



MAYOR AND COUNCIL COMMUNICATION

DATE: 11/4/15
CONSENT
RESOLUTION #2015-83
ITEM: #3

AGENDA ITEM: Approve Assessment Agreement for 404 Lake Elmo Avenue
SUBMITTED BY: Julie Johnson, City Clerk and Cathy Bendel, Finance Director
THROUGH: Julie Johnson, City Clerk and Cathy Bendel, Finance Director
REVIEWED BY: Julie Johnson, City Clerk and Cathy Bendel, Finance Director

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item.....City Clerk
- Report/Presentation City Clerk and Finance Director
- 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

FINANCIAL IMPACT: \$6,000 to be financed via assessment over 15 years at 4.61%

BACKGROUND AND STAFF REPORT:

The City Assessment policy provides an option to existing residents to finance the water and availability charges in cases when choosing to connect to new water or sewer services. All other fees are due at the time of permit.

The owners of 404 Lake Elmo Avenue N are requesting that they be allowed to finance the \$3,000 water access fee and the \$3,000 sewer access fee at the rate of 4.61% (bond rate of 2.61% + 2% per the City assessment agreement) .

If approved, the City Attorney and City Clerk will execute the attached draft assessment agreement.

RECOMMENDATIONS:

Approve entering into an assessment agreement with the owners of 404 Lake Elmo Avenue N (Gary and Teresa Kanne) for \$6,000; \$3,000 water access fee and \$3,000 sewer access fee.

ATTACHMENTS:

1. Request from resident dated October 14, 2015.
2. Draft Assessment Agreement
3. Resolution #2015-83

CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA

RESOLUTION 2015-83

RESOLUTION AUTHORIZING CERTIFICATION TO THE WASHINGTON
COUNTY AUDITOR FOR WATER AND SEWER ACCESS FEES

WHEREAS, the City of Lake Elmo Special Assessment policy allows for existing residents to finance utility access fees via special assessment;

WHEREAS, the owners of parcel 36.029.21.32.0007 have requested to be allowed to have \$3,000 in water access fees and \$3,000 in sewer access fees financed via special assessment for collection with taxes payable;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAKE ELMO, MINNESOTA, THAT:

1. The request by the owners of parcel 36.029.21.32.0007 is hereby accepted and shall be certified to the Washington County Auditor for collection with taxes payable beginning in 2016.
2. The certified amount of \$6,000 shall be payable over a period of 15 years, with interest of 4.61%.
3. The owner of the property may, at any time prior to certification to the County Auditor, pay the delinquent amount to the City Finance Director.

ADOPTED, by the Lake Elmo City Council on the 4th day of November, 2015.

By: _____
Mike Pearson
Mayor

ATTEST:

Julie Johnson
City Clerk

Return To:
David K. Snyder, Esq.
JOHNSON / TURNER LEGAL
56 East Broadway Avenue, Suite 206
Forest Lake, MN 55025

**CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA**

ASSESSMENT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of November, 2015, by and between the City of Lake Elmo, a Minnesota municipality organized under the laws of the State of Minnesota (hereinafter referred to as "City"); and Gary D. and Teresa D. Kanne, (hereinafter referred to as "Applicant").

WITNESS:

WHEREAS, the City Council of the City has, by Resolution on November 4, 2015, approved a request to connect their property at 404 Lake Elmo Avenue North to the City's water and sewer system; and

WHEREAS, it is the policy of the City to enter into development contracts as contemplated in Minnesota Statutes §462.358, Subd. 2(a); and,

WHEREAS, the parties hereto desire to set forth their respective rights and obligations.

NOW, THEREFORE, in consideration of the premises and of the mutual promises and conditions contained herein, it is agreed by the parties hereto as follows:

1. Assessment Amount. Upon execution of this Agreement, Applicant shall pay to the City the sum of \$6,000.00, to be assessed against the Property. The terms of the assessment shall be as follows:

The assessment amount of \$6,000.00 shall be payable over a period of fifteen (15) years, with 4.61% interest applied. The balance of the assessment amount shall be paid in full before any transfer of part or all of the property. The assessments shall represent ____% of the total cost of the improvements.

2. Lien Upon Property. The assessment shall be a lien upon the Property from the date of a resolution of the City Council adopting the assessment.

3. Warranty of Title. Applicant warrants and represents to the City that they are the fee owner(s) of the Subject Parcel described herein and that they have authority to execute this Assessment Agreement and agree to the conditions hereof.

4. Binding Effect. This Agreement shall be deemed to be a restrictive covenant and the terms and conditions hereof shall run with the lands described herein, and be binding on and inure to the benefit of the heirs, representatives and assigns of the parties hereto, and shall be binding upon all future owners of all or any part of the subject property, and shall be deemed covenants running with the land. Reference herein to the Applicant, if there be more than one, shall mean each and all of them.

This Agreement shall be placed of record so as to give notice hereof to subsequent purchasers, the cost of said recording shall be borne by the Applicant and charged against the escrow account.

