

**TAYLORS FALLS CITY COUNCIL
SPECIAL CLOSED MEETING
COUNCIL CHAMBERS
THURSDAY, MAY 19, 2010 – 8:00 A.M.**

MINUTES

The Agenda for this Meeting was posted Wednesday, May 13, 2010 at City Hall, the Post Office and on the City's Web Site.

The Taylors Falls City Council met for a Special Closed Meeting on Wednesday, May 19, 2010 at 8:00 a.m. in the Council Chambers at City Hall, 637 First Street, Taylors Falls, Minnesota.

CALL TO ORDER

The Special Meeting was called to order at 8:00 a.m. by Mayor Mike Buchite. The Mayor announced that the Council would enter into closed session for the purpose of Attorney/Client Privilege – Consider Purchase of Real Estate.

ROLL CALL

MEMBERS PRESENT: Mike Buchite, John Tangen, Zara Kinnunen, Ross Rivard, Larry Julik-Heine

MEMBERS ABSENT: None

OTHERS PRESENT: Clerk-Treasurer Jo Everson, City Attorneys Patrick Kelly and Chad Lemmons, and Zoning Administrator-Coordinator Larry Phillips

ENTER INTO CLOSED MEETING

MOTION BY KINNUNEN/JULIK-HEINE TO ENTER INTO CLOSED SESSION FOR THE PURPOSE OF ATTORNEY/CLIENT PRIVILEGE TO CONSIDER PURCHASE OF REAL ESTATE. AYES: ALL. MOTION CARRIED UNANIMOUSLY. The Council entered closed session at 8:02 a.m.

RETURN TO OPEN MEETING

The Mayor declared that the Council ended its closed meeting at 8:42 a.m.

MOTION BY TANGEN/KINUNNEN TO RETURN TO OPEN SESSION. AYES: ALL. MOTION CARRIED UNANIMOUSLY.

PERSONS PRESENT AT RETURN TO OPEN MEETING

MEMBERS PRESENT: Mike Buchite, Ross Rivard, John Tangen, Larry Julik-Heine, Zara Kinnunen

MEMBERS ABSENT: None

OTHERS PRESENT: City Clerk-Treasurer Jo Everson, City Attorneys Patrick Kelly and Chad Lemmons and Zoning Administrator-Coordinator Larry Phillips

SUMMARY OF CLOSED MEETING

The Mayor declared the Council discussed in closed session the details and history surrounding the proposed Option Contract between Northern States Power Company, d/b/a Xcel Energy, and the City of Taylors Falls. Information included in that conversation include:

- ❖ The City desires to purchase approximately 19.1 acres of property from Xcel Energy for the purpose of future sewer ponding and a possible future business park. This property is a portion of the 32.22 acre parcel where the Lawrence Creek Substation is located.
- ❖ During the Chisago Project Public Utilities Commission (PUC) permitting process, the PUC required the substation location to be coordinated with the City's need for future pond expansion.
- ❖ The option to purchase this property is valid for five years, from May 19, 2010 to May 19 2015.

- ❖ The cost to purchase 19.1 acres would be \$9,308 per acre, for a total cost of \$177,783.00. This is the same price per acre as Xcel Energy paid to the Wilberg's in the initial purchase, less the acquisition costs.
- ❖ The City will use a combination of tax abatement and a cash down payment to pay for the property.
- ❖ The entire 32.22 acres currently owned by Xcel Energy must be annexed into the City in order to successfully use the tax abatement process.

Each Council Member expressed their support of the Option Contract. Zoning Administrator-Coordinator Larry Phillips commented that by squaring up the section was systematic and orderly. All utilities would be located in one central location. A business park at this location would be a good use of the land.

MOTION BY RIVARD/KINNUNEN TO APPROVE THE OPTION CONTRACT, AS AMENDED, WHEREBY NSP d/b/a XCEL ENERGY, GRANTS UNTO THE CITY OF TAYLORS FALLS, AN OPTION TO PURCHASE 19.10 ACRES AS DESCRIBED IN EXHIBIT A, AT A COST OF \$177,783.00 ACCORDING TO THE TERMS SPECIFIED IN SAID CONTRACT. MOTION CARRIED UNANIMOUSLY. (attached)

ADJOURNMENT

MOTION BY JULIK-HEINE/KINNUNEN TO ADJOURN THE MAY 19, 2010 SPECIAL CITY COUNCIL MEETING OF THE TAYLORS FALLS CITY COUNCIL. MOTION CARRIED UNANIMOUSLY.

Being no further business to come before the Council, the Meeting adjourned at 8:50 a.m.

