

FOR BOARD ACTION

Agenda Item # 6

Meeting Date:

10/26/04

SUBJECT: Purchase of Rueb Property Adjacent to Chester Substation

PREPARED BY: Neil Stiller, Senior Electrical Engineer

ITEM DESCRIPTION:


RPU staff and Wilbert and Grace Rueb have agreed to tentative terms for the RPU purchase of a one acre parcel of real property adjacent to Chester Substation. All of the alternatives for bringing additional transmission capacity into the RPU system have a new line terminating at the Chester Substation. Acquisition of the Rueb property is essential to completing any of these plans. A sketch showing the property location is attached. The property is presently the Rueb residence.

A professional appraisal has been completed for the proposed site. The appraised value is \$139,500 based on the current single family residential zoning classification of the property.

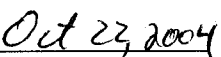
A purchase agreement has been prepared with assistance from the City Attorney's office and is attached for Utility Board review. The Agreement specifies a total purchase price of \$139,500 for the parcel.

UTILITY BOARD ACTION REQUESTED:

Staff recommends that the Utility Board request the Council to approve the purchase of the Wilbert & Grace Rueb property in the amount of \$139,500.00 and authorize the Mayor and City Clerk to execute the purchase agreement for the site, easements and access permit.



