



The City Council of the City of St. Charles welcomes you to its
Regular Meeting of Tuesday, June 28, 2022 at 6:00 p.m.
at 830 Whitewater Avenue, City Council Chambers, St. Charles, Minnesota.

ITEM	ACTION REQUESTED
1. Call to Order	
2. Pledge of Allegiance	
3. Approval of the Agenda	
4. Notices and Communications –	
5. Review of Financials	
6. Ordinance #638 Catalytic Converter (2 nd Reading)	APPROVE
7. Ordinance #639 Utility Billing Process	APPROVE
8. Agreement for Assessment/Waiver WWII	APPROVE

UNSCHEDULED PUBLIC APPEARANCES: Members of the audience may address any item not on the agenda. State Statute prohibits the City Council from discussing an item that is not on the agenda, but the City Council does listen to your concerns and has staff follow up on any questions you raise.

ADJOURNMENT



**MEMORANDUM for the CITY COUNCIL of St. Charles for
Tuesday, June 28, 2022**

6. Ordinance #638 Catalytic Converter (2nd Reading). A second reading will be held and approval is recommended.

7. Ordinance #639 Utility Billing Process (2nd Reading). A second reading will be held and approval is recommended.

8. Agreement for Assessment/Waiver WWIII. A proposed agreement for Assessment and Waiver for the Whitewater Industrial Park Third Subdivision is enclosed for consideration. In discussion with Dan Pearson he has requested the deferred assessment for the proposed 5 lots. Through discussion with City Attorney Chris Hood, deferring parkland dedication is prohibited through Statute and also contradicts the City's ordinance. Mr. Pearson was made aware of the change.

CITY OF ST. CHARLES

ORDINANCE #638

**AN ORDINANCE OF THE CITY OF ST. CHARLES, MINNESOTA,
AMENDING CHAPTER 130 OF ITS CODE OF ORDINANCES TO ADDRESS
CATALYTIC CONVERTER THEFT**

THE CITY OF ST. CHARLES DOES ORDAIN: (deleted material is lined out; new material is underlined; sections and subsections which are not being amended are omitted):

Section 1. Title XIII: General Regulations, Chapter 130: General Offenses, is hereby amended to add a new section as follows:

§ 130.40. – Catalytic Converters.

(A) *Sale of catalytic converters.* No person or business may sell a used catalytic converter that is not attached to a vehicle. This section does not apply to a bona fide automobile repair garage or used auto parts dealer; whose license permits the installation, replacement, maintenance, or removal of catalytic converters.

(B) *Purchase of catalytic converters.* No person or business may purchase a used catalytic converter that is not attached to a vehicle unless the seller is a licensed business, whose license permits the installation, replacement, maintenance, or removal of catalytic converters. The purchase of any catalytic converter must meet the recording requirements laid out in Minn. Stat. § 325E.21, Subd. 1(b).

(C) *Possession of catalytic converters.* No person shall be in possession of one (1) or more catalytic converters that do not belong to a vehicle or vehicles owned by the individual in possession of the catalytic converter(s), or that the individual cannot provide verification of legal receipt of the catalytic converter from the vehicle owner.

Section 2. Title XIII: General Regulations, Chapter 130: General Offenses, Section 130.99 Penalty is amended as follows:

A violation of § 130.20 and § 130.40 is a misdemeanor. The court may order restitution paid to any public agency for the costs of the emergency response resulting from the actions constituting a violation of § 130.20, not exceeding \$500 per public agency for each such response. A public agency seeking such restitution shall consult with the prosecuting attorney regarding the expenses incurred by the public agency, and the prosecuting attorney shall include the expenses in the statement of restitution pursuant to M.S. § 611A.04.

Section 3. This Ordinance shall take effect thirty days after its publication.

Adopted this ____ day of _____, 2022 by the City Council of the City of St. Charles, Minnesota.

