

STATE OF NEBRASKA
Minutes of the
Board of Public Roads Classifications and Standards

June 8, 2018

Nebraska Department of Transportation,
Room 110, 5001 South 14th Street, Lincoln, Nebraska

Meeting and Hearings Notices:

- Statewide news release emailed and posted on Nebraska Department of Transportation website June 1, 2018.
- Event posted on the State of Nebraska website (Public Meeting Calendar) June 1, 2018.
- Tentative agenda emailed to each board member and interested persons on June 1, 2018.
- Meeting agenda kept current and on public display in Liaison Services Section, Room 123B, Nebraska Department of Transportation, 1400 Highway 2, Lincoln, Nebraska.
- Meeting agenda posted in the main entrance of the Nebraska Department of Transportation's 1500 Highway 2 building; in the main entrance of the 5001 South 14th Street building; and outside of room 110, on June 8, 2018.
- Relaxation of Standards hearing notice emailed to Custer County on June 1, 2018.

Board members present:

Roger Figard, Lincoln, Chairman
James A. Litchfield, Wakefield, Vice Chairman
LeRoy G. Gerrard, Stromsburg
Barbara Keegan, Alliance
John F. Krager, Omaha
Mick Syslo, Lincoln
Darold E. Tagge, Holdrege
David Wacker, Hastings
Timothy W. Weander, Omaha (*Departure at 10:27 a.m.*)
Edward R. Wootton, Sr., Bellevue

Board member absent:

Lisa Kramer, Kennard

Staff members present:

LeMoyne D. Schulz, Board Secretary & Highway Local Liaison Coordinator, NDOT, Lincoln
Dennis R. Smith, Highway Local Coordinator, Liaison Services Section, Nebraska
LTAP/NDOT, Lincoln
Barbara Hasterlo, Office Associate, Liaison Services Section, Nebraska LTAP/NDOT, Lincoln

Others in attendance:

- Jodi Gibson, Materials & Research Division, Highway Local Project and Research Administration, NDOT, Lincoln
- Andy Cunningham, Government Affairs Office, NDOT, Lincoln
- Erich Strack, Government Affairs Office, Legislative Coordinator, NDOT, Lincoln
- Mark Mainelli, Mainelli-Wagner & Associates, Lincoln, representing Saunders County
- Randy Deans, Miller and Associates, Kearney, representing Custer County
- Mike Owen, Roadway Design, NDOT, Lincoln
- Kyle Keller, Roadway Design, NDOT, Lincoln
- Bill Cook, Nebraska Concrete Paving Association, Lincoln
- Jim Wilkinson, P.E., Yankee Hill Solutions, LLC, Lincoln, NE

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Chairman Figard called the meeting to order at 9:00 a.m. The meeting was open to the public.

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Chairman Figard made the following announcements in compliance with the Open Meetings Act.

- A copy of the Open Meetings Act is available for inspection and is posted by the entrance to this room.
- The Meeting Agenda and a copy of all materials that were provided to the Board Members, prior to the start of this meeting, are available on the table by the entrance to this room.
- A sign in sheet is available. Visitors are not required to sign, but are encouraged to do so.

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Mr. Schulz noted the following changes from the originally published agenda:

Additional: 2018 One-and Six-Year Plan received - *NDOT*.

Added: *NDOT New Programs and Policies – Mike Owen, NDOT Roadway Design Engineer*

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Mr. Tagge moved to approve the May 18, 2018 meeting minutes. Mr. Krager seconded the motion. Members Gerrard, Keegan, Krager, Litchfield, Syslo, Tagge, Wacker, Weander, Wootton and Figard voted YES. Member Kramer was absent. The motion carried.

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The board considered the Status of the submission of the 2017– 2018 Standardized System of Annual Reports.

- A total of 93 County, 528 Municipal and the Nebraska Department of Transportation's Reports have been received.
- A total of 93 County, 527 Municipal and the Nebraska Department of Transportation's Reports were accepted at previous meetings.
- One (1) Municipal Report is recommended for acceptance: Ithaca.