General Manager

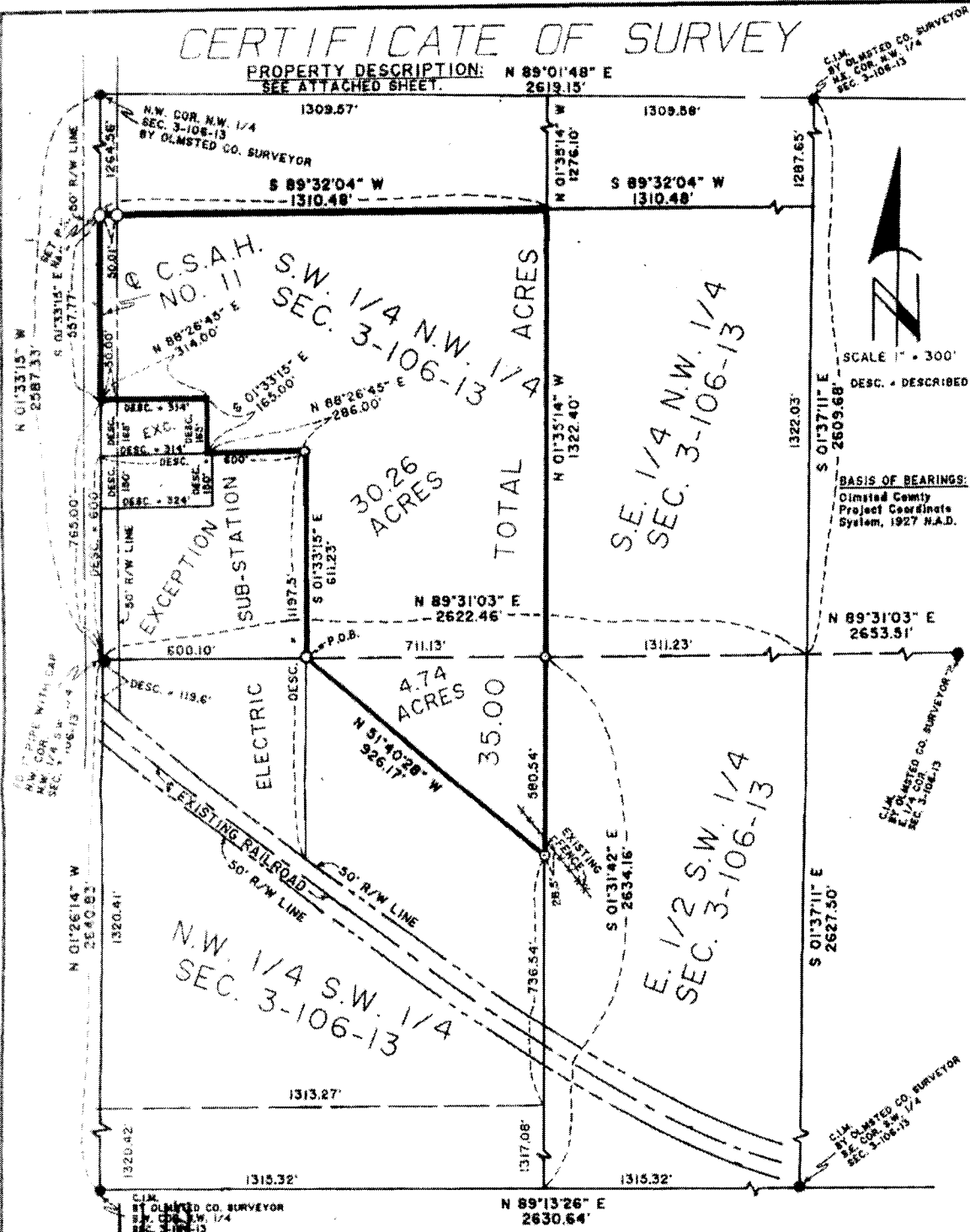


Date

ROCHESTER PUBLIC UTILITIES

CERTIFICATE OF SURVEY

PROPERTY DESCRIPTION: N 89°01'48" E
SEE ATTACHED SHEET. 2619.15'



SCALE 1" = 300'

BASIS OF BEARINGS:
Olmsted County
Project Coordinate
System, 1927 N.A.D.



APPROVED

Olmsted County
 Es and Bounds Subdivision # 95-16
 roved Environmental Specialist 12-12-95
 roved County Surveyor R-12-95
 roved Rochester-Olmsted Planning Dept. B
 Olmsted County, Minn. 55972

SCALE: 1" = 300'
 DATE: 11-14-96
 DRAWN BY: J.R.B. & S.J.M.

MONUMENTS
 FOUND AS INDICATED
 5/8" PIPE UNLESS
 SET NOTED OTHERWISE
 DATE SURVEYED 11-8-95

THIS DOCUMENT IS
 COPYRIGHTED BY:
 RODER V. BRAND
 &
 ASSOCIATES
 ST. CHARLES, MN. 55972

I HEREBY CERTIFY THAT THIS SURVEY, PLAN, OR REPORT WAS
 PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND
 THAT I AM A FULLY REGISTERED LAND SURVEYOR UNDER THE
 LAWS OF THE STATE OF MINNESOTA.
 DATE: Nov. 29, 1996
 REG. NO.: 8952
 Roder V. Brand
 LAND SURVEYOR
 No. 8952
 ST. CHARLES, MN. 55972
 TELEPHONE NO. 507-932-3895

THIS SURVEY AND DRAWING
 WAS PREPARED FOR THE
 EXCLUSIVE USE OF:
 PAUL STELLPFUG ✓
 ROCHESTER, MN.

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PURCHASE AGREEMENT RESIDENTIAL

September 1, 2004

This Agreement is between **Wilbert Rueb and Grace I. Rueb**, (hereinafter referred to as "Seller") and **City of Rochester and** , (hereinafter referred to as "Purchaser").

Seller and Purchaser agree to the sale and purchase of the following described real property located and being in the County of **Olmsted** and State of Minnesota, to-wit:

Commencing at the Southwest corner of the Northwester Quarter, thence North 600 feet for a place of beginning, thence North 165 feet, thence East 314 feet, thence South 165 feet, thence West 314 feet to the place of beginning, Section 3, Township 106, Range 13, Olmsted County, Minnesota.

which property has a street address of **390 50th Avenue SE, Rochester, Minnesota** upon the following terms and conditions:

1.0 **EARNEST MONEY.** Earnest money in the amount of **0 Dollars (\$0)** shall be paid by Purchaser at the time this agreement is signed by all parties. Such earnest money shall be held in trust and shall be applied to the purchase price of the property at the time of closing.

2.0 **PURCHASE PRICE.** The purchase price of the subject property shall be the sum of **One hundred thirty-nine** **Thousand and 00/100 Dollars (\$139,500.00)** to be paid as follows: Earnest money of **\$0** paid herewith, and the sum of **\$ 139,500** to be paid on the date of closing.