Councilmember

Councilmember

Attest:

Nick Koverman, City Administrator

First Reading:

Date: _____

Ayes: _____

Nays: _____

Absent: _____

Abstain _____

Second Reading:

Date: _____

Ayes: _____

Nays: _____

Absent: _____

Abstain _____

Published:

Date: _____

CITY OF ST. CHARLES

ORDINANCE #639

AN ORDINANCE OF THE CITY OF ST. CHARLES, MINNESOTA, AMENDING ST. CHARLES CODE RELATED TO UTILITY APPLICATION AND BILLING

THE CITY OF ST. CHARLES DOES ORDAIN (deleted material is ~~struck through~~; new material is underlined; subsections which are not being amended are omitted; and provisions renumbered are only referenced by title):

Section 1. Title V: Public Works, Chapter 50: General Public Works Provisions, of the City Code of St. Charles, Minnesota, be amended as follows:

§ 50.03 APPLICATION FOR SERVICE.

(A) Application for service and owner-customer responsibility.

(1) Application for water, sewer and electric utility service shall be made to the City of St. Charles on forms prescribed by the city and furnished by the city.

(2) A separate application for utility service may be required for each class of service to a applicant at a separate address or location.

(3) Every applicant for utility service from the city, and every owner of property for which application is made, shall be deemed by application to consent to all ordinances, rules, regulations and policies of the city relating to the municipal water, sewer and electric systems.

(4) Application for service and establishment of a utility account may be made by the property owner, the owner's representative, or the tenant of a commercial property, unless provided herein. Tenants of residential, multi-unit buildings with separate metering may apply for services if the owner or owner's representative gives written permission and agrees to continue to provide utility services to all unoccupied units between tenant occupancies, if any unit in the building is occupied.

(B) Application for service installation.

(1) Application for a service installation shall be made by the property owner or by the owner's representative. The property owner shall pay the city the fees or deposit required for the service connection installation as provided in this chapter when making application.

~~(A) Application procedure.~~

~~—(1) Application for a water, sewer or electric service installation and for utility service shall be made to the City Administrator on forms prescribed by the City Administrator and furnished by the city.~~

~~—(2) By signing, the applicant shall agree to conform to this chapter and to rules and regulations that may be established by the city as conditions for use of the public utilities.~~

(~~B~~ C) Conditions of service.

(1) The utility service supplied by the city is supplied upon the express condition that the product becomes the customer's property after it passes the water main, sewer main or electrical primary, and the city shall not in any event be liable for loss or damage to any person or property, resulting directly or indirectly from the use, misuse or presence of the utility service on the customer's premises, or elsewhere, after it passes the point of delivery to the customer. Each of the parties shall hold the other free and harmless of and from all liability, damages, actions and causes of action caused by or through the ownership, maintenance or operation of its utility property and equipment, and the liability division point shall be the point of delivery as herein defined or as stated in a specific contract between city and customer.

~~—(2) The city may refuse to connect service at a new location for any applicant indebted to the city for utility service rendered at another location until the applicant has paid, or made satisfactory arrangements to pay, the indebtedness and has complied with other requirements for service.~~

~~—(3) Application for a service installation shall be made by the property owner to be served or by the owner's representative. The applicant property owner shall pay the city the fees or deposit required for the service connection installation as provided in this chapter when making application.~~

(4 ~~2~~) Customers are responsible for securing information from the city pertaining to service availability at a specific location. The city shall be notified of the service connections and metering equipment. The customer is advised to secure this information prior to installation of interior wiring to assure service at a mutually agreeable time and location.

~~—(5) A separate application or contract, where required, may be made to cover each class of service to each individual, firm or corporation, at each separate address or location. Each application shall require the installation of 1 meter, except that the city may install more than 1 meter for its convenience.~~

(~~6~~ 3) The parties understand and agree that a signed agreement shall be binding upon and inure to the benefits of the successors, legal representatives and assigns of the respective parties, but no assignment by the customer of any agreement shall be binding upon the city unless the city consents to the assignment in writing. Any agreements are subject to the approval of the City Council.

(~~7~~ 4) The term of any signed agreement may be stated in the agreement, and service after the term's expiration shall be continued on a month to month basis until terminated according to § 50.06(G), unless other specific cancellation or continuation stipulations are made a part of the signed agreement.

§ 50.04 METERS.

(B) ~~Deposit~~ Installation cost. Five-eighths-inch meters shall be installed by plumbers at customer's expense at cost plus 10%; meters larger than 5/8-inch shall be billed to the customer at cost plus 10%. Each ~~eustomer~~ property owner shall additionally pay a connection fee per installed meter as stated in § 50.05 below.

