet (10')).

7.2 The FPD Buffer shall be delineated by installation of a split rail fence along the property line between the Buffer and the adjacent residential lots which shall be installed by the OWNER AND DEVELOPER by July 31, 2022. Said fencing shall be included in the financial surety described in Section 18 below.

7.3 The FPD Buffer shall be improved with a native grass mix as depicted on the Preliminary Landscaping Plans, prepared by Signature Design Group, dated September 14, 2020, last revised March 15, 2021. Installation of said native grass mix shall be completed by the OWNER AND DEVELOPER and approved by the City Engineer on or before July 31, 2022, or such extension as may be agreed to in writing by the City Engineer. Said fencing shall be included in the financial surety described in Section 18 below.

7.4 The OWNER AND DEVELOPER shall convey the FPD Buffer to the Naper Commons homeowners' association formed for single-family residences within the Naper Commons subdivision (the "Naper Commons Single-Family HOA") within five (5) years of the Effective Date of this Agreement. Prior to such conveyance OWNER AND DEVELOPER will record a covenant on the FPD Buffer property containing conditions regarding the upkeep and maintenance thereof, including but not limited to requiring that no structures be placed on it and requiring that it be maintained in good condition (e.g. mowed appropriately) with native landscaping consistent with the Final landscape Plan approved for the SUBJECT PROPERTY

(“**FPD Buffer Covenant**”). Such FPD Buffer Covenant shall be in a form approved by the City Attorney.

7.5 OWNER AND DEVELOPER shall be responsible for the upkeep, mowing, maintenance, and preservation of the FPD Buffer in compliance with the Final Landscape Plan prior to its conveyance to the Naper Commons Single-Family HOA.

7.6 The timing requirements set forth in this Section may be extended upon the written agreement of the City Engineer.

8. Buffer between Naper Commons Residences and the Fairmeadow Subdivision.

8.1 OWNER AND DEVELOPER shall create an outlot, as generally depicted on the Preliminary Plat of Subdivision as Outlot C, between the rear property line of residential properties on Lots 1 through 10 of the SUBJECT PROPERTY and residential properties located in the adjacent Fairmeadow Subdivision (the “Fairmeadow Buffer”).

8.2 The Fairmeadow Buffer shall be delineated by installation of a split rail fence along the shared property line with the lots in the Fairmeadow subdivision to be installed by the OWNER AND DEVELOPER on or before September 30, 2022. OWNER AND DEVELOPER shall obtain all necessary permits for the installation of said split rail fence. Said fencing shall be included in the financial surety described in Section 18 below.

8.3 The Fairmeadow Buffer shall be improved with landscaping comprised of a combination of deciduous, ornamental and evergreen trees as generally depicted on the Preliminary Landscaping Plans. Installation of said landscaping shall be completed by the OWNER AND DEVELOPER and approved by the City Engineer on or before September 30, 2022, or such extension as may be agreed to in writing by the City Engineer. Said landscaping shall be included in the financial surety described in Section 18 below.

8.4 The OWNER AND DEVELOPER shall convey the Fairmeadow Buffer to the Naper Commons Single-Family HOA within five (5) years of the Effective Date of this Agreement. Prior to such conveyance OWNER AND DEVELOPER will record a covenant on the Fairmeadow Buffer property containing conditions regarding the upkeep and maintenance thereof, including but not limited to requiring that no structures be placed on it and requiring that it be maintained in good condition by the HOA with landscaping consistent with the Final Landscape Plan approved for the SUBJECT PROPERTY (“**Fairmeadow Buffer Covenant**”). Such Fairmeadow Buffer Covenant shall be in a form approved by the City Attorney.

8.5 OWNER AND DEVELOPER shall be responsible for the upkeep, mowing, maintenance, and preservation of the Fairmeadow Buffer in compliance with the Final Landscape Plan prior to its conveyance to the Naper Commons Single-Family HOA.

8.6 The timing requirements set forth in this Section may be extended upon the written agreement of the City Engineer.

9. Dedication of Portion of Lucent Lane.

9.1 Lucent Lane Dedication. OWNER AND DEVELOPER shall dedicate, or cause to be dedicated, to the CITY, and the CITY shall accept dedication of Lucent Lane as depicted on

the Plat of Dedication (“**Lucent Lane Dedication**”), prepared by Cemcon, Inc. on September 14, 2020 and last revised on November 12, 2020 (the “Plat of Dedication”). The OWNER AND DEVELOPER shall cause the Plat of Dedication to be recorded prior to the approval a final plat of subdivision for the Subject Property.

9.2 Lucent Lane Improvement. A portion of the Lucent Lane Dedication, being that area depicted on the Preliminary Plat of Subdivision as Lucent Lane, is improved with an existing roadway (the “Existing Roadway”). The CITY hereby approves the modified geometry of the Existing Roadway as depicted in the preliminary engineering plan for Naper Commons, prepared by Cemcon Ltd., dated September 14, 2020, last revised on April 8, 2021 (“**Preliminary Engineering Plan**”). OWNER AND DEVELOPER shall be responsible for, at a minimum: i) milling and repaving Lucent Lane to variable thickness which shall not be less than two inches (2”) at any point; ii) removing existing street lights and installing the CITY’S standard fixtures; iii) installation of an eight foot (8’) pedestrian path along the north/east side of Lucent Lane; iv) completing the sidewalk extension and landscape enhancements on the west side of Lucent Lane; and v) installation of all required parkway trees (collectively the “**Lucent Lane Improvement**”). The Lucent Lane Improvement is generally depicted on the Preliminary Engineering Plan and the Preliminary Landscape Plan. The final design of the Lucent Lane Improvement may include additional pavement lifts to meet CITY’S required slopes and structural numbers, the final specifications of the Lucent Lane Improvement being subject to the review and approval of the City Engineer as part of the final engineering plans for the Subject Property. These requirements may be revised with the written approval of the City Engineer.

9.3 Road D Drive Improvement. A portion of the Lucent Lane Dedication, being that area depicted on the preliminary plat of subdivision as “Road D,” will be improved with a new roadway (the “**Road D Drive**”). The Road D Drive is generally depicted on the Preliminary Engineering Plan. The CITY preliminarily approves a one hundred and fifty foot (150’) radius for the Road D Drive, the location of all curb cuts, and modification of the adjacent parking lot improvements associated therewith are subject to approval of the final engineering. Road D Drive shall be subject to the review and approval of the City Engineer as part of the final engineering plans for the SUBJECT PROPERTY.

9.4 Completion and Conveyance of Road Improvements. The OWNER AND DEVELOPER shall submit the final engineering plans for the Lucent Lane Improvement and Road D Drive no later than with submission of the final subdivision plat for the SUBJECT PROPERTY for review and approval by the City Engineer. The Lucent Lane Improvement shall be substantially completed, as determined by the City Engineer, prior to issuance of any occupancy permits, whether temporary or final, for the SUBJECT PROPERTY. Road D shall be substantially completed as determined by the City Engineer, prior to the issuance of any non-model occupancy permit (whether temporary or final) for the SUBJECT PROPERTY. All outstanding punch-list items, including but not limited to street lights and landscaping, as determined by the City Engineer, must be completed to the satisfaction of the City Engineer within twelve (12) months of issuance of the any occupancy permits for the SUBJECT PROPERTY, whether temporary or final. In the absence of full completion of the punch-list items as set forth above and within the twelve (12) month timeframe, the CITY shall have the right to withhold issuance of any further occupancy permits for the SUBJECT PROPERTY. These requirements may be revised with the written approval of the City Engineer.

Upon completion of the Lucent Lane Improvement and Road D Drive, subject to the reasonable satisfaction of the City Engineer, OWNER AND DEVELOPER shall convey the Lucent Lane Improvement and Road D Drive to the CITY by bill of sale.

10. Reserved.

11. Lot 3 (Off-Site) and Lot 4 (On-Site) Parking Reconfiguration, Sidewalks, and Tree Preservation.

11.1 The Parties acknowledge and agree that certain improvements to the parking lot which is located in part on Lot 3 of the Nokia Campus and in part on Lot 4/SUBJECT PROPERTY will be completed by OWNER AND DEVELOPER in conjunction with the Naper Commons Subdivision improvements as described below subject to CITY approval of a Final Engineering Plan and Final Landscape Plans for Naper Commons. OWNER AND DEVELOPER will be responsible for obtaining owner authorizations and all required permits for these improvements.

11.2 OWNER AND DEVELOPER will reconfigure access to the parking improvements located on Lot 2 and Lot 3 of the Nokia Campus as generally depicted on the Preliminary Engineering Plan. The reconfiguration of the parking lot improvements will include tree preservation as depicted on the Preliminary Tree Preservation Plan.

11.2.1 The reconfiguration of the parking lot improvements on Lot 4 will include new sidewalk and new landscape enhancements as generally depicted on the Preliminary Landscape Plans.

11.3 OWNER AND DEVELOPER shall include one or more sheets in the applicable Final Engineering Plan and the Final Landscape Plan depicting the scope of said parking lot, sidewalk, and landscaping improvements the scope and geometry of which shall be approved if they are in substantial conformance with the scope and geometry thereof as depicted on the Preliminary PUD Plat. Subject to compliance with all applicable laws, including but not limited to the City Code, and contingent upon obtaining all necessary owner approvals and authorizations, and approval of Final Engineering and Final Landscape Plans, the CITY shall not object to the foregoing improvements.

