



STAFF REPORT

DATE: 3/7/2017

CONSENT

ITEM #: 5

TO: City Council
FROM: Stephen Wensman, Planning Director
AGENDA ITEM: 8200 Hill Trail Restrictive Covenant Repeal
REVIEWED BY: Kristina Handt, City Administrator

BACKGROUND:

On 10/05/1982, the owner of 8200 Hill Trail requested a variance related to lot size, house setbacks, and septic system setbacks to a garage. The variance was approved and a restrictive easement was recorded against the property.

The owner, Mr. Sewell, is now considering an addition to his home that would add two additional bedrooms, for a total of 4-bedrooms. The required upgrades to his septic system have been made in advance of the construction per Washington County's requirements.

In order for Mr. Sewell to pursue an addition to his home with two additional bedrooms, Mr. Sewell needs the City to remove the restrictive covenant.

ISSUE BEFORE THE COMMISSION:

The issue before the City Council is a request to remove a restrictive covenant on 8200 Hill Trail.

PROPOSAL DETAILS/ANALYSIS:

The construction of the original home required several variances pertaining to shoreland setbacks, minimum lot size and septic system setbacks. The original home was proposed as a one bedroom, but the septic system was sized to accommodate a two bedroom home. At the time, the City of Lake Elmo was the permitting authority for septic systems. The variances were approved and a restrictive easement was recorded against the property with the following condition:

3. The residential dwelling to be constructed, reconstructed or maintained on the lot, shall have no more bedrooms than 2. No additional bedrooms shall be allowed on the lot without prior written agreement of the City.

The City is no longer the permitting authority for septic systems. The restrictive covenant was drafted to protect the septic system under the City's jurisdiction. The County has approved a septic system for a home with four bedrooms and the septic system improvements have been installed. Staff has not reviewed any building permit and the extent of the proposed addition is not yet known. Assuming that the proposed additions meet all city requirements, Staff has no objections to the removal of the restrictive covenant.

Removal of a restrictive covenant requires a majority vote of the City Council.

FISCAL IMPACT:

None.

OPTIONS:

The options before the City Council is whether to remove the restrictive covenant or to leave it in place.

RECOMMENDATION:

Staff recommends, as part of tonight's consent agenda, the adoption of Resolution 2017-019 to remove the restrictive covenant on 8200 Hill Trail.

If the Council wishes to remove the agenda item from consent, then Staff recommends the City Council Adopt Resolution 2017-019 with the following motion:

“Move to adopt Resolution 2017-019 to remove the restrictive covenant on 8200 Hill Trail”

ATTACHMENTS:

- Resolution 2017-019 Variance Application form from 1982
- Restrictive Covenant for 8200 Hill Trail
- Certificate of Compliance for subsurface Sewage System
- Original variance application form from 1982

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

RESOLUTION NO. 2017-019

*A RESOLUTION REMOVING A RESTRICTIVE COVENANT ON 8200 HILL TRAIL, J L COHN
SUBDIVISION LOT 5 BLOCK 1*

**THE CITY COUNCIL OF THE CITY OF LAKE ELMO, MINNESOTA DOES HEREBY
RESOLVE AS FOLLOWS:**

WHEREAS, the City of Lake Elmo has received a request to remove a restrictive covenant from a property located at 8200 Hill Trail N., PID# 090.292.123.0005 from David Sewell, 8200 Hill Trail N in order to allow the construct an addition with additional bedrooms; and

WHEREAS, on October 5, 1982, several variances were approved permitting the construction of the existing home on 8200 Hill Trail N; and

WHEREAS, in 1982, the City of Lake Elmo was the permitting authority for on-site septic systems; and

WHEREAS, in order to protect the on-site septic system and the City, a restrictive easement was recorded against the property to protect the septic system; and

WHEREAS, the restrictive covenant included a condition such that the residential dwelling to be constructed, reconstructed or maintained on the lot, shall have no more bedrooms than 2. No additional bedrooms shall be allowed on the lot without prior written agreement of the City; and

WHEREAS, in 2017, Washington County is the permitting authority for on-site septic systems and the County has approved a new septic design for the property at 8200 Hill Trail N with capacity for a 4-bedroom home.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAKE ELMO, COUNTY OF WASHINGTON MINNESOTA, that such request for removal of a restrictive covenant is hereby granted in accordance with the property descriptions provided above.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk are hereby authorized to sign all documents necessary to effectuate the intent of this resolution.

Adopted by the Council this 3rd day of March, 2017.

Effective Date:_____

Approved:

Mike Pearson, Mayor

Attested by:

Julie Johnson, City Clerk

RESTRICTIVE COVENANT

THIS AGREEMENT, made and entered into this 7th day of October, 1982, between Dean A. Johnston and Karen S. Johnston, husband and wife, their heirs, successors and assigns, (hereinafter "Johnston's") and the City of Lake Elmo (hereinafter "City");

WHEREAS, Johnston's are the owners of the following described real estate, to wit:

Lot Five (5), J.L. Cohn Subdivision, according to the plat thereof on file and of record in the office of the County Recorder, for Washington County, Minnesota, (hereinafter "lot");

WHEREAS, Johnston's have applied to the City for certain variances from the Lake Elmo Municipal Code relating to lot size, house setback, and setback from septic system to garage for the lot;

WHEREAS, said variances are necessitated by the fact that the lot does not comply with the Lake Elmo Municipal Code if it is to be used for residential purposes as proposed by Johnston's.