§ 50.05 CHARGES FOR SERVICE CONNECTIONS.

(A) Electrical service connection p~~Permit and fees.~~

(1) ~~Connection shall~~ may be made to the city electric utility only after electrical affidavit is received by city and Electric Superintendent approves application.

(2) ~~See the city yearly fee schedule.~~ The City Council shall adopt a schedule of fees for electrical service connection permits from time to time.

(3) For electrical service connection fees, see § 54.09.

~~(B) Connection fees.~~

~~(1) When a water connection requires installing a service line from the main to the property line, or the applicant must provide this installation in accordance with city specifications, which would also include street repairs, curb repair and property landscaping.~~

~~(2) For electrical service connection fees, see § 54.09.~~

(B) Sewer and Water Service Connection fees.

(1) The City Council shall adopt a schedule of fees for sewer and water service connection from time to time.

(2) When a sewer or water connection requires installing a service line from the main to the property line the applicant shall provide for the service line installation in accordance with city specifications, including all costs for installation, street repairs, curb repair and property landscaping.

(C) Determination of adequacy.

(1) No connection to any city utility shall proceed issued until the City Superintendent Public Works Director has determined that adequate utility services exist to serve the property or that proper provisions have been made for installing adequate service to the property.

(2) An assessment project or bond by a contractor is required to ensure the project will be completed. Adequacy of main service shall be determined according to the main extension policies the Council adopts by resolution.

~~(D) Disconnect/reconnect fee. If a customer requests a temporary interruption of service, a fee of \$30 per meter shall be paid in advance. This fee shall cover 1 disconnection and subsequent reconnection.~~

§ 50.06 ACCOUNT, BILLING AND COLLECTING.

(A) Temporary interruption of service fee (disconnect/reconnect). If a customer or property owner requests a temporary interruption of service, a fee of \$50 per meter shall be paid in advance. The fee shall cover one (1) disconnect and subsequent reconnection.

~~(A) Application for service and owner customer responsibility.~~

~~—(1) Application for water, sewer and electric utility service shall be made to the City of St. Charles on forms prescribed by the city and furnished by the city.~~

~~—(2) Every person applying for utility service from the city, and every owner of property for which application is made, shall be deemed by application to consent to all ordinances, rules and regulations of the city relating to the municipal water, sewer and electric systems.~~

~~—(3) All utility accounts shall be carried in the name of the customer who personally, or by his or her authorized agent, shall apply for the service. The customer shall be liable for utility service supplied to his or her property.~~

(B) Billing. Utility service shall be billed to the party contracting for the service.

(1) All municipal utilities shall be billed monthly or quarterly and a utilities statement or statements shall be mailed by the city to each consumer.

(2) Statements for total water, sewer and electric charges for the preceding billing period shall be mailed by the city to each customer no later than three days after the beginning of the next billing period.

(3) The amount listed on the statement shall be due on or before the fifteenth day of the billing period. All utilities charges shall be delinquent if they are unpaid at the close of business on the thirtieth day following such billing, provided, that if the thirtieth day shall fall on a Saturday, Sunday, or legal holiday, the time shall be extended to the close of business on the next succeeding day on which business is normally transacted. A penalty in the amount of 10% of the delinquent amount shall be added to all delinquent charges. If service is suspended due to delinquency it shall not be restored at that location until any disconnect charges have been paid for each utility and all amounts owed for service and penalties have been paid.

(C) Meter deposits. At the time of filing an application for utility service, any applicant who does not have a 12-month history of payment for electric utility service with the city is required to pay a meter deposit.

(1) The meter deposit shall be established annually per the administrative fines and fees ordinance ~~for applicants residing at rental properties, residing at applicant owned residential property and for applicants renting, owning or operating a commercial business.~~

(2) The deposit shall be refunded after 12 consecutive months of prompt payment or upon prior termination of service with all bills paid.

(3) Deposits shall bear an interest rate that will be adjusted annually in accordance with the Department of Commerce from the date of deposit to the date of refund.

(D) Interest payable.

(1) The rate of interest payable by the city on its security deposits will be simple interest as established annually by the Department of Commerce from the date of deposit or January 1, 1975, whichever is later or as otherwise specified from time to time by appropriate state law.