3.0 **PERSONAL PROPERTY AND FIXTURES INCLUDED IN SALE.** The following items of personal property and fixtures owned by Seller and currently located on the property are included in the sale: garden bulbs, plants, shrubs, trees, storm windows and inserts, storm doors, screens, awnings, window shades, blinds, curtain-traverse-drapery rods, attached lighting fixtures with bulbs, plumbing fixtures, water heaters, heating systems, built-in air conditioning units, automatic garage door openers with controls, built-in dishwashers, garbage disposal, hood-fans, installed carpeting, work benches, and also the following items: **none**

3.1 **ACCEPTANCE AND CLOSING DATE.** If this Agreement is not accepted and signed by all parties on or before **February 1, 2005**, it shall be void and neither party shall have any further obligation to the other.

Closing shall take place on **November 10, 2004 (tent.)** at a place mutually agreeable to the parties. Seller shall deliver possession of the property not later than one hour after the time Seller receives the proceeds from the Purchaser.

4.0 **DEED AND MARKETABLE TITLE.** Upon performance by Purchaser Seller shall execute and deliver a **General Warranty Deed**, conveying marketable title, subject to:

4.1 Building and zoning laws, ordinances, and state and federal regulations.

4.2 Restrictions relating to use or improvement of the property which do not have effective forfeiture provisions.

4.3 Reservation of any mineral rights by the State of Minnesota.

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4.4 Utility and drainage easements which do not interfere with existing improvements.

4.5 Exception to title which constitute encumbrances, restrictions, or easements which have been disclosed to Purchaser and accepted by Purchaser in this Purchase Agreement.

5.0 **REAL ESTATE TAXES AND SPECIAL ASSESSMENTS.** Real estate taxes due and payable in and for the year of closing shall be prorated between Purchaser and Seller to the date of closing.

5.1 Seller warrants that the taxes due in the year of closing are homestead.

5.2 Seller shall pay on the date of closing all installments of special assessments certified for payment with the real estate taxes due and payable in the year of closing; special assessments levied as of the date of this agreement, and special assessments pending as of the date of this Agreement for improvements that have been ordered by City, Town or other governmental assessing authorities. Seller agrees to pay into escrow an amount equal to 125% of the estimated pending assessment. When such assessment has been levied, it will be paid from the escrow account and any remaining funds shall be returned to Seller. If the amount in the escrow account is not sufficient to pay the levied assessment, Seller agrees to pay the difference immediately upon demand.

5.3 Seller represents that Seller has not received a Notice of hearing of a new public improvement project from any governmental assessing authority which may result in assessment against the property. If a special assessment becomes pending after the date of this Agreement but before the date of closing, Purchaser may, at Purchaser's option:

5.4 Assume payment of the pending special assessment without adjustment to the price indicated in Section 2.0 above.

5.5 Require Seller to pay the pending special assessment (or escrow for payment of same as provided above) and Purchaser and Seller shall increase the purchase price by an amount equal to the estimated pending assessment (or the escrowed amount).

5.6 Declare this Agreement void by giving notice to Seller. Upon receipt of such notice, Seller and Purchaser agree to sign a rescission of this Purchase Agreement and all earnest money shall be returned to Purchaser.

5.7 Seller shall pay any deferred real estate taxes or special assessments which are required to be paid on account of the closing of this sale.

5.8 Purchaser shall pay all other future real estate taxes and assessments which are not specifically covered herein. Seller makes no warranty or representations as to the amount of any future real estate taxes or assessments.

6.0 **DAMAGE TO REAL PROPERTY.** If the real property is substantially damaged prior to closing, this Agreement may terminate at the option of Purchaser, and if it does, the earnest money shall be refunded to Purchaser. If the real property is damaged materially but less than substantially prior to closing, Purchaser may rescind this Agreement by Notice to Seller within 21 days after Seller notifies Purchaser of such damage. During the 21 day period, Purchaser may inspect the property or have the property inspected by any other person. In the event of rescission, the earnest money shall be refunded to Purchaser.

7.0 **SELLER'S BOUNDARY LINES, ACCESS, RESTRICTIONS AND LIEN WARRANTIES.** Seller warrants that buildings, if any, are entirely within the

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boundary lines of the property. Seller warrants that there is a right of access to the real property from a public right of way. Seller warrants that there are no present violations of any restrictions relating to the use and improvement of the property. These warranties shall survive the delivery of the deed or contract for deed.

8.0 **CONDITION OF THE PROPERTY.** Seller makes no warranty as to the condition of the property, well or septic system. Because Seller will be leasing the property from Purchaser after the closing, Seller shall not be obligated to remove any personal property or debris.