12. Floodplain. No site development permit shall be issued for the SUBJECT PROPERTY until April 26, 2021 which is the date upon which the Letter of Map Revision issued by the Federal Emergency Management Agency (“**FEMA**”) on December 11, 2020 becomes effective.

13. Vacation of Public Utility and Drainage Easement. The CITY agrees that at final plat of subdivision, the portion of the public utility and drainage easement (“**PUDE Easement**”) created pursuant to that certain Public Utility Easement Grant dated September 30, 1997 and recorded with the Office of the DuPage County Recorder as Document R97-170103 which represents a sixty foot (60’) temporary construction easement may be vacated and replaced with a ten foot (10’) temporary construction easement. The ten foot (10’) PUDE easement granted by said easement shall remain in full force and effect.

14. Construction Parking Management Plan. OWNER AND DEVELOPER shall prohibit construction vehicles associated with the development of the SUBJECT PROPERTY from parking on residential streets including but not limited to streets in the Fairmeadow Subdivision and the Danada Woods Townhomes Subdivision.

15. Public Improvements. OWNER AND DEVELOPER shall construct the Public Improvements, as provided herein, at their sole cost, in compliance with the terms and conditions of this Agreement, the Naper Commons Ordinances, including all exhibits thereto, the provisions of the Naperville Municipal Code, as amended from time to time; all other ordinances in existence or passed with respect to the SUBJECT PROPERTY, and all other laws and regulations.

16. Easements.

16.1 PUDE, PCBMPs, Sidewalk, and Access Easements.

OWNER AND DEVELOPER shall grant easements to the CITY at no cost to the CITY upon, over, under, and through the SUBJECT PROPERTY pursuant to easement provisions approved by the City Attorney for public utilities, drainage, post-construction best management practices (PBCMPs), public sidewalks, and access as may be reasonably required by the CITY for the contemplated development of the SUBJECT PROPERTY as generally depicted on the Preliminary Engineering Plan and as may be needed, as determined by the CITY, to accommodate the installation of utilities as set forth on the Final Engineering Plans. Such easements shall be granted by final plat of subdivision for the SUBJECT PROPERTY. No building permit shall be issued prior to the grant of said easements, but nothing herein shall delay otherwise prevent the issuance of preliminary grading and site development permits which may be issued pursuant to standard CITY process at OWNER AND DEVELOPER'S sole risk.

16.2 Cross-Access Easement and Roadway Access for Second Point of Access to and from the SUBJECT PROPERTY

16.2.1 A cross-access easement was dedicated on portions of Lots 2 and 3 of the Nokia Campus as depicted ("**Cross-Access Area**") on the final plat of subdivision for the Nokia Campus approved by the Naperville City Council on April 7, 2020 and recorded with the Office of the DuPage County Recorder under recording number R2020-085330. ("**2020 Cross-Access Easement**").

Prior to recordation of any final plat of subdivision for the SUBJECT PROPERTY, OWNER AND DEVELOPER shall work with the CITY and the owner of Lots 2 and 3 of the Nokia Campus to cause the 2020 Cross-Access Easement to be amended ("**Amended Cross-Access Easement**"). The Cross-Access Area is a critical component of the residential development of the SUBJECT PROPERTY because it provides the second means of ingress and egress to the SUBJECT PROPERTY required for life-safety purposes. The Amended Cross-Access Easement shall be subject to review and approval of the City Engineer and the City Attorney prior to recordation. It is the intent of the Parties that the Amended Cross-Access Easement shall:

- (i) Require that the Amended Cross-Access Easement may not be terminated or amended to restrict use of the Cross-Access Easement or ingress/egress to Lot 4 without prior written approval of the City Council;
- (ii) Require that the owners of Lots 2 and 3 of the Nokia Campus shall, at their sole expense, keep and maintain the Cross-Access Area on their respective Lots (the "**Cross-Access Road**") in good order and repair, and improved with a

continuous impervious material (such as concrete or asphalt) of sufficient bearing strength so as to accommodate the vehicular traffic which will use the Cross-Access Road. The owners of Lots 2 and 3 of the Nokia campus shall be required to provide timely snow and ice removal for the Cross-Access Road;

- (iii) Require that the owners of Lots 2 and 3 shall grant the CITY the right of access upon, over and across the Amended Cross-Access Easement to inspect the Cross-Access Road and the right, but not the obligation, to perform any maintenance of said Cross-Access Road which either owner of Lot 2 and/or Lot 3 has failed to perform if such failure continues for thirty (30) calendar days after written notice from the CITY of such failure. The owners of Lots 2 and/or 3 (as applicable) shall be liable for the cost of any maintenance so performed by the CITY ("City Maintenance Costs") and shall reimburse the CITY for such costs, with interest at statutory pre-judgment rate calculated from the date of expenditure. Upon recordation by the City of a claim for reimbursement, the City shall have a foreclosable lien upon the owner's property to secure reimbursement.
- (iv) In addition to the remedies provided for above, upon failure of the owners of Lots 2 and/or 3 (as applicable) to maintain the Cross-Access Road (after notice), the CITY shall be entitled to all remedies at law or equity to enforce the Amended Cross-Access Easement, including but not limited to all remedies for the abatement of a nuisance, which remedies shall be cumulative and not exclusive. If a judgment is entered against the owners of Lots 2 and/or 3 (as applicable), said owner(s) shall pay all reasonable attorney's fees and costs of the CITY (including in-house counsel). The CITY shall not be liable to the owners of Lots 2 and 3 or any party claiming through them, for any damage caused by the CITY in the performance of any maintenance undertaken pursuant to the Amended Cross-Access Easement unless such damage is caused by wanton or willful conduct. Failure to enforce a right granted under the Amended Cross-Access Easement shall not be deemed a waiver of such right or any other rights thereunder. No Party shall be liable for the failure to enforce the provisions of the Amended Cross-Access Easement.
- (v) The provisions of the Cross-Access Easement shall inure to and be binding upon the owners of Lot 2 and Lot 3 and their respective assigns, transferees, heirs, and grantees.

16.3 Easements Reserved on the Linear Park

The Plat of Dedication for the Linear Park shall reserve twenty foot (20') nonexclusive easements for all current utilities and cable providers on the Linear Park in addition to twenty foot (20') exclusive perimeter easements on the Linear Park to the CITY and its designees. The language of such easements shall be approved by the City Attorney.

17. Building Permits. Building permits for the development of the SUBJECT PROPERTY shall not be issued by the CITY until after: (i) the first final plat of subdivision for Naper Commons has been recorded with the Office of the DuPage County Recorder; and (ii) the City Engineer has

determined that sufficient improvements have been installed and are functioning to protect the health, safety, and welfare of the public.

18. Financial Surety. The OWNER AND DEVELOPER shall submit a surety to the CITY in a form and from a source acceptable to the City Attorney, and in an amount approved by the City Engineer based upon 110% of the approved engineer's cost estimate to guarantee the completion of public improvements and soil erosion and sedimentation control for the SUBJECT PROPERTY ("**Public Improvements**") as well as the Buffer improvements described in Sections 7 and 8 above, including but not limited to the installation of native grass mix and/or landscaping (as applicable) and the split-rail fences, in accordance with the Naperville Municipal Code then in effect.

The financial surety described above shall be received and approved prior to issuance of a site development permit for the SUBJECT PROPERTY. Notwithstanding provision of said surety, until the Public Improvements have been accepted by the CITY, the OWNER AND DEVELOPER shall remain obligated for completion of said Public Improvements and/or (at the CITY'S sole discretion) to pay any costs for said Public Improvements to the extent that the surety is not sufficient to pay for the costs of the Public Improvements, or in the event of any denial, or partial denial of coverage by the surety, or failure of the surety to timely respond to a demand for payment. Prior to acceptance of the Public Improvements by the CITY, the OWNER AND DEVELOPER shall provide the CITY with a maintenance surety for the Public Improvements in a form and from a source approved by the City Attorney and in conformity with the Naperville Municipal Code then in effect.

As to any surety, or maintenance surety, provided by the OWNER AND DEVELOPER to the City hereunder, the OWNER AND DEVELOPER agrees that: (1) at no time shall the City be liable for attorneys' fees with respect thereto; (2) OWNER AND DEVELOPER shall be liable to pay the CITY'S reasonable attorneys' fees and costs (in-house or outside counsel) in enforcement thereof; and (3) the list of circumstances set forth in such surety (including any exhibit thereto) as bases for default thereunder shall entitle the CITY to draw on said surety.

19. General Conditions.

19.1 **Binding Effect.** CITY and OWNER AND DEVELOPER acknowledge and agree that the terms contained herein shall be binding upon and inure to the benefit of the CITY and the OWNER AND DEVELOPER and their respective successors, assigns, and transferees, and any subsidiary, affiliate or parent of the OWNER AND DEVELOPER and any successor, assign, or transferee.

19.2 **Severability.** It is mutually understood and agreed that all agreements and covenants herein are severable and that in the event any of them shall be held to be invalid by any court of competent jurisdiction, this Agreement shall be interpreted as if such invalid agreement or covenant were not contained herein.