(2) Payment of interest to the customer may be made at the time the deposit is returned.

(3) The deposit shall cease to draw interest when any of the following occur:

(a) The deposit is returned;

(b) The customer's account becomes delinquent;

(c) Notice is sent to the customer's last known address that the deposit is no longer required; or

(d) Service is disconnected.

(E) Refund of deposits. The deposit plus interest, if any, is to be refunded under any of the following conditions:

(1) Upon customer's request after 12 consecutive months of the customer's bill being paid on time;

(2) After the customer has paid the final bill upon termination of service; or

(3) If the service is discontinued and there are charges due the city for service to the customer, the cash deposit plus interest will be applied to the charges, and the remaining balance of the deposit plus interest, if any, will be returned to the customer together with a statement of charges, credits and balance. If there is a balance due or credit of less than \$1, no refund or billing shall be made.

(F) Shut-off for non-payment.

(1) (a) The city shall endeavor to collect delinquent accounts promptly. In any case where satisfactory arrangements for payment have not been made, the St. Charles Utility Department may discontinue service to the delinquent customer after the procedural requirements of division (F)(2) below and, if applicable, the Winter Disconnect Rule, have been satisfied.

(b) When service to any premises has been discontinued, service shall not be restored to the same customer except upon payment of all delinquent amounts due or the establishment of a satisfactory payment arrangement plus a fee for disconnection and reconnection as established annually by the administrative fines and fees ordinance.

(2) (a) Service shall not be shut off under division (F)(1) above until a mailed and a delivered notice have been given to the customer.

(b) The final delivered notice shall state that if payment is not made by a certain date, the service to the premises will be shut off.

(c) The final notice shall clearly inform the customer of the amount of the past due bill, the options available to the customer and shall identify the telephone number, address and officer who will handle the customer's complaint.

(G) Collection with taxes.

(1) Delinquent water, sewer and electric charges shall be certified to the City Administrator who shall prepare an assessment roll each year providing for assessment of the delinquent amounts against the respective properties served.

(2) The assessment roll shall be delivered to the City Council for adoption bi-annually during the first regular meeting of July and October of each year.

(3) Upon adoption, the Deputy Clerk shall certify the assessment roll to the County Auditor for collection with taxes.

furnished.

Section 2: This Ordinance shall take effect thirty days after its publication.

Adopted this ____ day of _____, 2022 by the City Council of the City of St. Charles, Minnesota.

Councilmember

Councilmember

Attest:

Nick Koverman, City Administrator

First Reading:

Date: _____

Ayes: _____

Nays: _____

Absent: _____

Abstain _____

Second Reading:

Date: _____

Ayes: _____

Nays: _____

Absent: _____

Abstain _____

Published:

Date: _____

**AGREEMENT OF ASSESSMENT AND WAIVER OF APPEAL FOR WHITEWATER
INDUSTRIAL PARK THIRD SUBDIVISION, WINONA COUNTY, MINNESOTA**

THIS AGREEMENT (the “Agreement”) is made by Pearson Properties, Inc., a corporation under the laws of the State of Minnesota, with its principal office located at 137 15th Street East, St. Charles, MN 55972 (the “Developer”), and the City of St. Charles, a municipal corporation under the laws of the State of Minnesota (the “City”); (collectively the “parties”).

The parties represent and affirm that:

WHEREAS, the Developer is the owner of certain real property located in the City, County of Winona, State of Minnesota, described on the attached Exhibit A (hereinafter “the Property”).

WHEREAS, the Developer has requested that the City assess certain costs related to the Developer’s industrial development project (the “Project”) upon the Property, which services and costs directly benefit the Property; and

WHEREAS, the City is willing to assess the below costs upon the Property provided that the Property bear the total cost in an amount as specially assessed by the City against the Property and the Developer waives any objections or appeals related thereto.

