



MAYOR AND COUNCIL COMMUNICATION

DATE: 6/04/2013
REGULAR
ITEM #: 14

AGENDA ITEM: Kupferschmidt/Toft Request to Vacate Street Right-of-Way
SUBMITTED BY: Kyle Klatt, Director of Planning
THROUGH: Dean Zuleger, City Administrator
REVIEWED BY: Nick Johnson, City Planner
Jack Griffin, City Engineer

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item Staff
- Report/Presentation..... Staff
- Questions from Council to Staff..... Mayor Facilitates
- Public Input, if Appropriate Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion..... Mayor & City Council
- Action on Motion..... Mayor Facilitates

PUBLIC POLICY STATEMENT

The City denied a request to vacate public right-of-way within the Myron Ellman Subdivision in October of 2011. Two property owners within this subdivision are now asking the Council to reconsider this previous request. A street within a platted subdivision may only be vacated after a public hearing with mailed notice to all property owners within the subdivision.

SUMMARY AND ACTION REQUESTED:

The City Council is being asked to consider a request from two property owners within the Myron Ellman Subdivision to vacate the street that was platted as 12th Street within this subdivision. The property owners that have come forward at this time include:

Lot 9, Block 2: Alan and Ralea Kupferschmidt, 2769 Legion Avenue North

Lot 10, Block 1: Rodney and Judy Toft, 2764 Legion Avenue North

The specific request is to vacate the Twelfth Street right-of-way that is located along the southern edge of this plat. Although this street is not improved (paved) as a public roadway, there are utilities currently located with the right-of-way, including a lift station, pipes leading to a City 201 drain field to the east, and a paved turn-around area. The City does not have any current information in the form of a survey; however, that documents exactly where this infrastructure is located within the right-of-way. Staff is recommending that should the Council

wish to move forward with the vacation of the right-of-way as requested by the property owners, that Council take the following action:

“Move to request that the affected property owners provide the City with: 1) a survey documenting the existence and location of all public infrastructure within the right-of-way adjacent to Lot 9, Block 2 and Lot 10, Block 1 of the Myron Ellman Subdivision; and 2) utility, drainage, access, or other easements deemed necessary by the City Engineer in the absence of a platted right-of-way, prior to the City moving forward with a public hearing to consider the vacation request.”

BACKGROUND AND STAFF REPORT:

In researching the previous request, Staff was not able to find much information concerning the Myron Ellman Subdivision other than the signed plat itself and documentation from the construction and installation of the 201 system along Legion Avenue. The plat was approved by the Village of Lake Elmo in 1969 and therefore predates the City’s current zoning and subdivision regulations. Most of the homes in the subdivision were built in the early to late 1970’s, including the homes on the Kupferschmidt and Toft properties. Sometime after many of these homes were built, Legion Pond, which was located to the east the subdivision, experienced a dramatic rise in water level. This water level rise was one of the factors that led to the installation of a 201 system along Legion Avenue, which includes a drain field site immediately to the east of Block 2 of the subdivision.

Staff has attached a copy of an older Valley Branch Watershed District plan that includes a more detailed history/summary of issues associated with the past rise of Legion Pond.

At present, the two property owners that have requested consideration of a street vacation are the southernmost property owners within the subdivision, and both own lots immediately north of the street that was platted as “Twelfth Street”. The City never improved this right of way as a street, but did install infrastructure related to the 201 system within the right-of-way and also installed a paved turn-around area at the end of Legion Avenue. In the case of Mr. Toft, his home was built, for reasons that are not very clear in the historical record, at a setback of roughly three feet from the 12th Street right-of-way line. Mr. Kupferschmidt also recently received a variance from the City to build a porch addition to his home that is located 15 feet from the right-of-way line.

In both cases, the property owners believe that vacating the right-of-way is justified because: 1) it is highly unlikely that the City would ever need to build a road over this property, 2) the infrastructure that is presently in place may no longer be needed once public sanitary sewer is brought into the neighborhood, and 3) past planning and development decisions have left them with substandard building setbacks that already inhibit and restrict the public use of the right-of-way.

Staff has attached several documents that are intended to help the Council better understand the current situation, including project plans related to the 201 System, an aerial photograph showing current conditions and the Staff memorandum from the previous vacation request (which did not include the right-of-way adjacent to the Toft property).

RECOMMENDATION:

Based upon the above background information and Staff report, it is recommended that the City Council request that the property owners provide the City with additional information before a vacation request is considered with the with the following motion:

“Move to request that the affected property owners provide the City with:

1) A survey documenting the existence and location of all public infrastructure within the right-of-way adjacent to Lot 9, Block 2 and Lot 10, Block 1 of the Myron Ellman Subdivision; and

2) Utility, drainage, access, or other easements deemed necessary by the City Engineer in the absence of a platted right-of-way

prior to the City moving forward with a public hearing to consider the vacation request.”

ATTACHMENT(S):

1. Aerial Site Diagram
2. Mryon Ellman Subdivision
3. 201 Septic System Plans – Legion Avenue
4. Legion Pond Water Management Plan (Older VBWD Plan)
5. Staff Report from 2011 Vacation Request