19.3 **Amendment.** The agreements, covenants, terms and conditions herein contained may be amended or modified only through the written mutual consent of the CITY and the OWNER AND DEVELOPER of the SUBJECT PROPERTY to which such amendments or modifications are applicable.

19.4 **Assignment.** This Agreement may not be assigned by the OWNER AND DEVELOPER without the prior written consent of the CITY.

19.5 **Choice of Law and Venue.** This Agreement shall in all respects be subject to and construed in accordance with and governed by the laws of the State of Illinois. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

19.6 **Ambiguity.** If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.

19.7 **Recordation.** This Agreement will be recorded with the Office of the DuPage County Recorder.

19.8 **Term.** This Agreement shall be from the Effective Date defined herein and shall terminate, subject to the survival provisions set forth in 19.13 below upon the later of fifteen (15) years from the Effective Date or issuance of all final certificates of occupancy for the SUBJECT PROPERTY.

19.9 **Exhibits.** All exhibits hereto shall be deemed incorporated herein in their entirety.

19.10. **Survival.** The following provisions of this Agreement shall survive its expiration: Section 1-9 (and any subparts thereof), Sections 11-18 (and any subparts thereof) and Subsections 19.1, 19.2, 19.3, 19.5, 19.6, 19.9. and 19.10.

19.11 **Authority to Execute/OWNER AND DEVELOPER.** The undersigned warrants that he/she is the OWNER AND DEVELOPER of the SUBJECT PROPERTY, or is the duly authorized representative of the OWNER AND DEVELOPER of the SUBJECT PROPERTY in the case of a corporation, partnership, trust, or similar ownership form which owns the SUBJECT PROPERTY and that the undersigned has full power and authority to sign this document and voluntarily agrees to the provisions set forth herein.

19.12 **Authority to Execute/CITY.** The undersigned City Manager warrants that he has been directed to, and has the authority to, execute this Agreement. The undersigned City Clerk warrants that she has been directed to, and has the authority to, attest the signature of the City Manager on this Agreement.

19.13 **Effective Date.** This Agreement shall be effective when it has been fully executed by the Parties hereto and has been recorded with the Office of the DuPage County Recorder (herein referred to as "**Effective Date**").

/ SIGNATURES ON FOLLOWING PAGES /

OWNER AND DEVELOPER/ PULTE HOME COMPANY, LLC:



[Signature]

Robert Getz

[Printed name]

Vice President Land

[Title] Its:

State of Illinois)

) ss

County of DuPage)

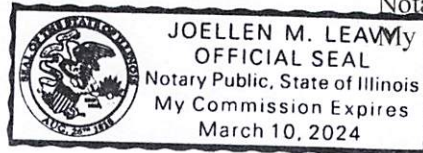
The foregoing instrument was acknowledged before me by Robert Getz
this 16 day of April 2021.

Joellen M. Leavy
Notary Public

Joellen M. Leavy
Print Name

Given under my hand and official seal this 16 day of April, 2021.

-Seal- Joellen M. Leavy
Notary Public



Commission Expires: March 10, 2024

CITY OF NAPERVILLE

By: _____
Douglas A. Krieger
City Manager

ATTEST:

By: _____
Pam Gallahue, Ph.D.
City Clerk

Date: _____

LEGAL DESCRIPTION

LOT 4 IN NOKIA CAMPUS SUBDIVISION, BEING A SUBDIVISION IN PART OF THE NORTH 1/2 OF SECTION 5, TOWNSHIP 38 NORTH, RANGE 10 EAST AND THE SOUTH HALF OF SECTION 32, TOWNSHIP 39 NORTH RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 6, 2020 AS DOCUMENT R2020-085330, IN DUPAGE COUNTY, ILLINOIS.

PINs: 05-32-300-014
08-05-207-036

ADDRESS: Part of the 1960-2000 Lucent Lane, Nokia Campus, Naperville, Illinois

PRELIMINARY PLAT of SUBDIVISION

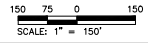
FOR NAPER COMMONS

PARCEL DESCRIPTION

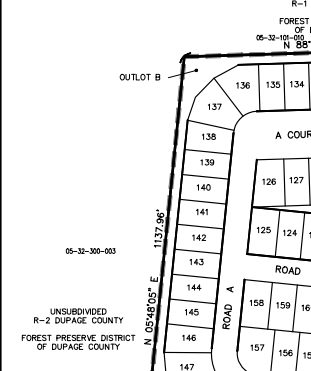
PART OF LOT 4 IN NOKIA CAMPUS SUBDIVISION, BEING A SUBDIVISION IN PART OF THE NORTH 1/2 OF SECTION 5, TOWNSHIP 38 NORTH, RANGE 10 EAST AND THE SOUTH HALF OF SECTION 32, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 6, 2020 AS DOCUMENT R2020-085330, IN DUPAGE COUNTY, ILLINOIS.

LOT DIMENSIONS & AREAS ARE APPROXIMATIONS & WILL VARY AT TIME OF FINAL PLATTING.

PARCEL INDEX NUMBER table with columns for parcel index number and property details.



LOCATION MAP

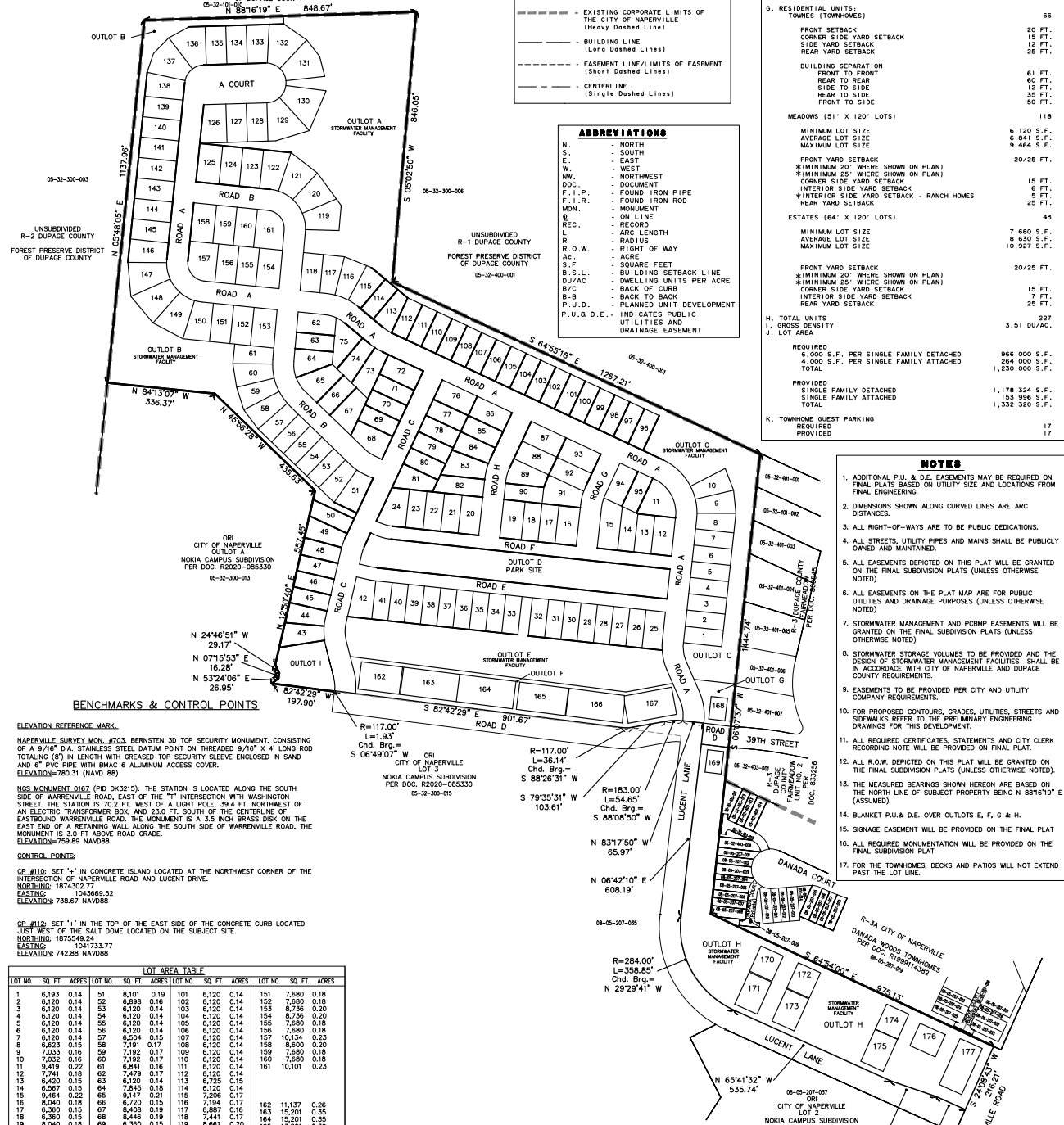


LINE LEGEND table defining symbols for subdivision boundary line, lot line, easement, building line, etc.

ABBREVIATIONS table listing abbreviations for North, South, East, West, etc., and their meanings.

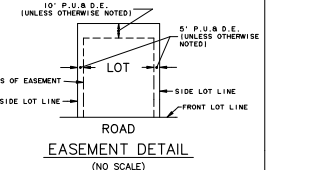
SITE DATA table containing various site metrics such as total area, proposed zoning, residential units, and required/provided parking.

