

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

09-0234R

CONDITIONAL RESOLUTION OF INTENT TO APPROVE PROPERTY
EXCHANGE WITH KOHL'S DEPARTMENT STORES, INC.

CITY PROPOSAL:

RESOLVED, that the city of Duluth hereby expresses its intention to convey the city's interest in that parcel of property legally described on Public Document No. _____(a) to Kohl's Department Stores, Inc., (Kohl's) and to grant to Kohl's a temporary construction and environmental monitoring easement over that parcel of property legally described on Public Document No. _____(b) in exchange for conveyance by Kohl's to the city of that parcel of property legally described on Public Document No. _____(c) under and subject to the following general terms and conditions:

(a) Compliance with the requirements of Article XXXIII of Chapter 2 of the Duluth City Code, 1959, as amended;

(b) Negotiation and execution of a property exchange agreement between the city and Kohl's which shall be subject to approval by the city council by ordinance;

(c) The securing and receipt by Kohl's of all necessary approvals from all appropriate and necessary jurisdictions, approving the transaction and Kohl's proposed use of the property described on Public Document No. _____(a) for construction and operation of a one-level, piling-supported parking structure, including but not limited to approvals and permits from the U.S. Army corps of

engineers, the Minnesota state pollution control agency, the Minnesota state department of natural resources and the city of Duluth.

Approved:

Approved for presentation to council:

Department Director

Chief Administrative Officer

Approved as to form:

Approved:

Attorney

Auditor

COMM SERV/ATTY REA:blj 4/3/2009

STATEMENT OF PURPOSE: This resolution provides to Kohl's Department Stores, Inc., a conditional level of assurance that they will be able to proceed with a plan to exchange certain wetland property adjacent to their store and to Miller Creek for other wetland property in which the city has an interest, also adjacent to the store, which will allow them to replace parking which they are losing due to the Highway 53/Miller Hill Mall area reconstruction project and which they believe is necessary to maintain the viability of their store.

Due to modifications to Sundby Road and other road work adjacent to their store on Miller Trunk Highway, Kohl's is anticipating losing at least 111 of the existing 424 store parking spaces. Kohl's considers the existing level of parking to be substandard and they have determined that further reducing their available parking is unacceptable. They anticipate that the resulting reduction in parking will have a material negative effect on the competitiveness of the store. Even with a planned reconfiguration of their parking lot which will add an additional 39 spaces, they will still have 72 fewer parking spaces for their store. This loss of parking has caused them to have concerns about the future of the facility.

In order to protect the viability of the store in their view, Kohl's has developed a plan to develop an additional 72 parking spaces along the southwest side of the store, a solution which would not only restore the number of parking spaces to its original level at a commercially acceptable location but would also improve the circulation around the building for delivery of merchandise to the store. The complication for them is that the property in question is owned by the city, having been conveyed to the city at the time of the original development, essentially for environmental reasons.

Understanding these objectives and in an attempt to respect the purpose of the original conveyance, Kohl's has proposed that they exchange the city's interests in the subject property, located to the southwest of the store which is well away from Miller Creek, for property owned by Kohl's to the northeast of the store which is actually occupied by the streambed and banks of Miller Creek along with a culvert through which the creek is channeled and over which the existing access road is located. The area of the property offered by Kohl's is approximately twice that of the property they are requesting and, from an environmental perspective, the property to be received by the city would appear to have greater value.

As indicated above, Kohl's intends to use the property acquired from the city for parking. Because the area impacted is in a floodplain and is wetlands, they intend to develop a one-level, piling-supported structure upon which to place that parking which will allow the wetlands underneath the parking structure to continue to function substantially as wetlands, albeit the nature of the vegetation would undoubtedly be altered. The exchange would also require that Kohl's would be solely responsible for securing all necessary approvals for the development including permits from the corps of engineers and the MnDNR.

In addition to the property conveyed to Kohl's, the city would agree to grant a temporary construction and environmental monitoring easement over some 4,500 square feet of wetland property adjacent to the westerly-most corner of the store building. After construction was completed, this area would be restored to its pre-construction condition.

The reason that Kohl's has sought the conditional approval that would be granted by this resolution is because it will require a very substantial amount of time and effort to secure the necessary approvals and costs associated with that process will be very high. In addition, they feel that they need to have a solution in place and constructed before the 2009 Christmas shopping season this fall and they feel that they have no time to lose pursuing options which will prove to be fruitless.