NOW THEREFORE, the Parties agree as follows:

1. The total cost to be assessed against the Property includes Water and Sewer Access charges (\$3,850.00 X 6.34 total acres) which totals \$24,409.00 and shall be assessed against each platted lot in the approved final plat thereof recorded upon the Property in the amount of 4,881.80 per lot. The Developer agrees that each lot within the approved final plat thereof recorded upon the Property is accordingly benefitted by the assessed amount.
2. The Developer agrees to pay the amount specially assessed by the City against the Property as described herein.
3. The City agrees that the amount hereby assessed shall be deferred upon each platted lot of record within the Property for a period not to exceed four (4) years from the date of the last signatory hereto. Notwithstanding the foregoing, a respective assessment on a lot of record shall be due and payable to the City of St. Charles on such lot of record at the time of the closing on the sale of such respective lot

commensurate with closing on the sale of such lot of record. For the period of deferral, no interest shall accrue on the respective assessments.

4. At the conclusion of the deferral period, the remaining unsold lots and remaining balance due on the respective assessments on such lots shall be payable in equal annual installments extending over a period of four (4) years, the first of the installments to be payable on or before the first Monday in January 2026, and shall bear interest at the rate of eight (8%) percent per annum from such date. To each subsequent installment, when due, shall be added interest for one year on all unpaid installments. Notwithstanding the foregoing, the remaining balance upon a respective assessment on a lot of record shall be due and payable to the City of St. Charles on such lot of record at the time of the closing on the sale of such respective lot commensurate with closing on the sale of such lot of record. Following the period of deferral, interest shall accrue on the respective assessments as provided in this paragraph to the date of closing on the sale of such respective lot. In the event that any lot of record is unsold after the period of deferral, the Developer shall pay the respective installments when the same are due and payable to the same extent as any owner of property subject to a special assessment.
5. The Developer, at any time prior to certification of the assessment to the county auditor, may pay the whole of the assessment on any or all lots of record within the Property, with interest accrued as provided herein, to the City.
6. The Developer hereby acknowledges and agrees that the special benefit to the Property and each lot within the approved final plat thereof recorded upon the Property equals or exceeds the amount specially assessed by the City against the Property and each respective lot thereof, thereby spreading the cost to the benefitted Property and corresponding lots over time through a special assessment upon the Property and each respective lot thereof as determined and adopted by the City pursuant to Minnesota Statutes, Chapter 429.
7. **The Developer, as the owner of the Property and each respective platted lot thereof, hereby expressly waives any objections or rights of appeal with respect to any such special assessment adopted by the City upon the Property, and each respective platted lot thereof, whether the same be based upon procedural irregularities or error under Minnesota Statutes, Chapter 429, or other law, ordinance or regulation, or whether based upon a claim that the amount of the assessment is excessive, or upon any other alleged defect or claim.**
8. The Developer agrees that the obligation to pay the City for the adopted special assessments on the Property, and each respective platted lot thereof, and the waiver of objections and appeal rights hereunder shall continue until such special assessments in the total amount specified herein and with respect to each platted lot are paid in full.
9. Notwithstanding this Agreement, the Developer acknowledges and agrees that the decision of the City Council of the City of St. Charles to approve and authorize execution of this Agreement remains in the sole judgment and discretion of the City Council.
10. This Agreement shall only be effective upon approval of the same by the City Council and authorization by the Mayor and City Administrator of the City to execute the same on behalf of the City.
11. This Agreement shall inure to the benefit of and be binding upon the successors in interest of both the City and Developer. The Developer shall notify any successor to their respective interest in the Property of the existence and terms of this Agreement.
12. **VOLUNTARY AND KNOWING ACTION.** The Parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents hereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound hereby.
13. **AUTHORIZED SIGNATORIES.** The Parties each represent and warrant to the other that the persons signing this Agreement are authorized signatories for the entities or persons represented; each party indemnifies and

holds the other harmless against any breach of the foregoing.

14. MODIFICATIONS/AMENDMENT. Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing and signed by authorized representatives of the Parties.
15. GOVERNING LAW. This Agreement shall be deemed to have been made and accepted in Winona County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of this Agreement without regard to its choice of law or conflict of laws principles.
16. DATA PRACTICES. The Parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 et seq.
17. NO WAIVER. Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving Party.
18. SURVIVABILITY. All covenants, indemnities, guarantees, releases, waivers, representations and warranties by any Party, and any undischarged obligations of a Party arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.
19. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original, and which together shall constitute a single, integrated contract.

