



September 17, 2015 – Walworth County Board of Supervisors

**Report of the County Clerk Regarding
Communications Received After the Agenda Mailing**

The following items were placed on Supervisors' desks and are attached to this cover sheet:

County Clerk

Kimberly S. Bushey
County Clerk

1. Res. No. 37-09/15 – Approving an Encroachment Agreement by and between Walworth County and KINOVE, LLC Relating to CTH ES Right-of-Way– *Vote Required: Majority* (Recommended by the Public Works Committee 5-0)

These items were received after the agenda mailing before the meeting. Other items that were placed on the Supervisors' desks at the meeting are not included on this report. Please contact the County Clerk's office for information regarding those items.

Resolution No. 37 – 09/15

Approving an Encroachment Agreement by and between Walworth County and KINOVE, LLC Relating to CTH ES Right-of-Way

1 Moved/Sponsored by: Public Works Committee
2

3 **WHEREAS**, KINOVE, LLC is the owner of property located at 2886 Main Street, Village of
4 East Troy; and,
5

6 **WHEREAS**, a survey of said property, dated July 30, 1998, discloses an existing building
7 located at the above-stated address is located, in part, upon the County right-of-way for CTH ES
8 and that an awning extends from this building over the right-of-way by approximately four feet
9 for the entire width of the building; and,
10

11 **WHEREAS**, KINOVE, LLC wishes to raze the existing building and replace it in the same
12 location, which will result in continuing the encroachment as well as the continuing of the
13 overhang; and,
14

15 **WHEREAS**, Walworth County consents to allow the encroachment to continue provided
16 KINOVE, LLC enters into an encroachment agreement; and,
17

18 **WHEREAS**, Walworth County and KINOVE, LLC have negotiated an encroachment agreement
19 to permit the building to be reconstructed; and,
20

21 **WHEREAS**, this encroachment agreement shall run with the land and shall be without charge
22 but the owner shall be responsible for all costs, repairs and expenses of any kind related to the
23 existence and maintenance of the encroachment and overhang; and,
24

25 **WHEREAS**, the Public Works Committee has recommended executing an encroachment
26 agreement with respect to the existence of, and continued use of, those portions of the property
27 which are located in or over the County right-of-way to CTH ES.
28

29 **NOW, THEREFORE, BE IT RESOLVED** that the Walworth County Board of Supervisors
30 hereby approves the attached encroachment agreement by and between Walworth County and
31 KINOVE, LLC.
32
33
34

35 _____
36 Nancy Russell
37 County Board Chair
38

Kimberly S. Bushey
County Clerk

39 Action Required: Majority X Two-thirds _____ Other _____
40

41 County Board Meeting Date: September 17, 2015
42

ENCROACHMENT AGREEMENT

Document Number

Document Title

In re the following described property in Walworth County, State of Wisconsin:

The East One-half (1/2) of Lot Three (3) in Block Six (6) in the Original Plat of the Village of East Troy, Wisconsin, said premises also being described as follows: Commencing at a stake standing 12 rods North and 123 feet East of the Southeast corner of Section Nineteen (19), Township Four (4) North, Range Eighteen (18) East, and running thence North 6 rods, thence East 20 feet, then South 6 rods, thence West 20 feet to the place of beginning.

See attached agreement

Recording Area

Name and Return Address

Russell W. Devitt
SOFFA & DEVITT LLC
332 W. Whitewater Street
Whitewater, WI 53190

ROP 00060

Parcel Identification Number (PIN)

THIS PAGE IS PART OF THIS LEGAL DOCUMENT – DO NOT REMOVE.

This information must be completed by submitter: document title, name & return address, and PIN (if required). Other information such as the granting clause, legal description, etc., may be placed on this first page of the document or may be placed on additional pages of the document.

WRDA Rev. 12/22/2010

AGREEMENT, entered into by and between Walworth County, a municipal corporation existing pursuant to the laws of the State of Wisconsin, hereinafter "County", and Kinove, LLC, a Wisconsin limited liability company, hereinafter referred to as "Property Owner".