- The Municipality of Ithaca, which was cited to the State Treasurer for suspension of its Highway Allocation Funds, submitted its Report on May 31, 2018. The State Treasurer should be advised to cease the suspension and restore the suspended funds.
- One (1) municipality has not submitted a Report: Maskell. The Report has been delinquent since January 1, 2018. Highway Allocation Funds are under suspension beginning with the May 10 distribution. Currently in the first month of suspension.

Mr. Wootton moved to accept the Status Report of the Standardized System of Annual Reports for 2017– 2018, as presented. Mr. Krager seconded the motion. Members Gerrard, Keegan, Krager, Litchfield, Syslo, Tagge, Wacker, Weander, Wootton and Figard voted YES. Member Kramer was absent. The motion carried.

Ms. Keegan moved to lift the suspended Highway Allocation Funds to the Village of Ithaca. Mr. Gerrard seconded the motion. Members Gerrard, Keegan, Krager, Litchfield, Syslo, Tagge, Wacker, Weander, Wootton and Figard voted YES. Member Kramer was absent. The motion carried. (See Attachment #1.)

The board considered the Status of the submission of the 2018 One- and Six-Year Plans.

- A total of 90 County, 529 Municipal and Nebraska Department of Transportation's One- and Six-Year Plans have been received.
- Eighty-nine (89) County and 529 Municipal One- and Six-Year Plans were accepted at previous meetings.
- One (1) County One- and Six-Year Plan is recommended for acceptance: Morrill.
- The Nebraska Department of Transportation's One- and Six-Year Plan is recommended for acceptance.

Mr. Wootton moved to accept the Status Report of the 2018 One- and Six-Year Plans, as presented. Mr. Tagge seconded the motion. Members Gerrard, Keegan, Krager, Litchfield, Syslo, Tagge, Wacker, Weander, Wootton and Figard voted YES. Member Kramer was absent. The motion carried.

The board considered the Saunders County One- and Six-Year Plan revision adding Work/Project No. C-78(769) to the 2018 One-Year Plan. A copy of the county Resolution #12-2018, adopted May 1, 2018, was received on May 24, 2018. Mr. Mainelli presented the request.

The Work/Project consists of Work Type N&R, replace Bridge No. C007832670 with culverts on a Local road. The estimated cost is \$45,000 (Funding source unknown).

Mr. Krager moved to accept the Saunders County revision. Mr. Wacker seconded the motion. Members Gerrard, Keegan, Krager, Litchfield, Syslo, Tagge, Wacker, Weander, Wootton and Figard voted YES. Member Kramer was absent. The motion carried.

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The board considered the City of Alliance One- and Six-Year Plan revision adding Work/Project No. M-108(168) to the 2018 One-Year Plan. A copy of city Resolution No. 18-63, adopted May 15, 2018, was received on May 21, 2018. No one was present to present the request.

The Work/Project consists of Work Type 3R, asphalt surfacing on an existing Local street. The estimated cost is \$461,000 (Municipal Funding).

Mr. Tagge moved to accept the City of Alliance revision. Mr. Wootton seconded the motion. Members Gerrard, Keegan, Krager, Litchfield, Syslo, Tagge, Wacker, Weander, Wootton and Figard voted YES. Member Kramer was absent. The motion carried.

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The board considered the Village of Roseland One- and Six-Year Plan revision adding Work/Project No. M-523(23) to the 2018 One-Year Plan. A copy of Village Resolution, adopted May 15, 2018, was received on May 24, 2018. No one was present to present the request.

The Work/Project consists of Work Type N&R, concrete surfacing on an existing Local street. The estimated cost is \$80,000 (Municipal Funding).

Mr. Weander moved to accept the Village of Roseland revision. Mr. Wacker seconded the motion. Members Gerrard, Keegan, Krager, Litchfield, Syslo, Tagge, Wacker, Weander, Wootton and Figard voted YES. Member Kramer was absent. The motion carried.