(Remainder of page intentionally left blank - signature pages to follow)

IN WITNESS WHEREOF, the City and Developer have each executed this Agreement in their names effective the date of the last signatory hereto.

DEVELOPER:

Pearson Properties, Inc.

By: _____
(Signature)

Date: _____

_____, Its _____
(Print name) (Title)

STATE OF MINNESOTA)
) -ss-
COUNTY OF WINONA)

On this ____ day of _____, 20____, before me a Notary Public within and for said County, personally appeared _____ as _____ of Pearson Properties, Inc., to me known to be the person described in and who executed the foregoing Agreement and acknowledged that they executed the same as their free act and deed on behalf of Pearson Properties, Inc.

Notary Public

CITY OF ST. CHARLES:

By: _____
_____, Its Councilmember

Date: _____

By: _____
_____, Its Councilmember

Date: _____

By: _____
Nick Koverman, Its City Administrator

Date: _____

STATE OF MINNESOTA)
) -ss-
COUNTY OF WINONA)

On this ____ day of _____, 20____, before me a Notary Public within and for said County, personally appeared _____ and _____ and Nick Koverman, respectively Councilmembers and City Administrator of the City of St. Charles, to me known to be the persons described in and who executed the foregoing Agreement and acknowledged that they executed the same as their free act and deed on behalf of the City of St. Charles.

Notary Public

EXHIBIT A
LEGAL DESCRIPTION OF LANDOWNER'S PROPERTY

Real Property located in the City of St. Charles, Winona County, Minnesota, described as follows:

The Southeast Quarter of the Southwest Quarter (SE1/4 of SW1/4), Section Eighteen (18), Township One Hundred Six (106) North, of Range Ten (10), West of the Fifth Principal Meridian, Winona County, Minnesota, (also known as Lot Ten (10), Limits of the City of St. Charles);

EXCEPT

The South 416 feet of the East 229.2 feet thereof;

AND EXCEPT

Commencing at the South Quarter (S 1/4) corner of said Section Eighteen (18), Township One Hundred Six (106) North, Range Ten (10); thence West along the South line of said Section Eighteen (18), a distance of 720 feet to the point of beginning for the exception herein described; thence Northerly and parallel with the North-South Quarter line of said Section Eighteen (18), a distance of 264 feet; thence West on a line parallel to the South line of said Section Eighteen (18), a distance of 165 feet; thence Southerly on a line parallel to the North-South Quarter line of said Section Eighteen (18), a distance of 264 to the South line of said Section Eighteen (18); thence East along with South line of said Section Eighteen (18), a distance of 165 feet to the point of beginning;

AND EXCEPT

A part of the Southeast Quarter of the Southwest Quarter (SE1/4 of SW1/4) of Section Eighteen (18), Township One Hundred Six (106) North, Range Ten (10) West, (also known as Lot 10, Limits of the City of St. Charles), City of St. Charles, Winona County, Minnesota, described as follows: Commencing at the Southeast corner of the Southwest Quarter (SW1/4) of said Section Eighteen (18); thence South 86 degrees 27 minutes 15 seconds West (NOTE: all bearings are in relationship with the East line of said Southwest Quarter which is assumed) along the South line of the Southeast Quarter of said Southwest Quarter (SE1/4 of SW1/4) for a distance of 459.17 feet to the POINT OF BEGINNING of the Parcel to be described; thence continue South 86 degrees 27 minutes 15 seconds West along said South line for a distance of 260.83 feet; thence North 01 degree 58 minutes 17 seconds West, parallel with the East line of said Southwest Quarter (SW1/4), for a distance of 313.71 feet; thence North 86 degrees 27 minutes 15 seconds East for a distance of 199.88 feet thence South 56 degrees 45 minutes 38 seconds East for a distance of 73.26 feet; thence South 03 degrees 30 minutes 58 seconds East for a distance of 39.88 feet; thence South 01 degrees 58 minutes 17 seconds East for a distance of 229.93 feet to the POINT OF BEGINNING;

AND EXCEPT

That part of the hereinbefore described parcel platted as WHITEWATER INDUSTRIAL PARK;

AND EXCEPT

That part of the hereinbefore described parcel platted as WHITEWATER INDUSTRIAL PARK SECOND.

Said tract contains 6.34 acres more or less.