Michael D. Buchite, Mayor

Jo Everson, Clerk-Treasurer

APPROVED: JUNE 14, 2010

OPTION CONTRACT

For and in consideration of the sum of One and no/100s Dollar (\$1.00) to me in hand paid, the receipt whereof is hereby acknowledged, Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, (“NSP”) hereby grants unto THE CITY OF TAYLORS FALLS, Chisago County, Minnesota, a municipal corporation, (“Buyer”) an Option for 5 years from the _____ day of _____, 2010 and terminating on the _____ day of _____, 2015 (the “Option Period”), to purchase, for the sum of one hundred seventy seven thousand seven hundred eighty three DOLLARS (\$177,783.00) the following described lands situated in the County of Chisago and State of Minnesota to-wit:

Hereinafter referred to as the “Property” as described on Exhibit A

upon the following terms and conditions, to-wit: \$1.00 option payment paid herewith and the balance of the Option Price in the amount of \$177,782.00 to be paid as follows:

Buyer shall have the right, at its sole discretion, to pay the balance of the Option Price by passing a resolution adopting abatement of real estate taxes pursuant to Minn. Stat. §§ 469.1812 to 469.1815. The property which shall be the subject of said tax abatement resolution is described on Exhibit D attached hereto. It is hereby understood and agreed by the Seller that payment of the Option Price will occur in installments. The Seller hereby agrees to accept payment in installments.

Upon receipt of tax abatement funds from Chisago County, Buyer shall deliver said funds to the Seller. In the event any other governmental entity adopts a resolution abating real estate

taxes due on the property described on Exhibit D attached hereto, then in that event all funds generated by said tax abatement shall be applied to the option purchase price.

Upon exercise of its Option Rights and the satisfaction of the Seller's obligations contained in the Rider to Option Contract attached hereto as Exhibits B and C, the Buyer shall execute a Security Agreement acknowledging the Option Purchase Price due the Seller and securing payment to Seller of all future streams of tax abatement payments.

Buyer shall have the right to pay the balance in full or in part of the Option Purchase Price at any time upon written notice to Seller. Upon payment in full of the Option Price, Seller shall execute all documents necessary to release any secured interest that the Seller may have on the real property described in Exhibit A attached hereto.

If Buyer chooses to exercise the Option herein granted, Buyer shall do so by setting forth its intention to purchase the Property in its entirety by delivering written notice to NSP. Said notice shall be received by NSP prior to the expiration of the Option Period and the Closing shall occur not later than 45 days after the date of the Buyer's notice. In case said notice shall be given in due time, but the transaction is not completed prior to expiration of the Option Period, then 45 days shall be given in which to examine title, make the conveyance, and close the transaction.

Unless the Option is exercised by Buyer as required in this Option Contract within the time above specified, and a failure to give such notice, and comply with the terms and perform the conditions hereof (except as hereinafter provided) within the time specified, shall terminate this Option, and all rights thereunder, without further act or notice whatsoever, time being the essence of this agreement. The conditions of this Option Contract shall include those contained in the Rider attached hereto as Exhibits B and C.

Buyer and Northern States Power Company hereby accept said Option and agree to each and all its terms.

EXHIBIT B

RIDER TO OPTION CONTRACT

1. In the event of any conflict or ambiguity between the terms of this Rider and those contained in the printed form Option Contract to which it is attached, the terms of this Rider shall govern.
2. Within 10 (ten) days after receipt of Buyer's exercise of its right to purchase the Property as set forth herein, NSP shall furnish Buyer with a commitment from Chisago County Abstract Company committing to issue Buyer an owner's policy of title insurance at closing.
3. Buyer shall have 15 days after receipt of said commitment for title insurance to make any objections to marketability of title in writing, or the same shall be deemed waived. If title to said Property is found not to be marketable, NSP agrees to undertake, at the request of Buyer, such steps and pay all costs as shall be necessary to render said title marketable on or before the Date of Closing. Notwithstanding the foregoing, NSP shall have no obligation to remove the encumbrances to title set forth in the attached Exhibit C ("Permitted Encumbrances"). At NSP's option, the Date of Closing may be extended for up to an additional 120 days to provide NSP with sufficient time to render title marketable. If said title cannot be made marketable within said period, (a) Buyer may, at its election, declare this option void and the parties shall have no further rights against each other under this option; or (b) Buyer may elect to cure title and proceed to closing withholding an amount it estimates necessary at closing to cover the cost to clear title but not to exceed \$1,000.00.
4. During the Option Period and provided that Buyer first gives NSP not less than two business days prior notice, Buyer, and its employees, agents and independent contractors, are hereby granted a right of access and egress to the Property for the purpose of making any surveys, investigations, environmental assessment or cure, soil tests and borings considered by Buyer to be necessary in connection with its purchase and proposed use of the Property. This right of access and egress is granted on the express condition that Buyer (a) indemnifies and holds harmless NSP, from all losses, damages, charges, obligations and claims, including mechanic's liens that arise as a result of the Buyer's exercise of its rights under this Paragraph 4 by its employees, agents and independent contractors in, on or about the Property; and (b) promptly repairs any damage to the Property occurring as a result of such activities. Buyer's obligations as set forth in subparagraphs "a" or "b" shall survive the Date of Closing or the termination or expiration of this Option Contract.
5. Within ten business days after the date when this Option Contract has been executed by both parties, NSP shall provided Buyer with copies of any existing survey, test and environmental data that NSP possesses regarding the Property.
6. The Property is currently a portion of real property owned by NSP and is not located within the limits of the city of Taylors Falls. Buyer shall be solely responsible for all costs and expenses relating to annexing the Property into the City limits. NSP shall cooperate with Buyer by executing any required applications, but at no cost or expense to NSP. In