- NOTES section containing 17 numbered notes regarding easements, dimensions, and other project details.



BENCHMARKS & CONTROL POINTS section detailing specific survey points and their elevations.

LOT AREA TABLE with columns for lot no., sq. ft., and acres, listing data for all lots in the subdivision.

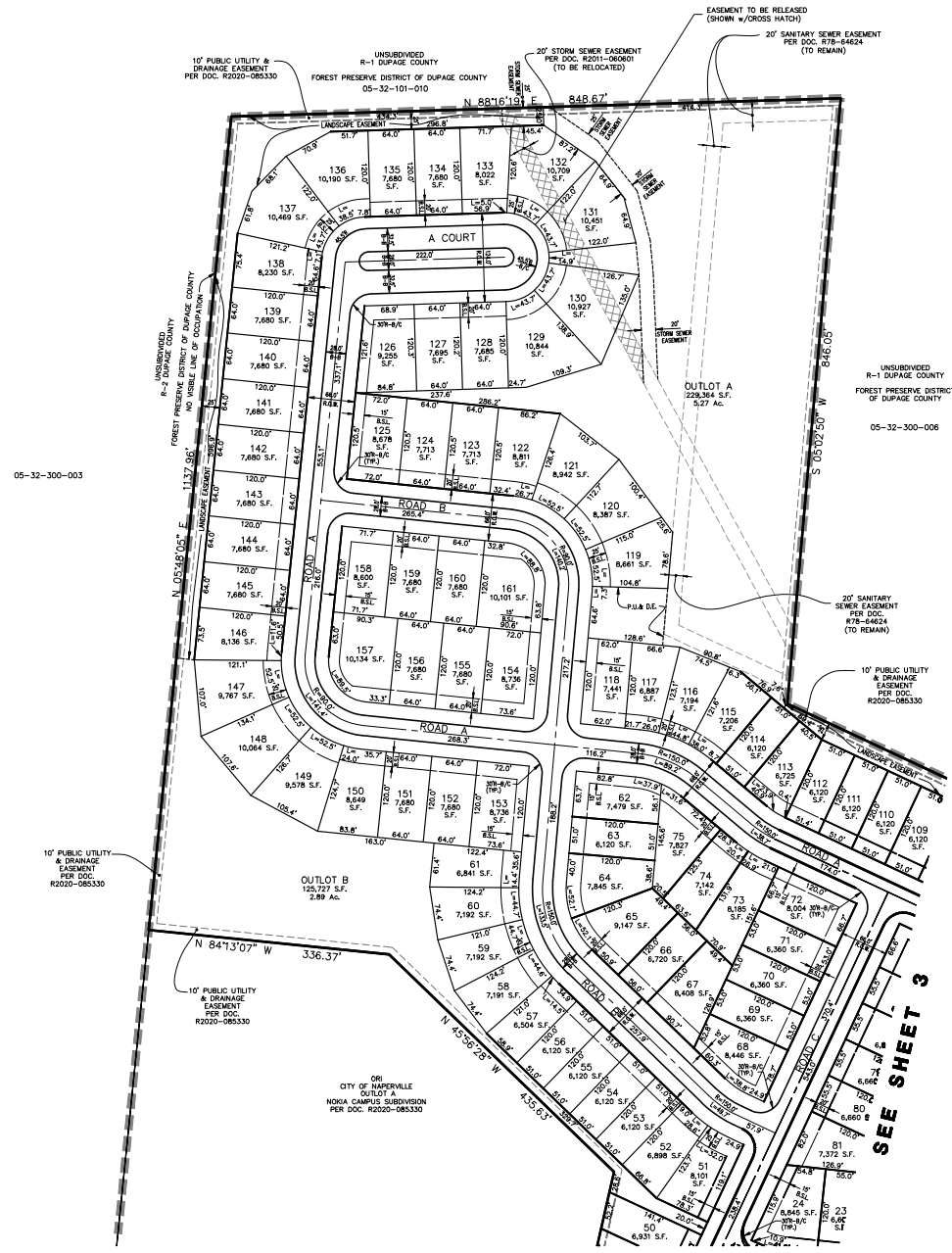


CEMCON, Ltd. logo and contact information, including address, phone numbers, and website.

PREPARED FOR: PULTE HOME COMPANY, LLC 1900 E. GOLF ROAD, SUITE 300 EXHIBIT B 60173 18417-230-5400



80 40 0 80
SCALE: 1" = 80'



05-32-300-003

SEE SHEET 3

PREPARED FOR:
PULTE HOME COMPANY, LLC
1900 E. GOLF ROAD, SUITE 300
SCHAUMBURG, IL 60173
EXHIBIT B 230-5400

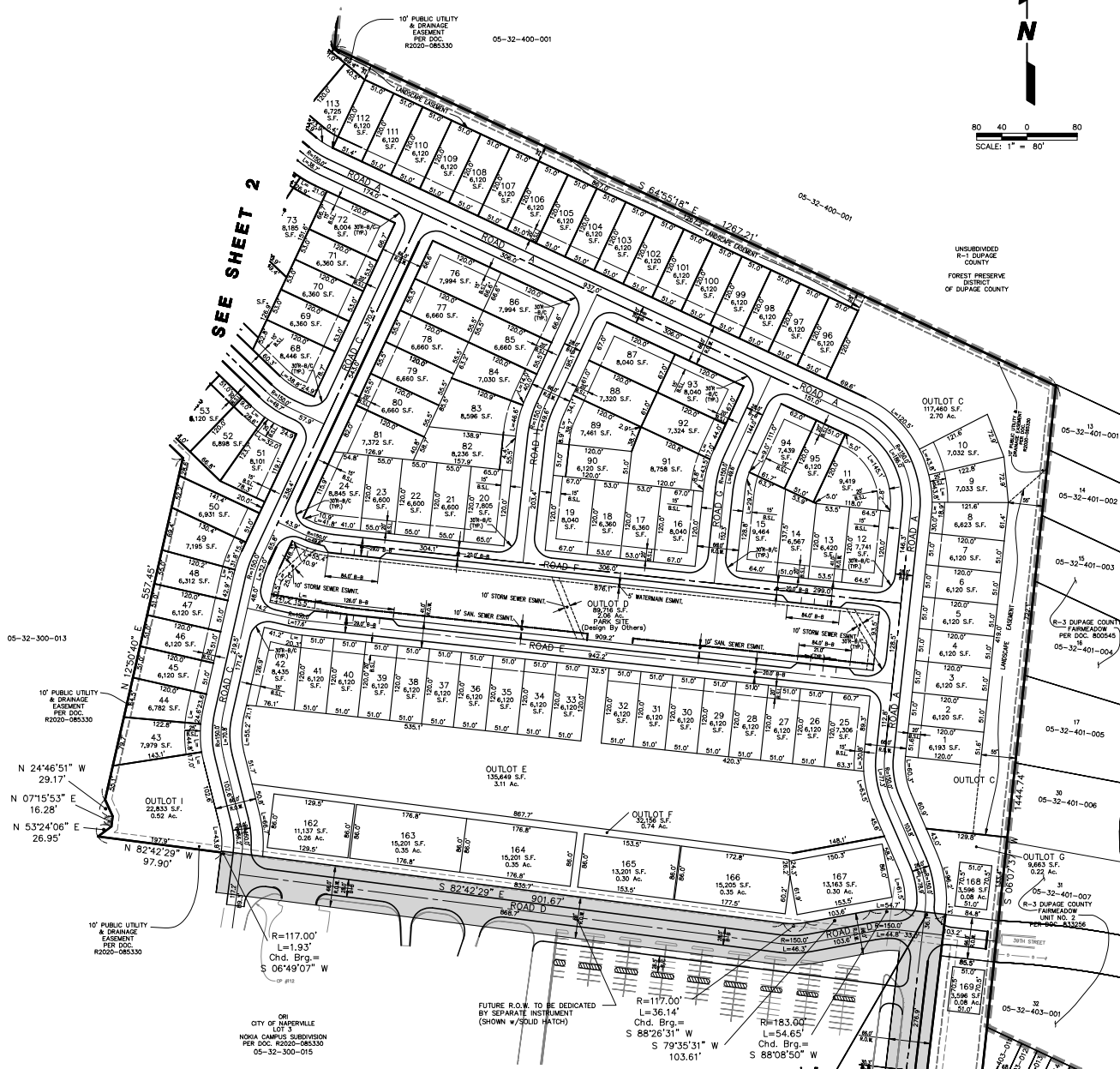
PREPARED BY:
CEMCON, Ltd.
Consulting Engineers, Land Surveyors & Planners
2280 White Oak Circle, Suite 100
Aurora, Illinois 60502-9675
PH: 630.862.2100 FAX: 630.862.2199
E-Mail: info@cemcon.com Website: www.cemcon.com