Seller represents that Seller has not received any notice from any governmental authority as to the existence of any Dutch elm disease, oak wilt or other disease of any trees on the property and that Seller is unaware of any such diseases.

Seller represents that Seller is unaware of any hazardous substances or petroleum products having been placed, stored or released from or on the property by any person in violation of any law, nor of any underground storage tanks having been located on the property at any time.

Seller does disclose that certain hazardous substances, such as are ordinarily used for household and/or agricultural purposes have been used and/or located on the property. Seller represents that neither the specific amounts or types of such substances nor their use and location need be disclosed because: (a) this information would not be material to Purchaser's decision to purchase; and (b) the amount, type, use, or location of such substances does not constitute a violation of any statute, rule or ordinance governing hazardous substances.

Seller's warranties and representations contained in this section 8.0 shall survive the delivery of the Deed or Contract for Deed provided that any notice of a defect or claim or breach of warranty must be in writing and given to Seller within one year of the date of closing.

Purchaser shall have the right to have inspections of the property conducted prior to closing at Purchaser's expense. Unless required by local ordinance or lending regulations, Seller does not plan to have the property inspected. Other than any specific representations made in this Agreements, the property is being sold "AS IS" with no express or implied representation or warranties by Seller as to physical conditions, quality of construction of any improvements, workmanship, or fitness for any particular purpose. (This paragraph is not intended to waive or limit any provisions of Minn. Stat., Chapter 327A regarding new construction).

9.0 **NOTICES.** Seller has not received any notice from any governmental authority as to violation of any law, ordinance or regulation affecting the property. If the property is subject to restrictive covenants, Seller has not received any notice from any person as to a breach of the covenants.

10.0 **TRUTH IN HOUSING.** Purchaser acknowledges receipt of any Truth-in-Housing Disclosure Report or other inspection report if required by the municipality in which the property is located.

11.0 **PRORATIONS.** All interest, fuel oil, liquid petroleum gas and all other charges for water, sewer, electricity and natural gas shall be prorated between the parties as of the date of closing.

12.0 **WELL AND SEPTIC SYSTEMS.** Seller represents that there is a well and septic systems located on the subject property. Seller acknowledges that Seller is required by law to disclose the existence of any wells or septic systems. Seller makes no warranty as to the condition of the well or septic system.

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13.0 **POSSESSION.** Seller shall deliver possession of the property according to the terms of the Lease between Seller and Purchaser. Seller shall, after closing, continue to be responsible for all charges for water, sewer, electricity and natural gas.

14.0 **EXAMINATION OF TITLE.** Within a reasonable time after acceptance of this Agreement by all parties, Seller shall furnish Purchaser with an Abstract of Title or a Registered Property Abstract certified to date which must include proper and customary searches covering bankruptcies and State and Federal judgments, liens, real estate taxes, and levied and pending special assessments. Purchaser shall have a reasonable period of time (but not less than 10 business days) after receipt of the Abstract of Title or Registered Property Abstract either to have Purchaser's attorney examine the title and provide Seller with written objections or, at Purchaser's expense, to make an application for a Title Insurance Policy and notify Seller of the application. Purchaser shall have ten business days after receipt of the Commitment for title Insurance to provide Seller with a copy of such Commitment and written objections. Purchaser shall be deemed to have waived any title objection not made within the ten (10) day period, except that this shall not operate as a waiver of Seller's obligation to deliver a statutory Warranty Deed, unless a Warranty Deed is not specified above.

15.0 **TITLE CORRECTIONS AND REMEDIES.** Seller shall have sixty (60) days, or until the date of closing, whichever occurs first from the receipt of Purchaser's written title objections to make title marketable. In the event that Seller cannot make the title marketable within sixty (60) days or before the date of closing, whichever first occurs and Seller and Purchaser have not reached a written agreement providing for the correction of title defects at a later date, this Agreement shall be void and Purchaser shall be entitled to a return of Purchaser's earnest money.

Liens or encumbrances for liquidated amounts which can be released by payment or escrow from proceeds shall not delay the closing.