addition, Buyer shall pay all costs, including without limitation all survey costs and application fees, related to the subdivision and platting of the Property as may be required by applicable law to subdivide the Property from the balance of the NSP's property. Together with its notice of exercise of the option described in this Option Contract, Buyer shall deliver to NSP evidence reasonably acceptable to NSP that Buyer has completed the subdivision and annexation processes. The parties expressly agree that this Option Contract is subject to annexation and subdivision and NSP shall have no obligation to convey title to the Property to Buyer if the annexation and subdivision processes have not been completed prior to the Date of Closing. If Buyer is unable to successfully annex and subdivide the Property prior to expiration of the Option Period, this option may be void at buyer's sole discretion and the parties shall have no further rights or obligations against each other, other than Buyer's obligations of indemnity and repair as specifically set forth in Paragraph 4.

7. If Buyer exercises its option to purchase, NSP, upon written notice from Buyer, shall take such steps as are required to vacate the premises of any and all tenants by the date of closing.
8. Real estate taxes and installments of special assessments due and payable in prior years to Closing shall be paid in full by NSP on or before the Date of Closing. Real Estate taxes and installments of special assessments due and payable in the year of Closing will be prorated to the Date of Closing. The parties acknowledge that real estate taxes due and payable in the year of Closing shall be paid in full at Closing.
9. If this option is exercised by Buyer, the total option money paid in relation to this option shall be applied against the purchase price at closing. If the option is not exercised for any reason, the option money shall, upon expiration of the option term, be automatically forfeited to and be and remain the sole property of NSP as consideration for the grant of option.
10. At the closing of the transaction, NSP will execute and deliver to Buyer a limited Warranty Deed.
11. NSP hereby makes the following representations, which shall be true and correct on the Date of Closing:
 - a. To the best of NSP's knowledge there are no wells, functioning or abandoned, located on the Property.
 - b. NSP is not a "foreign person" as contemplated by Section 1445 of the Internal Revenue Code.
 - c. To NSP's knowledge, methamphetamine production has not occurred on the Property.
 - d. NSP discloses that any applicable airport zoning regulations affecting the Property are available for review at the Chisago County Courthouse.

12. If Buyer does not execute this Option Agreement within the 5 year term, this agreement will become void, and the parties shall have no rights against each other under this Option Contract, other than Buyer's obligations of indemnity and repair as set forth in Paragraph 4.
13. Until the Date of Closing, NSP shall have the full responsibility and the entire liability for any and all damages or injuries of any kind whatsoever to the Property, to any and all persons, whether employees or otherwise, and to any other property from and connected to the Property, except liability arising directly from the negligence of Buyer, its agents or employees. If, following exercise of the Option but prior to the Date of Closing, all or a portion of the Property shall be the subject of an action in eminent domain or a proposed taking by a governmental authority, whether temporary or permanent, Buyer, at its sole election, shall have the right to terminate this Agreement without liability on its part, by so notifying NSP. In such case, NSP shall retain the Option Payment.
14. Time is and shall at all times be and remain of the essence of this Agreement.
15. Any notice required or permitted hereunder shall be in writing and shall be either personally served or mailed by certified mail, postage prepaid, return receipt requested, or by overnight courier service such as Federal Express, addressed:

If to the Buyer, at:

City of Taylors Falls
Attn: City Clerk
637 First Street
Taylors Falls, MN 55084-1144

If to NSP, at:

Northern States Power d/b/a/ Xcel Energy
Attn: Siting and Land Rights Department
414 Nicollet Mall MP800
Minneapolis, MN 55401

or, in either case, such other address as NSP or Buyer, as the case may be, may from time to time designate by written notice to the other party hereto. Mailed notice shall be deemed to have been given one day following the date it is mailed as herein provided. Personally delivered notice shall be deemed given on the date the same is delivered.

EXHIBIT C

Permitted Encumbrances

1. The lien of real estate taxes not yet due and payable in the year of closing and thereafter.
2. Building and zoning laws, ordinances, state and federal regulations.
3. Existing roads, utility and drainage easements.
4. Reservation of any mineral rights by the state of Minnesota.
5. Covenants, conditions, restrictions, if any, without effective forfeiture provisions.
6. Such other matters as may be accepted by Buyer following examination of title.