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The Board took a five (5) minute break, 9:20-9:25 a.m., as it was ahead of schedule.

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At 9:25 a.m., the Board heard the Custer County request for a Relaxation for County Project No. C-21(402)A1, on a Local road. *(The hearing was held in an informal format, Custer County having declined the option of a formal hearing.)* The request is for a Relaxation of the 428 NAC 2-001.03J New and Reconstructed County Road – 55 MPH Design Speed, Horizontal Alignment, Stopping Sight Distance, and 428 NAC 2-001.03B Note 8 first paragraph Standards, as specified its letter dated May 18, 2018 and County Board Resolution No. 17R-2018, adopted May 15, 2018. Mr. Deans presented the request. No one appeared in opposition. The hearing concluded at 9:49 a.m. The Board then considered the request.

Mr. Wacker moved that the Board 1) acknowledge the receipt of the Custer County Relaxation request, and 2) that no relaxation is required. Mr. Wootton seconded the motion. Members Gerrard, Keegan, Krager, Litchfield, Syslo, Tagge, Wacker, Weander, Wootton and Figard voted YES. Member Kramer was absent. The motion carried with the requisite majority vote. *(Reference Title 428, NAC 2, Procedures for Standards, the Note on page 36, "County road and Municipal street design standards do not provide standards specific to intersections, alleys, driveways, sidewalks, trails, bicycle lanes, or off-street parking.")*

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Mr. Owen and Mr. Keller gave a presentation on NDOT New Programs and Policies on “Two Plus Two’s” and “Super – Two’s.”

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There were no State-Aid Bridge Fund Applications.

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Other business:

- There was no Legislative Report.
- NBCS Vision/Mission Implementation Committee presentation on proposed changes to the State Statutes, and rules and regulations for OneAndSix, SSAR, and Construction and Maintenance Standards.

Chairman Figard reminded the board members that as the NBCS approaches its Fifty-Year Anniversary (1969 – 2019), and with the Governor’s Executive Order No. 17-04 (2017) prompting the review of all existing rules and regulations, it is time for updates to the NBCS existing laws to better reflect the present, state-wide highway, road and street issues and needs. He gave a brief presentation to the Board on the proposed changes from the *NBCS Vision/Mission Implementation Committee* (Committee) that include changes to State Statutes, and rules and regulations for the OneAndSix, SSAR, and Construction and Maintenance Standards. (See Attachment # 2, *NBCS Existing Law and Proposed Changes, June 8, 2018.*)

The Committee met on May 18, following the NBCS meeting, to discuss the proposed changes and arrived at a consensus. The Committee is now seeking the approval of NBCS of the proposal.

The goal is for the NBCS to suggest simplification in doing the right thing regarding safety, rules and regulations, and reviewing statutory requirements that make new initiatives for dollars to go further.

Chairman Figard and Mr. Schulz will be presenters at the June 13-14 meeting of the *Nebraska Association of County Engineers, County Highway Superintendents and County Surveyors*, in Valentine. The Board requested the Committee presentation on proposed changes to the State Statutes, and rules and regulations for OneAndSix, SSAR, and Construction and Maintenance Standards be part of the presentation.

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Mr. Schulz reported the following correspondence and general information:

- Board members received a copy of the NDOT Local Assistance Division, Boards - Liaison Services Section handout to be distributed at the *Nebraska Association of County Engineers, County Highway Superintendents and County Surveyors* summer meeting, June 13-14 in Valentine.

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Comments from the Audience. Mr. Cook commented on Mr. Owen's presentation on *NDOT New Programs and Policies*.

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Acknowledgement of Visitors.

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The next regular meeting will be held on July 20 at 9:00 a.m., in the Nebraska Department of Transportation Central Headquarters Building Auditorium, Room 139A, 1500 Highway 2, Lincoln, Nebraska.

