



MAYOR & COUNCIL COMMUNICATION

DATE: December 03, 2013
REGULAR
ITEM # 14a & b
Public Hearing (2); Resolution (2)

AGENDA ITEM: Diedrich-Rieder Easement Vacation: a) Public Utility Easement and Agreement & b) Temporary Construction Easement and Agreement

SUBMITTED BY: Adam Bell, City Clerk

THROUGH: Dean Zuleger, City Administrator

REVIEWED BY: Beckie Gumatz, Program Assistant

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item City Administrator
- Report/Presentation.....City Administrator
- Questions from Council to Staff..... Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion..... Mayor & City Council
- Action on Motion..... Mayor Facilitates

POLICY RECOMMENDER: Dean Zuleger, City Administrator

FISCAL IMPACT:

The consideration given for the initial easements was \$16,141.71. Of that amount, \$8,070.85 was paid to Gerhard Rieder and \$8,070.86 to Tammy Diedrich on 4/16/13. City staff is diligently working out the details of the repayment of those funds to the City.

SUMMARY AND ACTION REQUESTED:

The City Council is respectfully requested to hold a public hearing to consider the vacation of the Permanent easement on the related property. Following the hearing, Council is further requested to approve Resolution No. 2013-106A, A Resolution Vacating a Permanent Public Utility Easement and Agreement by taking the following action:

“Move to approve Resolution No. 2013-106A, A Resolution Vacating A Permanent Public Utility Easement And Agreement, contingent upon the City of Lake Elmo receiving the repayment of negotiated easement purchase funds ”

In addition, Council is also respectfully requested to hold a public hearing to consider the vacation of the temporary construction easement on the related property. Following the hearing, Council is further requested to approve Resolution No. 2013-106B, A Resolution Vacating a Temporary Construction Easement and Agreement by taking the following action:

“Move to approve Resolution No. 2013-106B, A Resolution Vacating a Temporary Construction Easement and Agreement, contingent upon the City of Lake Elmo receiving the repayment of negotiated easement purchase funds ”

LEGISLATIVE HISTORY:

On April 19, 2013 the City obtained permanent and temporary easements from property owners Tammy Diedrich and Gerhard Rieder for consideration as part of the Lake Elmo sewer and water infrastructure project. Those easements were subsequently recorded in the Washington County Property Records.

The location of the easements was changed at the request of the land owners and developers to facilitate development and make for more efficient infrastructure placement. New easements with the updated information were obtained by staff; however the city has been requested to vacate the previously recorded easements.

Pursuant to Minn. Stat. §§ 412.861 and 462.358, subd. 7, a city may vacate a public utility easement in the same manner as vacating streets. By law, in order to vacate a recorded easement, Council must hold a public hearing on the vacation and then pass a resolution vacating the easement.

On November 6, 2013 Council approved Resolution Nos. 2013-90A & 2013-90B calling for the public hearings to vacate the easements. Notice of the hearing was published, posted, and mailed to affected property owners by the City Clerk as required by law. Tonight Council is expected to hold those public hearings.

BACKGROUND INFORMATION (SWOT):

Strengths Granting this vacation will allow for continued disciplined and balanced market-driven growth. Granting the vacation extends the notion that the City is a favorable place to develop and partner with.

Weaknesses Specific tangible weaknesses are difficult to determine. One potential weakness identified by staff is the negative financial impact on property owners of being required to repay funds.

Opportunities While each specific case is potentially different and has varying factors, increased and improved process and communication during the easement obtaining process would be beneficial.

Threats The obvious threat to the City is that the purchase money is never repaid. However, in that case, the resolution is never effective and the City will retain the easement on the property. That scenario will have an impact in any future development of that specific parcel. It is impossible to predict what future needs the city may have for that specific easement. Because the resolutions are not effective until the easement purchase funds are repaid to the City, there is ultimately a limited threat.

A resolution granting a vacation commenced solely on the initiative of the city council requires a four-fifths majority vote in favor of the resolution. Both the City Engineer and City Attorney have reviewed this process.

RECOMMENDATION: Based on the aforementioned, following the public hearings, the staff recommends the appropriate guiding motions:

- a) ***“Move to approve Resolution No. 2013-106A, A Resolution Vacating A Permanent Public Utility Easement And Agreement, contingent upon the City of Lake Elmo receiving the repayment of negotiated easement purchase funds ”***

- b) ***“Move to approve Resolution No. 2013-106B, A Resolution Vacating a Temporary Construction Easement and Agreement, contingent upon the City of Lake Elmo receiving the repayment of negotiated easement purchase funds ”***

ATTACHMENTS:

1. Resolution No. 2013-106A, A Resolution Vacating a Permanent Public Utility Easement and Agreement
2. Resolution No. 2013-106B, A Resolution Vacating a Temporary Construction Easement and Agreement