DISC NO.: 402138 FILE NAME: PREOCR
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11-18-20/AAL REVISED PER 2020-11-03 CITY COMMENTS
01-20-21/AAL REVISED PER PLANNING COMMISSION MEETING 12/16
02-01-21/AAL REVISED PER 2021-01-29 CITY COMMENTS
02-18-21/AAL REVISED PER PLANNING COMMISSION MEETING 2/6
03-15-21/AAL REVISED PER 2021-03-11 CITY COMMENTS
04-08-21/AAL REVISED PER 2021-04-08 CITY COMMENTS
**PRELIMINARY PLAN OF SUBDIVISION FOR MAPER COMMONS
CITY OF NAPERVILLE PROJECT NO.: 20-1000008**
SHEET 2 OF 4
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LAST FILE CREATED: 7/2/2021 BY: CELIA LUMBERG
DRAWING P.L.W. PL. VESTING/STATE/PLANNING/PROVISIONS

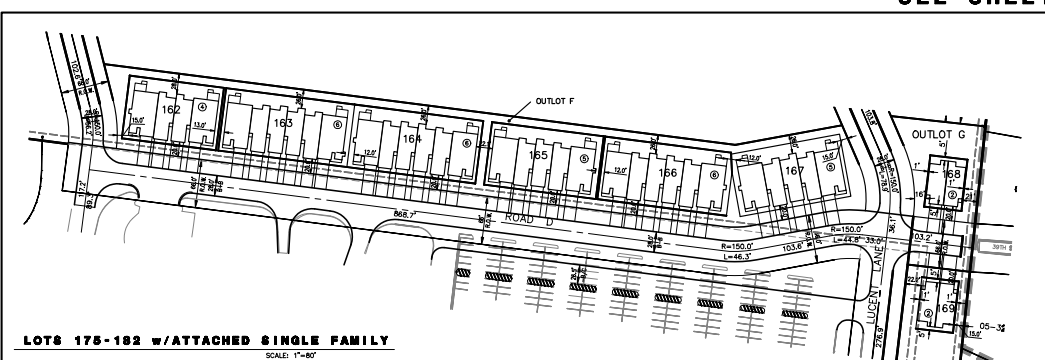


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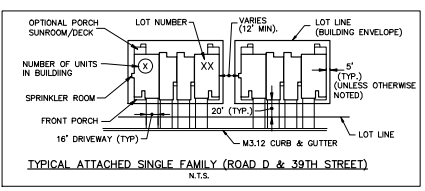


SEE SHEET 2

SEE SHEET 4



LOTS 175-182 w/ATTACHED SINGLE FAMILY
SCALE: 1"=80'



TYPICAL ATTACHED SINGLE FAMILY (ROAD D & 39TH STREET)
N.T.S.

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PULTE HOME COMPANY, LLC
1900 E. GOLF ROAD, SUITE 300
SCHAUMBURG, IL 60173
EXHIBIT B 230-5400

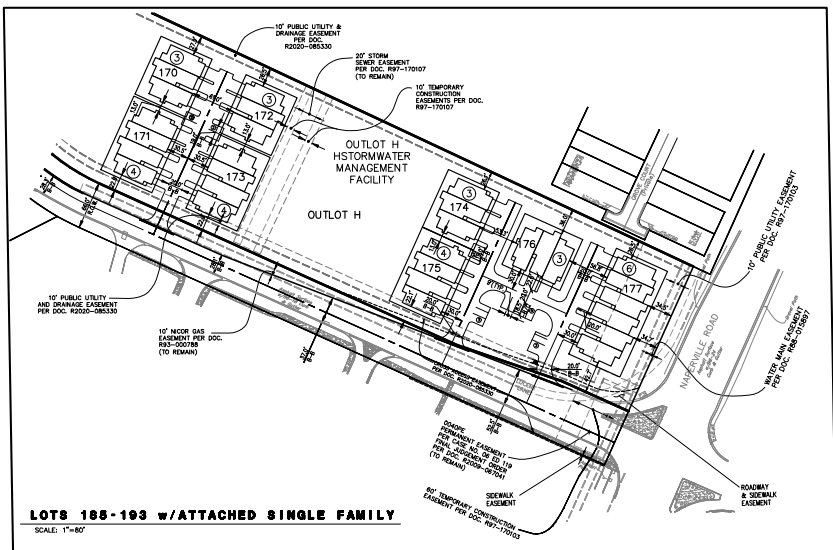
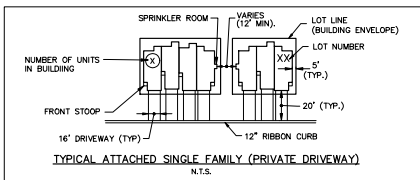
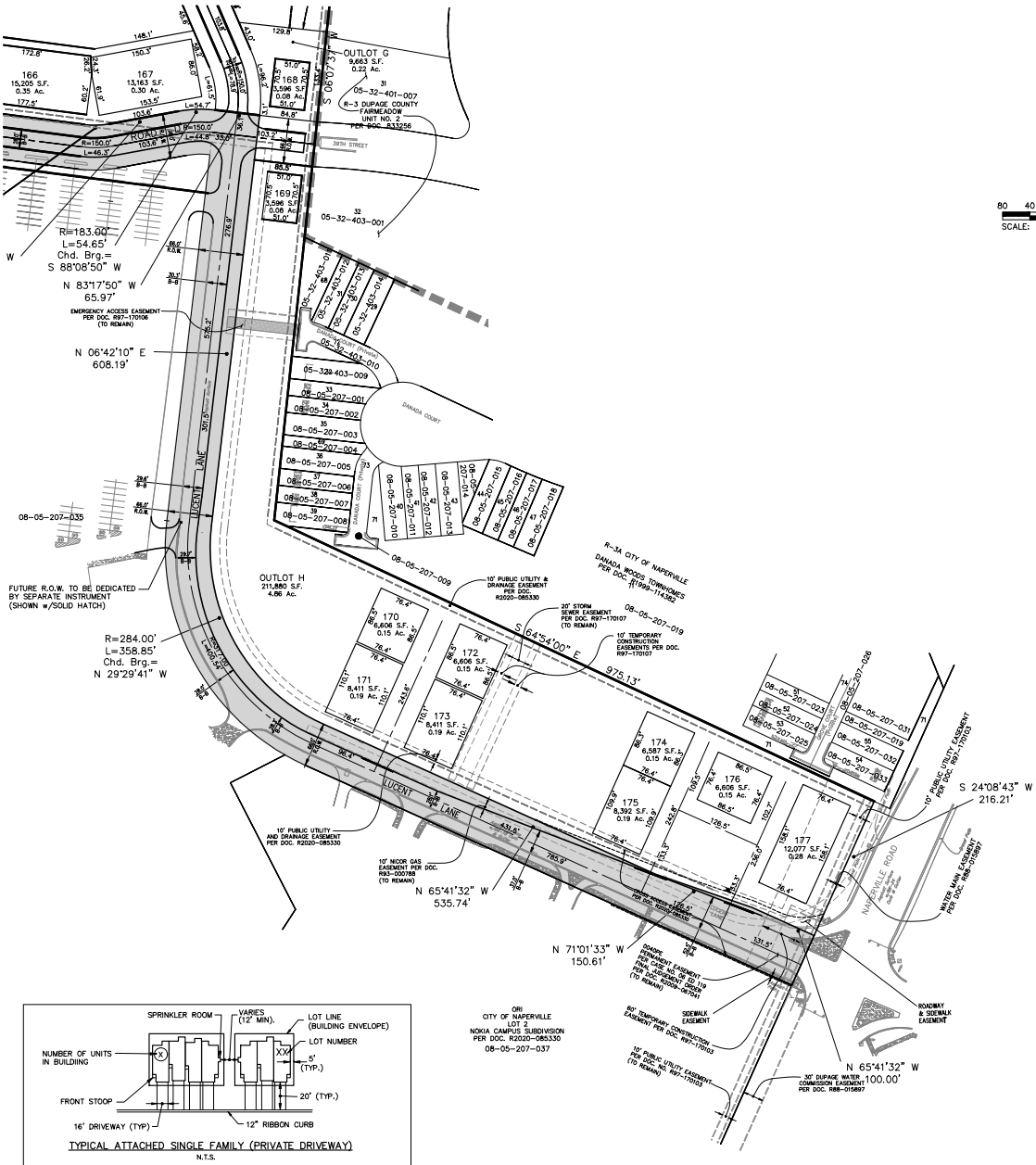
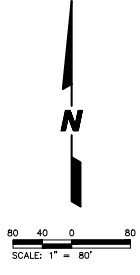
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Aurora, Illinois 60502-9875
PH: 630.862.2100 FAX: 630.862.2199
E-Mail: info@cemcon.com Website: www.cemcon.com

DISC NO.: 402138 FILE NAME: PREDEV
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COMPLETION DATE: 09-14-20 JOB NO.: 402138
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10-16-20/AL REVISED PER 2020-10-09 CITY COMMENTS
01-20-21/AL REVISED PER PLAN COMMISSION MEETING 12/16
02-01-21/AL REVISED PER 2021-01-29 CITY COMMENTS
02-19-21/AL REVISED PER PLAN COMMISSION MEETING 2/9
03-16-21/AL REVISED PER 2021-03-11 CITY COMMENTS
04-08-21/AL REVISED PER 2021-04-28 CITY COMMENTS

PRELIMINARY PLAN OF SUBDIVISION FOR MAPER COMMONS
CITY OF NAPERVILLE PROJECT NO.: 20-1000088
SHEET 3 OF 4
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DATE PLOTTED: 09/20/21 BY: CELE LUMBERG