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There being no further agenda items, Chairman Figard adjourned the meeting at 11:13 a.m.

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LeMoyne D. Schulz
Secretary for the Board
<https://dot.nebraska.gov/business-center/lpa/boards-liaison/>

NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION

June 8, 2018



Mr. Don Stenberg
Nebraska State Treasurer
State Capitol Rm 2003
Lincoln NE 68509

Dear Mr. Stenberg:

The Board of Public Roads Classifications and Standards, at their regular meeting on June 8, 2018, voted to lift the suspension of Highway-User Revenue to the **Village of Ithaca**. The suspension was initiated by letter of this board dated May 3, 2018, pursuant to action taken at the April 20, 2018 meeting. By action of your office, funds were suspended beginning with the May 10, 2018 allocation. Ithaca's Standardized Annual Street Program Report for 2017-2018 was received May 31, 2018.

The penalty provision of 39-2121 Nebraska Revised Statutes provides that if any county or municipality fails to file such plan on or before its due date, the Board shall notify the local governing board, the Governor and the State Treasurer who shall suspend distribution of any Highway-User Revenue allocated to such county or municipality until the report has been filed. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period, it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality.

The Board of Public Roads Classifications and Standards respectfully requests that you release the funds held in escrow, pursuant to 39-2121 Neb.Rev.Stat., and resume distribution of Highway-User Revenue to the Village of Ithaca at this time. Please note that this Board's action does not alter sanctions imposed by the State Auditor pursuant to other statutes.

Sincerely,

Handwritten signature of LeMoyne D. Schulz in black ink.

LeMoyne D. Schulz
Secretary for the Board

LDS/BPR10-zq

xc: Pete Ricketts, Governor
Kyle Schneweis, Nebraska Department of Transportation
Ithaca Village Board
Erin Stoddard, Nebraska Department of Transportation
Julie Ogden, Ithaca Street Superintendent
File

Kyle Schneweis, P.E., Director
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David L. Wacker
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Timothy W. Weander
Omaha

Edward R. Wootton, Sr.
Bellevue

LeMoyne D. Schulz
Secretary – ex officio

Attachment No. 1

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The Board of Public Roads Classifications and Standards (NBCS)
Existing Law and Proposed Changes
June 8, 2018

Recently the NBCS reviewed their rules and regulations in response to the Governor's Executive Order No. 17-04 (2017) requiring agency and NBCS review of all existing rules and regulations. This process reaffirmed for the NBCS the need for revisions to NBCS statutes and rules, to update language and to realign some of the statutory requirements related to the NBCS.

The intent provision of the NBCS existing statutes says:

[I]t is the intent of the Legislature to provide by law a system of planning, programming, budgeting, reporting, and accounting for each governmental entity which will bring improved management methods. Such management will provide citizens the opportunity to know how each governmental entity intends to spend its highway money, and to determine its performance when measured against its plans. Neb. Rev. Stat. § 39-2101.

The NBCS statutes were passed 49 years ago and have served the state well. However, the NBCS believes it is now time to update these statutory provisions to better reflect the present statewide highway, road and street issues and needs.

In the nearly 50 years since the NBCS statutes were passed, the NBCS has observed significant improvements in highway/street management and operation. The NBCS has further observed that the record keeping practices of governmental agencies in Nebraska have become more sophisticated and that the general public has a greater awareness of its right and ability to access these public records directly from the governmental agency. Based on feedback received from political subdivisions, these improvements in management and public record accessibility have made some of the NBCS functions redundant, burdensome and largely unnecessary.