WHEREAS, Property Owner is the owner of the above described real estate located in the County of Walworth, State of Wisconsin, Parcel No. ROP 00060 with a street address of 2886 Main Street, Village of East Troy, and

WHEREAS, a survey of said property, a copy of which is attached hereto and incorporated herein by reference, dated July 30, 1998 by Farris Hanson & Associates, Inc. discloses that an existing building constructed upon said real property is in part located upon the County right-of-way for C.T.H. "ES", a county road, and further that a certain awning extends from said building over said right-of-way for a distance of approximately 4 feet for the entire 20 foot width of said building, and

WHEREAS, the parties deem it to be mutually advantageous to execute a written agreement with respect to the existence of, and continued use of, those portions of the property above described which are located in or over the right-of-way to C.T.H. "ES" owned by County,

NOW THEREFORE, the parties agree as follows:

1. County acknowledges that the building owned by Property Owner encroaches onto its right-of-way as shown on the attached survey, and further understands said building is in the process of being razed and replaced in the same location as said building presently exists, thus continuing the encroachment shown on the attached survey, and County is further aware that an awning presently exists across the front of said building for its entire 20 foot width which extends over the right-of-way of County approximately 4 feet, and County agrees that said encroachments and overhang shall be allowed to continue unless and until such right otherwise expires as provided in Paragraph 3 below.
2. Property Owner acknowledges for itself, its predecessors in title, its heirs, successors and assigns, that the encroachments outlined above shall not be extended or expanded without prior written consent of County and further agrees that the encroachments above described have been and shall continue to be a permissive use and that such use is not and shall not be considered as a basis for any later claim of ownership based on adverse possession or prescriptive use, and
3. Property Owner agrees, for itself, its heirs, successors and assigns that in the event said replaced building is itself razed, replaced or damaged beyond repair and thus required to be removed, or otherwise required to be removed for any reason by any court of competent jurisdiction, then any further reconstruction or replacement of said building in the right-of-way owned by County or overhanging the right-of-way of County shall not take place without the prior written agreement of County, and
4. County and Property Owner agree that Property Owner's right to encroach pursuant to the terms set forth in this Agreement shall run with the land and shall benefit and be binding

upon the parties hereto, their heirs, successors and assigns, and shall be without charge but that Property Owner shall be responsible for all costs, repairs, and expenses of any kind related to the existence of and maintenance and upkeep of said encroachment and overhang and County is not nor shall be in any way responsible for any such costs. Furthermore in the event that said encroaching improvements are in any way damaged as a result of said encroachment then Property Owner shall, as between Property Owner and County, be responsible for such repairs as may need to be made to said improvements and County shall be indemnified and held harmless with respect to same.

IN WITNESS WHEREOF Property Owner and County have executed this agreement on the date set forth below.

Dated this _____ day of September, 2015.

WALWORTH COUNTY by:

County Clerk

STATE OF WISCONSIN)
)SS
COUNTY OF WALWORTH)

Personally came before me this _____ day of September, 2015, the above named _____ to me known to be the person(s) who executed the foregoing instrument and acknowledged same.

Notary Public
Walworth County, Wisconsin
My commission expires: _____

Dated this _____ day of September, 2015.

KINOVE, LLC by:

STATE OF WISCONSIN)
)SS
COUNTY OF WALWORTH)

Personally came before me this _____ day of September, 2015, the above named _____
_____ to me known to be the person(s) who executed the foregoing
instrument and acknowledged same.

Notary Public
Walworth County, Wisconsin
My commission expires: _____

This instrument drafted by:

Mr. Russell W. Devitt
SOFFA & DEVITT LLC
332 W. Whitewater Street
Whitewater, WI 53190
(262)473-5105
(262)473-5166 – fax