SEE SHEET 3



LOTS 168-193 w/ATTACHED SINGLE FAMILY
SCALE: 1"=80'

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CEMCON, Ltd.
Consulting Engineers, Land Surveyors & Planners
2280 White Oak Circle, Suite 100
Aurora, Illinois 60502-9675
PH: 630.862.2100 FAX: 630.862.2199
E-Mail: info@cemcon.com Website: www.cemcon.com

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COMPLETION DATE: 09-14-20 JOB NO.: 402138
XREF.: TOPO PROJECT MANAGER: CRM

- 10-16-20/LAL: REVISED PER 2020-10-05 CITY COMMENTS
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- 02-19-21/LAL: REVISED PER PLAN COMMISSION MEETING 2/6
- 04-08-21/LAL: REVISED PER 2021-04-08 CITY COMMENTS

PRELIMINARY PLAN of SUBDIVISION FOR MAPER COMMONS
CITY OF NAPERVILLE PROJECT NO. 20-1000008
SHEET 4 OF 4

PREPARED FOR:
PULTE HOME COMPANY, LLC
1900 E. GOLF ROAD, SUITE 300
SCHAUMBURG, IL 60173
EXHIBIT B 230-5400



April 7, 2021

Erin Venard
Project Manager – DRT, Transportation Engineering Development (T.E.D.)
City of Naperville
400 S. Eagle Street
Naperville, IL 60540

Re: Naper Commons Development

Dear Erin,

Naperville Park District staff recently discussed the most recent version of the park donation area depicted in Exhibit 1 with the team representing Pulte Homes. Please note that the Park District concurs in the concept park design concerning its size and character. However, the Park District expressed concern about the specific amenities listed as being present within the park concept and has, for example, requested removal of the pickleball court and “string lights” called out in Exhibit 1 since these features are not recommended for Neighborhood Parks (i.e., those parks that are in close proximity to residential properties) as per the Park District’s Master Plan.

Further, please be advised that Pulte Homes and the Naperville Park District are drafting a Development Agreement for this Park. The Development Agreement will identify the process of Pulte Homes and the Park District finalizing the site plan including the layout of pathways, hardscapes, plaza areas, and site furnishings as well as confirm park design details and specifications, and the values of the same. Pulte Homes will grade the entire park donation area and construct the hardscape and landscape improvements in the “Pulte Homes Park Development Area” depicted in Exhibit 1. The Park District will construct the park improvements in the center portion of the site identified as the “Naperville Park District Park Development Area” in Exhibit 1.

I hope this information is helpful. Please do not hesitate to contact me if there are any questions.

Sincerely,

Eric Shutes
Director of Planning
Naperville Park District

cc: Ray McGury, Naperville Park District, Executive Director
Derke Price, Naperville Park District, Attorney
Pat Lord, City of Naperville, Attorney
Russell Whitaker, III, Rosanova & Whitaker, Ltd., Attorney

EXHIBIT 1



EXHIBIT C

PREPARED BY
Pulte Group, Inc.

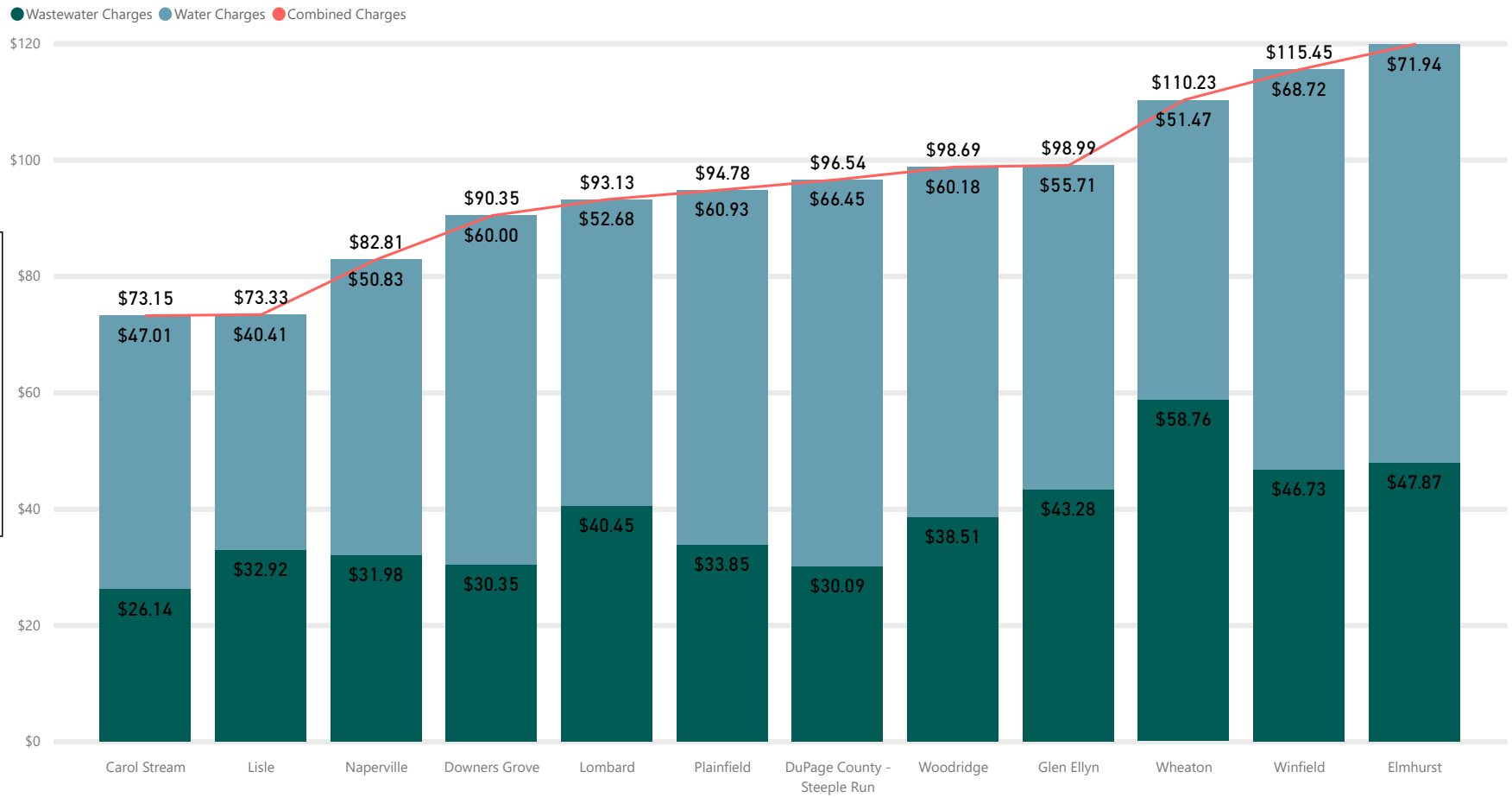


ISSUE DATE: January 14, 2021
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Linear Park
Naper Commons
Naperville, Illinois



Combined Water and Sanitary Charges by Village/City



- Year
- 2007
 - 2009
 - 2011
 - 2012
 - 2013
 - 2014
 - 2015
 - 2017
 - 2018
 - 2019
 - 2020

Services

People



April

Financial Report

April 20, 2021

Programs

Local Economy

Recent Actions & Trends

Vaccination Progress

- Vaccination rates steadily increasing with supply
- Population vaccinated as of April 10
 - DuPage: 24.0%
 - Will: 18.7%
- Regional re-opening metrics moving in negative direction
- All regions remain in Phase 4 of state mitigation plan

Return to Learn

- School districts 203 and 204 returned to in-person learning in early April
- Return to normal activities and movement away from home may increase economic activity
 - Increased motor fuel consumption
 - Purchase of supplies/apparel deferred at start of the school year

Economic Indicators – State Revenue

State Sales Tax

- 3.6% above budget projections

Home Rule Sales Tax

- 16.1% below budget projections

State Income Tax

- 47.5% above budget projections
- Continue to reap benefit of full LGDF disbursement and better than expected economic conditions

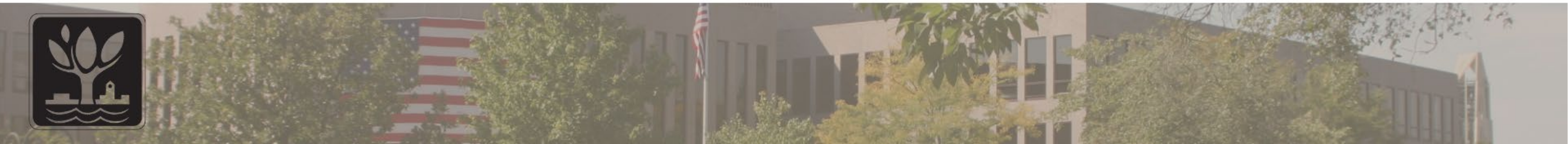
Motor Fuel Tax (includes Transportation Renewal Funds)