Existing Statutes

In general, the NBCS statutes require the NBCS to do the following:

1. Resolve disputes concerning the State Functional Classifications assigned by NDOT to all county roads and municipal streets.
2. Develop standards for the design, construction and maintenance of all highways, roads and streets.
3. Provide for Relaxation of Standards for any functional classification "in those instances in which their application is not feasible because of peculiar, special, or unique local situations."
4. Receive from NDOT, 93 Counties and 529 Municipalities their One- and Six-Year Plans (OneAndSix) and review and make recommendations to those plans.
5. Develop a "Standardized System of Annual Reporting" (SSAR) to be filled out and submitted by NDOT, the Counties and Municipalities to the NBCS to report each entities use and accounting of highway funds.
6. Provide for the loss of highway-user revenue for failure to file reports and plans, for false reports and for failing to construct highways, roads or streets in conformance with the NBCS standards.

The NBCS believes that it should continue to perform the functions generally described above in items 1, 2, 3, and 6, with minor updates. The following is a discussion about the NBCS duties concerning items 5 and 4.

Highest Priority for Change- Item 5 (SSAR) The NBCS proposes to amend the statute (a) to allow a Certification from NDOT, and a Certification by Resolution from the Counties and the Municipalities, that their public records clearly and separately include the information specified in the statute, and (b) to eliminate the submittal of the detailed information to the NBCS.

o **Existing Law**

Neb. Rev. Stat. § 39-2120, requires the NBCS and the Auditor of Public Accounts to develop and implement a standardized system of annual reporting (SSAR). The statute includes a list of the detailed information that must be submitted by each entity. The list serves as a legislative mandate of what financial and other information should be considered and accounted for by each entity. The statute also requires that NDOT, and the Counties and Municipalities gather the specific information from their records and submit that information annually to the NBCS.

o **Issues**

This statutory process is of limited usefulness to the NBCS or the reporting entities. Over time, the reporting entities have developed their own accounting and record keeping methods that were not developed to produce the information in the same way as the NBCS Forms require it to be provided. To meet the present requirements, each entity must pull the information from its records, and report it to the NBCS on the NBCS required forms. This is a redundancy!

The certification to the NBCS will be sufficient incentive for each entity to properly report the specified information, but the focus will shift to each entities report of this information in its own public records, rather than the report submitted on the NBCS forms to the NBCS.

o **Proposed Solution**

Amend the statute to require that each County and Municipality be responsible for certifying by resolution to the NBCS annually, on or before October 31 of each year that they have gathered and reported in their public records the specific information set out in the statute without having an obligation to provide the detailed information to the NBCS. The governing body of a County or Municipality would authorize the signing of the Resolution by the entities Board Chair or Mayor after adoption of the annual budget required by Neb. Rev. Stat. § 13-506 and adoption of the OneAndSix. The Director of the NDOT would sign a certification on behalf of NDOT.

Second Highest Priority for Change- Item 4 (OneAndSix) The NBCS proposes to simplify the task of listing projects in each entities OneAndSix. Additionally, the adoption of the OneAndSix would be certified to the NBCS annually, on or before October 31 of each year, rather than the programs being submitted to the NBCS. Revisions to either the One- or Six-Year Plan must be run through a public meeting process and kept as a public record, but would not be submitted with the NBCS. This approach would remove the statutory requirements that the NBCS review such plans for consistency or for other purposes. As with Item 5 above, this approach would shift the focus to each entities process in establishing their plan, rather than focusing on submittal of such plan to the NBCS.

Additional Proposed Changes

- **Use of Construction Standards.** Change to allow Counties and Municipalities to use their own Construction Standards/Specifications. Any entity will be encouraged to use NDOT's construction specifications if they do not have their own.
- **Update Maintenance Standards.** Probably no fundamental change; may update language.
- **Uniform time for submitting certification but no later than October 31 of each year.**
- **Public Hearing Requirements.** Change to allow each County and Municipality to use their own statutes concerning the holding of public hearings necessary to authorize a Mayor or Board Chair to sign the necessary resolution. NBCS may require a couple minimums to make sure public is properly notified with a reasonable time to prepare and attend the meeting where the OneAndSix/SSAR Certification is discussed and approved.
- **Revise other Provisions/Statutes to carry out new changes.** Other sections/statutes will need to be revised to conform to or carry out all changes made to the statutes. *Example: Neb. Rev. Stat. § 39-810(1)(e) reporting of county road and bridge contracts over \$20,000 to NBCS. Neb. Rev. Stat. §§ 39-2502(6) & 39-2512(6) to receive Incentive Funds superintendent submits plans and reports to NBCS. Neb. Rev. Stat. §§ 39-2510 & 39-2520 certification of local option sales tax to NBCS.*