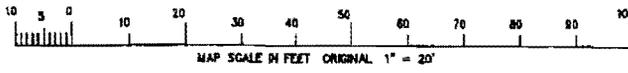
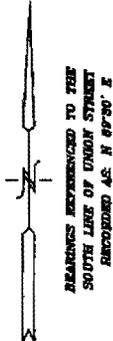
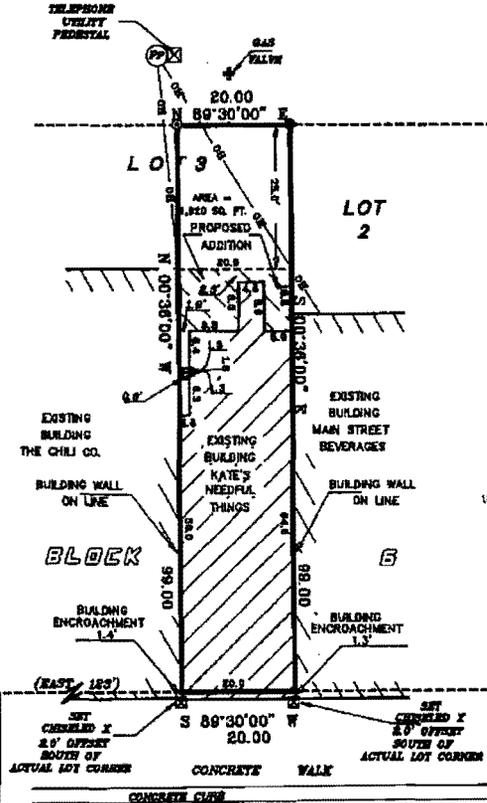
BLOCK 4

PLAT OF SURVEY

THE EAST 1/2 OF LOT 3, BLOCK 8 OF THE ORIGINAL PLAT OF VILLAGE OF EAST TROY, WALWORTH COUNTY WISCONSIN

THE EAST 1/2 OF LOT 3 IN BLOCK 8 IN THE VILLAGE OF EAST TROY, WISCONSIN, SAID PREMISES ALSO BEING DESCRIBED AS FOLLOWS: COMMENCING AT A STAKE STANDING 12 RODS NORTH AND 123 FEET EAST OF THE SOUTHEAST CORNER OF SECTION 19, TOWN 4 NORTH, RANGE 18 EAST, AND RUNNING THENCE NORTH 6 RODS; THENCE EAST 20 FEET; THENCE SOUTH 6 RODS; THENCE WEST 20 FEET TO THE PLACE OF BEGINNING.

UNION STREET (88' WIDE)



LEGEND

- ⊙ - FOUND IRON ROD
- - SET RAILROAD SPIKE
- ⊙ - POWER POLE
- OH— - OVERHEAD WIRES
- ⊠ - CHISELED X
- () - RECORDED AS



MAIN STREET (C.T.H. "ES") (88' WIDE)

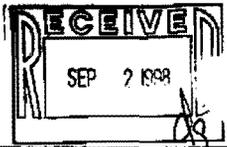
NOTE: COPIES OF THIS MAP TO WHICH THE FOLLOWING CERTIFICATE WILL APPLY ARE PRINTS SHOWING SURVEYOR'S ORIGINAL SEAL AND SIGNATURE IN BLACK INK. COPIES BY ANY OTHER MEANS MAY HAVE ALTERATIONS WHICH DO NOT REPRESENT THE SURVEYOR'S WORK PRODUCT.

I HEREBY CERTIFY THAT THE ABOVE DESCRIBED PROPERTY HAS BEEN SURVEYED UNDER MY DIRECTION AND THAT THE ABOVE MAP IS A TRUE REPRESENTATION THEREOF AND SHOWS THE SIZE AND LOCATION OF THE PROPERTY AND ITS EXTERIOR BOUNDARIES. THIS SURVEY IS MADE FOR THE USE OF THE PRESENT OWNERS OF THE PROPERTY, AND ALSO THOSE WHO PURCHASE, MORTGAGE, OR GUARANTEE THE TITLE THERETO WITHIN ONE YEAR FROM THE DATE HEREOF.

DATED: JULY 30, 1908

Randal J. Mathwick
 RANDAL J. MATHWICK R.L.S. 2411

12.02.
 90.120
 Rep-60
 003-568



12.02. 90.120 Rep-60 003-568	PLANNING, MAPS AND ADMINISTRATION, INC. Engineering, Architecture, Surveying 1200 Wisconsin Street, Kenosha, Wis. 53140 Phone 484-1100	STATE OF WISCONSIN DEPARTMENT OF REVENUE TAX COLLECTOR 1000 WATER STREET KENOSHA, WISCONSIN 53140 Phone 484-1100	THE SURVEYOR 4000 EAST WISCONSIN EAST TROY, WISCONSIN