- 12.9% below budget projections

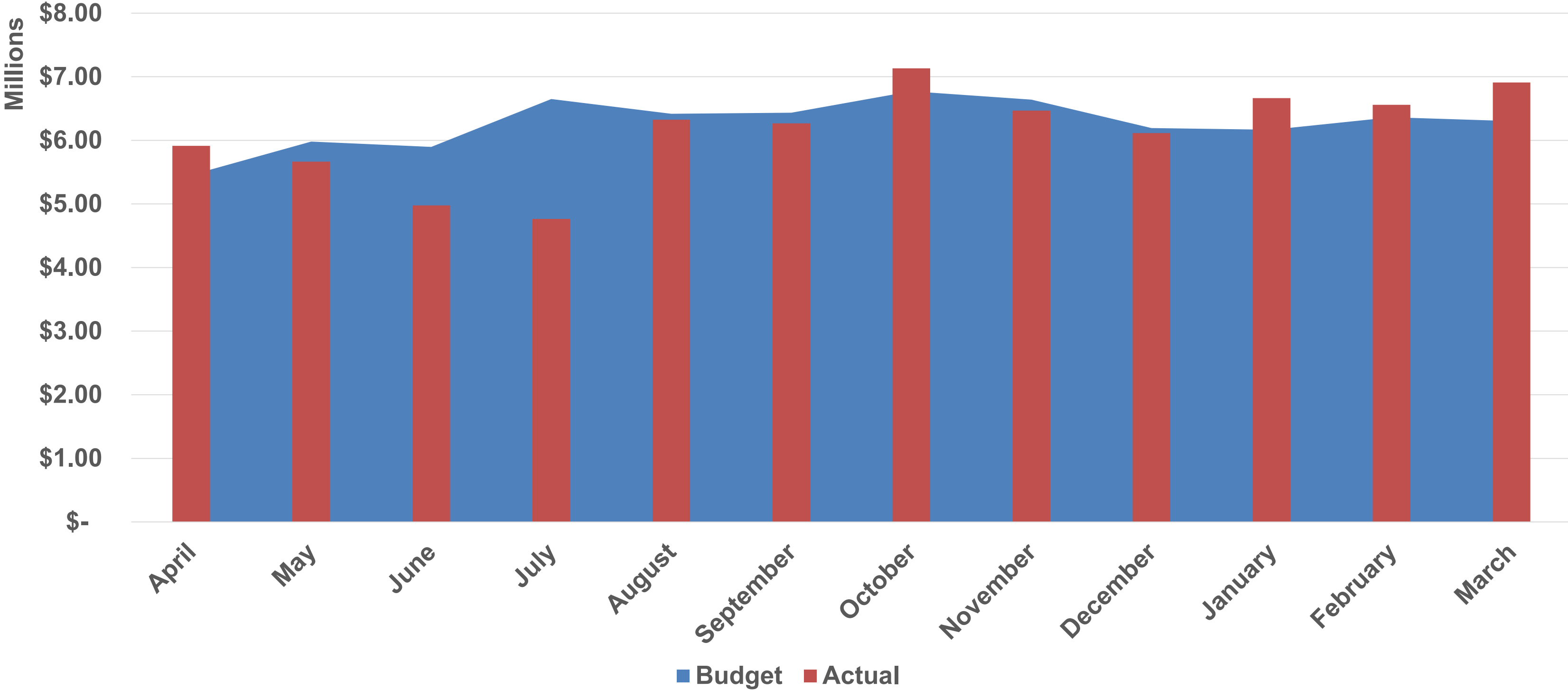
Local Use Tax

- 91.5% above budget projections
- Highest monthly receipt on record

Initial analysis of April revenue indicates a shift from use tax to sales tax due to new online sales tax laws effective Jan. 1st.



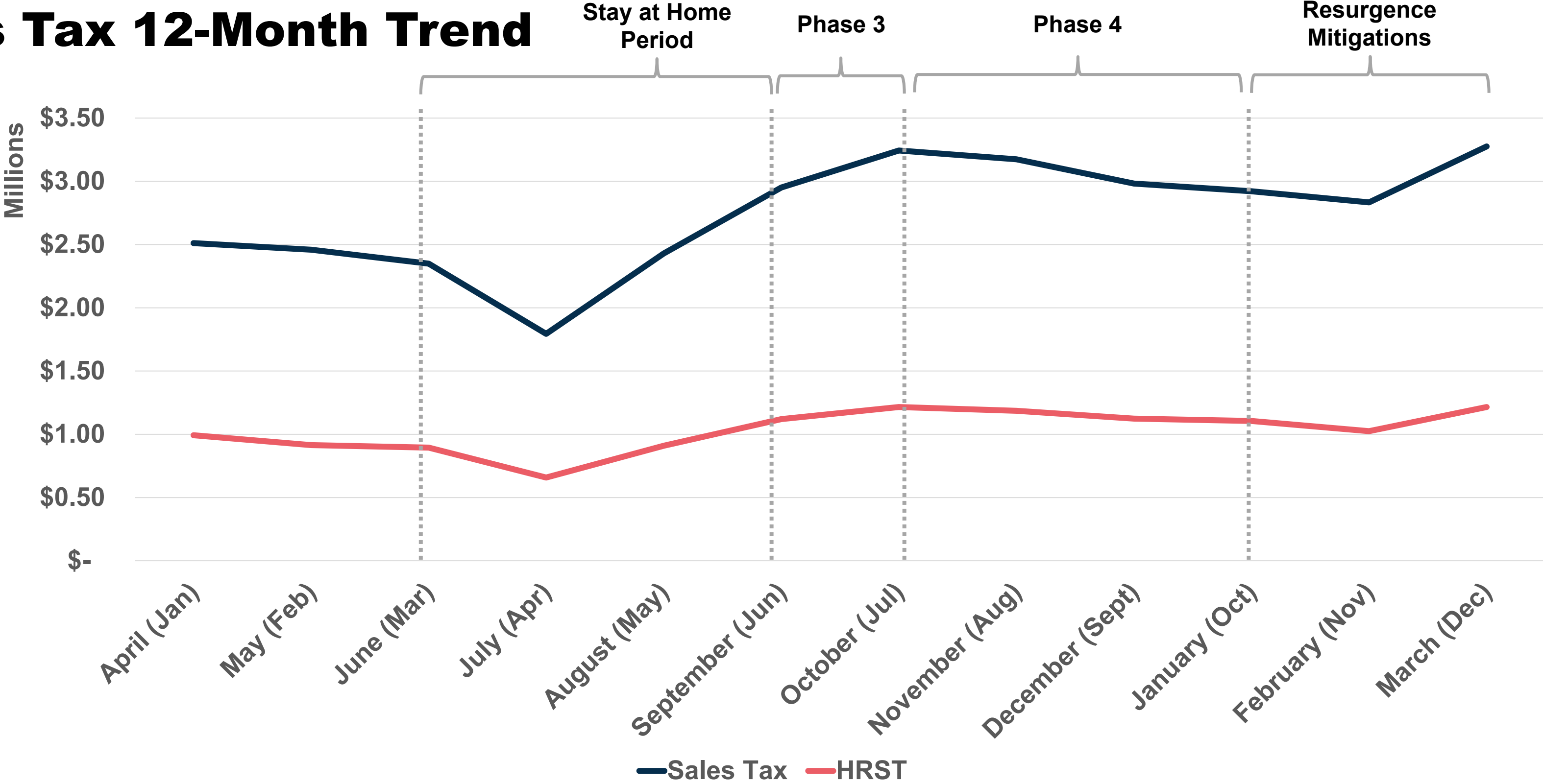
State Collected Revenues



- Combined state-collected revenues exceeding projections by 9.7% in March
- Overall, combined revenues exceeding projections by 6.9% year to date
- A positive trend has been established over the past 12 months



Sales Tax 12-Month Trend

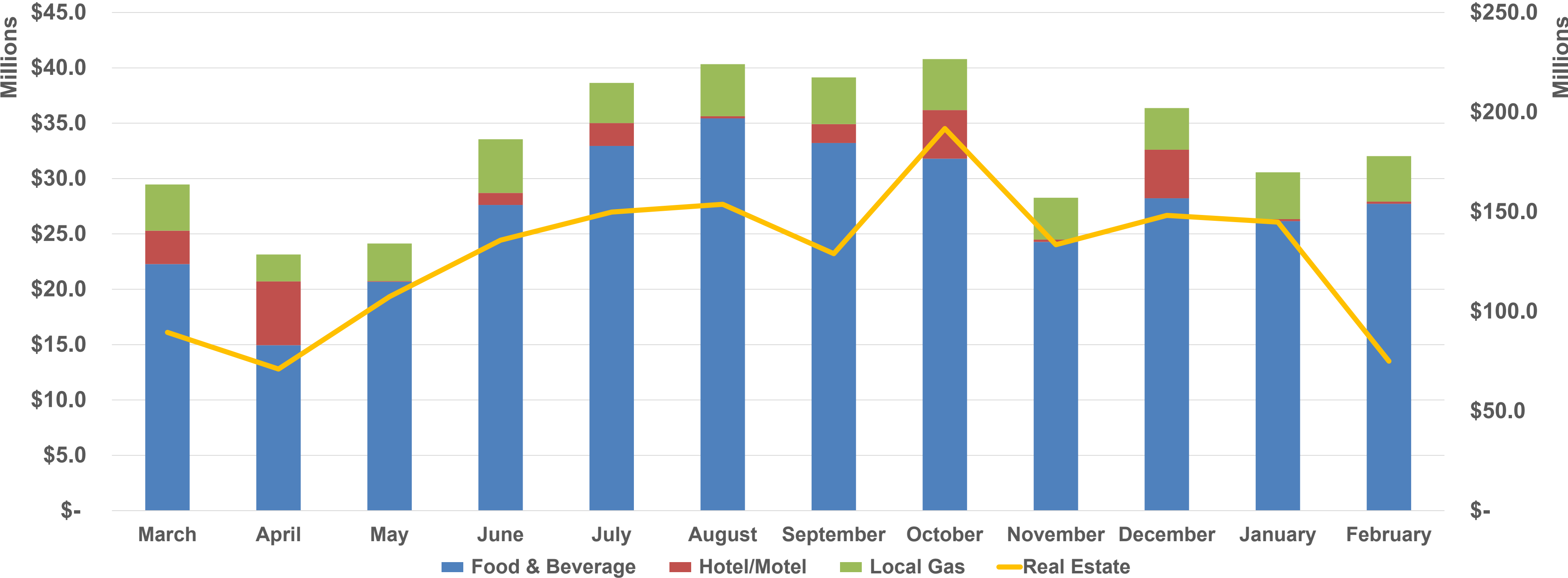


- Taxable sales increased in Dec. after slow start to holiday shopping season in Nov.
- National Retail Federation reports 8.3% increase in overall holiday sales in 2020
- Largest growth (24%) came in online sales – accounts for high use tax revenue