5. Notices. Any notice or other communication that either party wishes or must give to the other shall be deemed duly given: (i) on the date of personal delivery or (ii) two (2) days following mailing by certified mail, postage prepaid, return receipt requested, to the following

addresses of the parties or to such other address as either party shall designate to the other:

City of Lake Elmo:

Julie Johnson, City Clerk
City of Lake Elmo
3800 Laverne Avenue N.
Lake Elmo, MN 55042

Applicant:

Gary & Teresa Kanne
404 Lake Elmo Avenue N.
Lake Elmo, MN 55042

6. Governing Law. This Agreement shall be interpreted in accordance with and be governed by the laws of the State of Minnesota.

7. Entire Agreement. This Agreement sets forth the entire agreement of the parties hereto and supersedes all prior agreements and understandings between the parties with respect to the matters contained herein.

8. Amendment, Modification or Waiver. No amendment, modification or waiver of any condition, provision or term herein shall be valid or of any effect unless made in writing, signed by the party or parties to be bound or by a duly authorized representative thereof and specifying with particularity the extent and nature of such amendment, modification and waiver.

9. Waiver of Rights to Appeal. Applicant expressly waives objection to any irregularity with regard to the said improvement assessments and any claim that the amount thereof levied against owner's property is excessive, together with all rights to appeal in the courts, including those appeal rights arising under Minn. Const. art. X, § 1 and Minn. Stat. § 429.011 et. seq.

IN WITNESS WHEREOF, the City and Applicant have caused this Agreement to be duly executed on the day and year first above written.

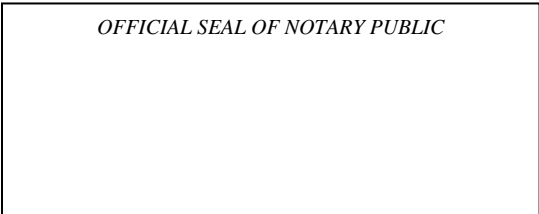
APPLICANT

Gary D. Kanne

Teresa D. Kanne

STATE OF MINNESOTA)
) ss.
 COUNTY OF WASHINGTON)

On this ____ day of _____, 2015, before me, a Notary Public, within and for said County and State, personally appeared Gary D. Kanne and Teresa D. Kanne, husband and wife, to me personally known, who, being duly sworn, acknowledged said instrument to be his/her/their free act and deed.



 SIGNATURE OF NOTARY PUBLIC

CITY OF LAKE ELMO

By: _____

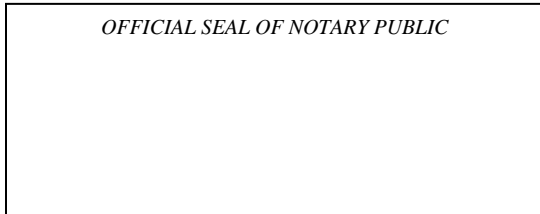
By: _____

Its: Mayor

Its: Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

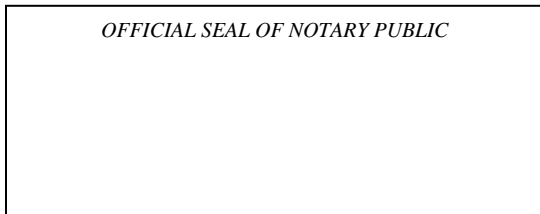
The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Mike Pearson, the Mayor of the City of Lake Elmo, a Minnesota municipal corporation, on behalf of said City with full authority so to do.



SIGNATURE OF NOTARY PUBLIC

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Julie Johnson, the Clerk of the City of Lake Elmo, a Minnesota municipal corporation, on behalf of said City with full authority so to do.



SIGNATURE OF NOTARY PUBLIC

DRAFTED BY:
David K. Snyder, Esq.
JOHNSON / TURNER LEGAL
56 East Broadway Avenue, Suite 206
Forest Lake, MN 55025
(651) 464-7292

EXHIBIT A

(Parcel A)

EXHIBIT B

(Parcel B)

October 14, 2015

To: City of Lake Elmo

From: Gary & Teresa Kanne

RE: 404 Lake Elmo Avenue North Water and Sewer Connection

We request connection to city water and sewer services at the above referenced address. We understand that the fees to connect will be as follows:

Water access/availability fee: \$3,000
Water connection fee: \$1,000
Sewer access/availability fee (city): \$3,000
Sewer connection fee (city): \$1,000
Sewer access/availability fee (Met Council): \$2,485
Water Meter: \$350


Total: \$10,835

Of the \$10,835 we understand that \$4,835 (water connection, sewer connection, Met Council sewer access & water meter) is due at the time of the permit and the remaining \$6,000 can be assessed to the property. The assessment would be payable over a term of 15 years with interest at 4.61%.

Please draft an Assessment Agreement for our review and signature as soon as possible.



Gary D. Kanne



Teresa D. Kanne