16. **DEFAULT.** If title is marketable or can be made marketable within the time period specified in Section 13.0 above and provided that all contingencies are satisfied, in the event of default the Seller and Purchaser shall have the following options:

16.1 If Seller defaults, Purchaser may seek damages from Seller, including costs and reasonable attorney fees or seek specific performance, provided that any such action be commenced within six (6) months from the date of the default.

16.2 If Purchaser defaults, Seller may cancel this contract as provided by statute and retain all payments made hereunder as liquidated damages (the parties acknowledge that any note given pursuant to this contract is a down payment note and may be presented for payment notwithstanding cancellation) or seek specific performance of this Agreement and Seller's costs of enforcement of this Agreement, including reasonable attorneys' fees, provided that any such action is commenced within six months from the date of default.

17.0 **NOTICES.** All notices required herein shall be in writing and delivered personally or mailed to the address as shown below and, if mailed, are effective the date after the date of mailing. If Seller and Purchaser are represented by counsel or a title company, any notice may be delivered or mailed to such attorney or title company.

18.0 **COSTS OF CLOSING.** Unless otherwise agreed to in writing, Seller shall be responsible for any deed tax imposed by the State of Minnesota and Purchaser shall be responsible for any costs associated with obtaining financing. Purchaser shall be responsible

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for the preparation of the Certificate of Real Estate Value. Each party shall be responsible for costs of any agents or attorneys retained by such party.

19.0 **ACCESS TO PROPERTY.** Purchaser and/or Purchaser’s agent shall have the right to enter the property, including any improvements thereto, for the purpose of gathering information for the preparation of an appraisal, inspection of the premises, or for the purpose of gathering information for the preparation of a plat drawing. Purchaser shall enter the property only after reasonable notice and at a reasonable time.

20.0 **SELLER’S AFFIDAVIT.** At closing, Seller shall supplement the warranties and representations in this Purchase Agreement by executing and delivering a Minnesota Conveyancing Blank (Form No. 116-M, 117-M or 118-M) Affidavit of Seller.

21.0 **SUBDIVISION OF LAND.** If this sale constitutes or requires a subdivision of land owned by Seller, Seller shall pay all subdivision expenses and obtain all necessary governmental approvals. Seller warrants that the legal description of the real property to be conveyed has been or will be approved for recording as of the date of closing.

22.0 **GOVERNING LAW.** This contract shall be governed by the laws of the State of Minnesota and any local ordinances relating to the quality of any existing wells or septic systems.

23.0 **ADDENDA.** Any addenda attached hereto and signed by the parties or signed separately by the parties are made a part of this Agreement.

24.0 **ADDITIONAL TERMS:** Purchaser does not intend to have the well or septic system tested or inspected. Purchaser waives the right to receive from Seller any and all disclosures, including lead paint disclosures and any other disclosures required by law. Seller will provide a Well Disclosure indicating the location of the well for the purposes of filing the deed of conveyance.

25.0 **ADVISORY TO PARTIES. TIME IS OF THE ESSENCE FOR ALL PROVISIONS OF THIS CONTRACT. ANY WAIVER BY EITHER PARTY OF ANY PROVISION OF THIS AGREEMENT SHALL NOT ACT AS A WAIVER OF ANY OTHER PROVISION.**

For Seller:

I have read the foregoing and agree to sell the property for the price and terms and conditions set forth above.

For Purchaser:

I have read the foregoing and agree to purchase the property for the price and terms and conditions set forth above.

City of Rochester

Wilbert Rueb
Date: _____

By _____
Its _____
Date: _____

Grace I. Rueb
Date: _____

By _____
Its _____
Date: _____

This Agreement drafted by:
Ohly Law Office, 1850 North Broadway, Rochester, MN 55906
(507) 289-4529



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, that the Common Council of the said City is requested to approve a purchase order agreement with Wilbert and Grace Rueb and that the Common Council authorize the Mayor and the City Clerk to execute the agreement for

Residential Property which has a street address of 390 50th Avenue SE, Rochester, Minnesota, commencing at the Southwest corner of the Northwester Quarter, thence North 600 feet for a place of beginning, thence North 165 feet, thence East 314 feet, thence South 165 feet, thence West 314 feet to the place of beginning, Section 3, Township 106, Range 13, Olmsted County, Minnesota.

The amount of the purchase order agreement to be ONE HUNDRED THIRTY-NINE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$139,500.00).

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 26th day of October, 2004.

President

Secretary