Locally Collected Revenues

Taxable Sales



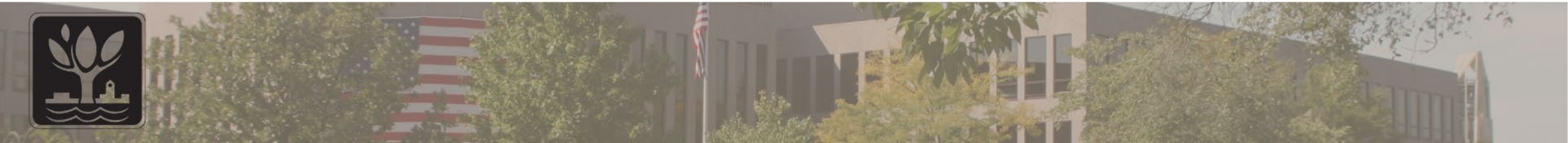
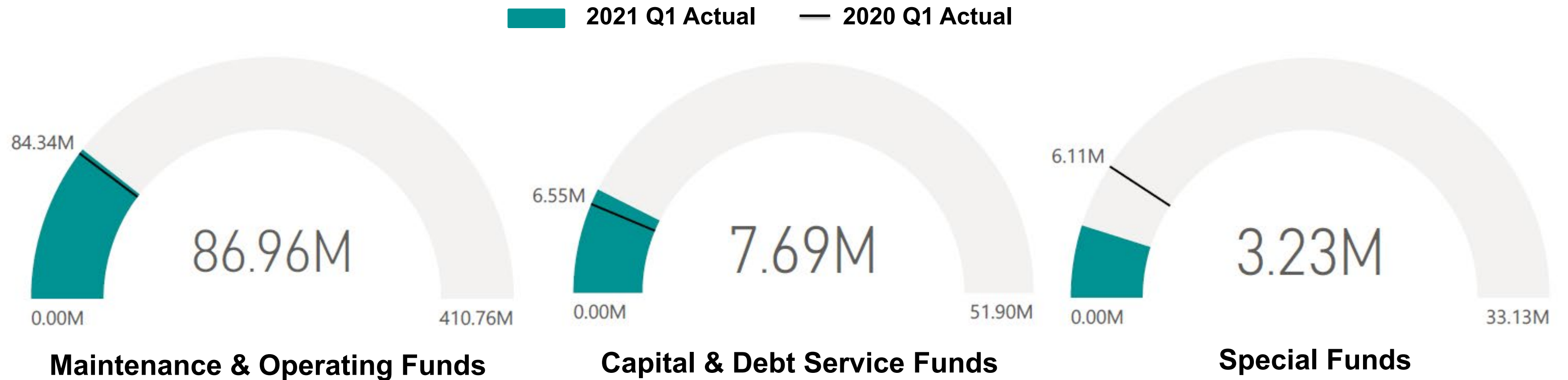
- Food & beverage sales increased 8% in February
- Local gas sales down 20% year over year; stable at \$4.1 million/month over last 6 months
- Real estate sales declined in Feb. but remained 12% higher than Feb. 2020



1st Quarter Budget Review – Revenue

Citywide revenues total \$97.88 million: 0.9% increase over 2020 Q1

- General fund revenues outpacing 2020 by 4.3%, or \$2.67 million
- Electric and Water charges also outpacing 2020 by 1.4% and 6.0% respectively
- Special Funds revenue is \$840,000 ahead of budget projections but lags 2020 actuals due to late ETSB deposit received in early 2020

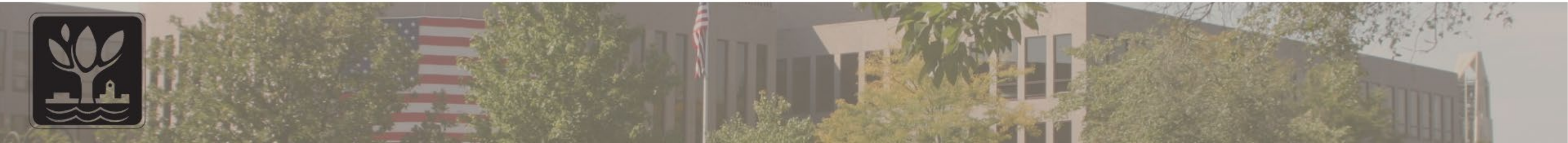
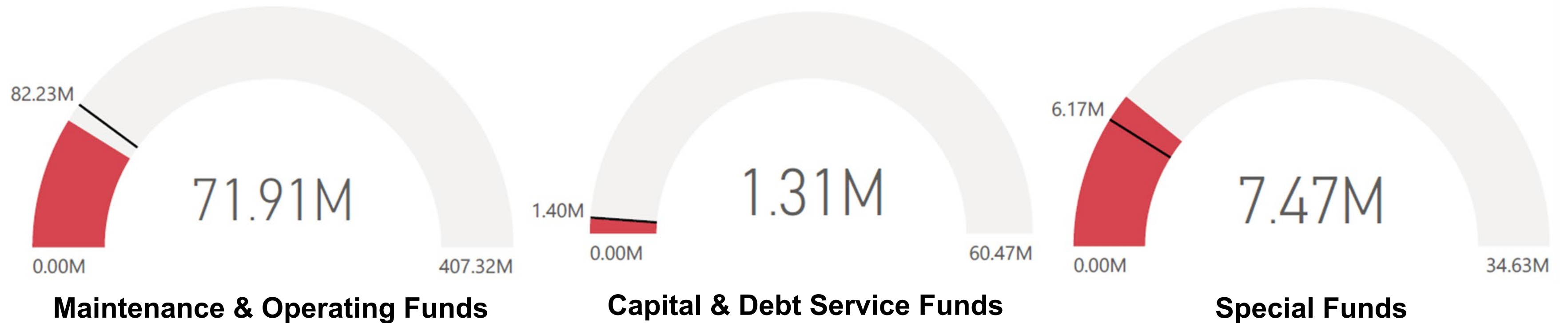


1st Quarter Budget Review – Expenses

Citywide expenses total \$80.69 million: 10.0% decrease from 2020 Q1

- Salaries and wages up 2.5% - in line with budgeted increases
- Purchased electric and water expenses increased – tied to higher revenue
- Capital expenses down 35% but expected to normalized as spring/summer projects begin
- Insurance benefit expenses down 30% – may be tied to good plan experience/timing of payments

■ 2021 Q1 Actual — 2020 Q1 Actual

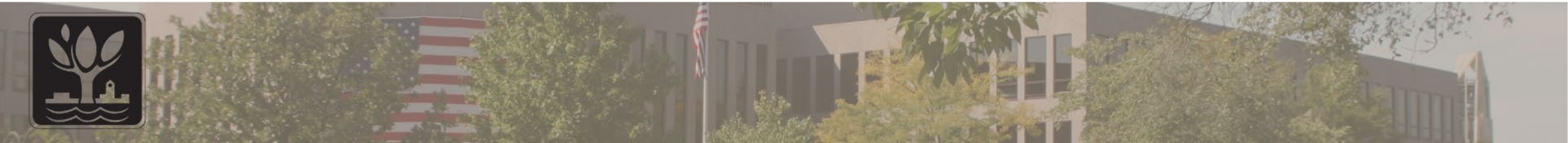


Local Economic Support

Temporary Utility Assistance Program

- Approximately 15% of program funds distributed through April 10
- Requests fewer than anticipated, particularly with small business
- Funds remain available for residential and small business utility customers as disconnection process resumes in May

	Assistance Approved	Amount Disbursed	Funds Remaining
Residential	105	\$27,876	\$242,124
Small Business	50	\$44,972	\$155,028
Total	155	\$72,848	\$397,152



Next Steps

- **Analyze revenue changes tied to online sales tax law updates**
- **Update on federal stimulus funds**
 - Due to be received in May
- **Monitor and report on issues as needed**
 - Includes existing and future budget priorities





Questions?