Continued/Refocused Goals and Objectives of NBCS

- **Setting Standards.** Continue to set reasonable and meaningful standards for highways, roads and streets that will lead to uniformity, compliance with national standards and meet driver expectancies.
 - Continue working closely with entities to make sure design standards set the proper balance.
 - Find a way to incorporate Practical Design concepts.

The NBCS is authorized to develop and implement programs, such as practical design, or context sensitive design, in cooperation with the State, Counties and Municipalities to provide additional flexibility in making engineering and funding decisions concerning design standards for projects.
 - Revise the "construction" and "maintenance" standards to match current best practices.
- **Relaxation of Standards.** Continue and improve the current process for granting Relaxations of Standards to NDOT, Counties and Municipalities.
 - *Relaxation by a separate entity provides a stronger argument of "safe harbor" from Tort Liability.*
- **Oversight of Certification by Each Entity of their One- and Six-Year Plan.** NBCS may spot check NDOT, Counties and Municipal Certifications of their OneAndSix.
- **Oversight of Certification of Each Entities Accounting and Management of Highway-user Revenue and Expenditures.** NBCS may spot check NDOT, Counties and Municipalities Certifications of their efforts to separately account for highway-user related revenue to confirm, when necessary, that those funds are expended solely for design, construction, reconstruction, maintenance and operation of highways, roads and streets.
- **Loss of Funds until Compliance.** Continue NBCS role of withholding Highway-user Revenue until Certifications are received each year from each entity.

Summary*

We propose that **one** "Certification by Resolution" filed annually with the NBCS by October 31st of each year, would replace the current requirement of filing the SSAR, OneAndSix, and revisions by Counties and Municipalities. NDOT would file a "Certification" with the NBCS by July 1st of each year. Relaxation of Standards request would continue to be submitted to the NBCS as needed.

NBCS maintains the option of auditing certifications and could initiate penalties for false reporting, Neb. Rev. Stat. § 39-2121(3)(a).

County & Municipal OneAndSix*

Amend Neb. Rev. Stat. §§ 39-2115 through 39-2119.01 to eliminate the requirement for filing with the NBCS by March 1st of each year. Instead require that Counties and Municipalities: (1) hold a public hearing prior to, in conjunction with, or following of, the adoption of their annual budget required by Neb. Rev. Stat. § 13-506, but no later than September 30th.

NDOT OneAndSix

Amend Neb. Rev. Stat. §§ 39- 2115 and 39-2118 to eliminate the requirement for filing with the NBCS by July 1st of each year. Instead require that NDOT file an annual Certification with the NBCS under Neb. Rev. Stat. §§ 39-2120 and 39-2121 by July 1st of each year. *Failure to file would result in the suspension of Highway Allocation Funds.*

County, Municipal and NDOT SSAR*

Amend Neb. Rev. Stat. §§ 39-2120 and 39-2121 to require a certification from Counties, Municipalities and NDOT, and eliminate the filing of reports.

**Following adoption of their budget and OneAndSix each County and Municipality would file under Neb. Rev. Stat. §§ 39-2120 and 39-2121 a "Certification by Resolution" with the NBCS but no later than October 31 of each year. Failure to file would result in the suspension of Highway Allocation Funds, etc.*

Next Steps

- NBCS approved concept June 8, 2018.
- Present concept to County Highway Superintendents June 14, 2018.
- Submit concept to NDOT by mid-June 2018 for their consideration.