NOW, THEREFORE, in consideration of the City's granting the necessary variances for purposes of allowing the construction, maintenance and use of a residential dwelling, including garage, on the lot and Johnston's agreeing to the following conditions, it is agreed by the parties hereto as follows:

1. The City grants all variances from the Lake Elmo Municipal Code for the construction, maintenance and use of a

residential dwelling, including garage, on the lot, including, but not necessarily limited to the following: lot size, house setback from the lake, and setback from septic system to garage. These variances shall be perpetual and run with the title to the lot, subject only to the conditions stated herein.

2. The Johnston's agree to have the septic system on the lot inspected with City supervision at least annually and to demonstrate to the reasonable satisfaction of the City this septic system is functioning according to its design as set forth on the September 29, 1982, Site Plan on file with the City. The inspector chosen by the Johnston's must be approved by the City. Said septic system shall be pumped as required by these annual inspections. Any other corrective work the septic system requires shall be done immediately following this annual inspection. All expenses incurred by the Johnston's as a result of these inspections shall be paid by the Johnston's.


3. The residential dwelling to be constructed, reconstructed or maintained on the lot, shall have no more bedrooms than 2. No additional bedrooms shall be allowed on the lot without prior written agreement by the City.

4. The Johnston's shall forever release the City from any and all damages resulting from septic system failure, high water damage, house location or storm water runoff on the lot.

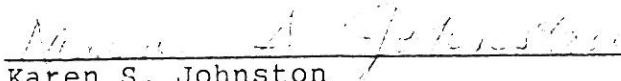
5. The Johnston's and their heirs and assigns agree not to drive over or park at any time on the drainfield area on the lot.

6. Notwithstanding any language to the contrary herein, "Johnston's" shall mean and refer only to the then record owner, whether one or more persons or entities, of a fee simple title to the lot, but shall not mean or refer to the mortgagee of such lot unless or until the mortgagee has acquired title pursuant to foreclosure of said mortgage and the period within which the fee owner may redeem from such foreclosure has terminated. When and if the lot is being sold by the fee owner to a contract vendee who is entitled to possession of the lot, the contract vendee shall be considered the "Johnston's" for purposes of this agreement.

7. This restrictive covenant may be placed in record with the Washington County Recorder's Office as an encumbrance against the lot.




Dean A. Johnston



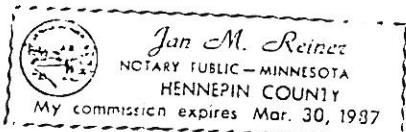
Karen S. Johnston

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

Subscribed and sworn to before me this 11th day of October, 1982, a notary public in and for said county by Dean A. Johnston and Karen Johnston, husband and wife.



Notary Public





SUBSURFACE SEWAGE TREATMENT SYSTEM

CERTIFICATE OF COMPLIANCE

| | |
|--|--|
| SITE/OWNER INFORMATION | |
| Site Address: 8200 Hill Trl N, City Of Lake Elmo | Property ID#: 0902921230005 |
| Property Owner: Sewell David R & Kristen M | |
| Mailing Address: 8200 Hill Trl N | Mail City/State/ZIP: Lake Elmo Mn 55042 |
| SSTS CONTRACTOR INFORMATION | |
| Installation Business: Bill Wolfe Excavating | MPCA License #: |
| Certified Individual on Job: | Date of Installation: 01/05/2017 |
| INSPECTION INFORMATION | |
| County Inspector: Christopher W. LeClair REHS | MPCA Registration No. C6836 County Permit No. 2016-0182 |
| Dates of Inspections: 01/05/2017 | |
| <i>System Components: See as-built for detailed system component information</i> | |
| Well Setbacks: 50 Feet Well Status: Well installed at time of inspection | |
| COUNTY VERIFICATION OF SOIL CONDITIONS | |
| County Inspector Who Verified Soil Conditions: See soil observation logs Tank Replacement Only: Yes | |
| Depth of Restriction Inches Depth System Installed Below Grade Inches | |
| Vertical Separation Provided at the Time of Installation Inches SWF: No Class V Injection Well: No | |
| CERTIFIED STATEMENT | |
| This certifies that the subsurface sewage treatment system installed at the aforementioned address was inspected during installation and found to be in compliance with requirements of the Washington County Development Code, Chapter Four, Subsurface Sewage Treatment System Regulations (Washington County Ordinance #179), and Minnesota Rules, Chapter 7080-7083. This Certificate of Compliance is valid for five (5) years from the date of issuance unless Washington County finds evidence of an imminent threat to public health and safety. Supporting documentation with detailed information on the system can be found on the attached as-built. | |
| Christopher W. LeClair REHS 14233497e9f5b65c7f2641733cdf939146e551b954045acae014bbd03f6d432a | C6836 MPCA Reg. # |
| County Inspector | 01/05/2017 Date |

DEAN JOHNSTON

CITY OF LAKE ELMO
DEVELOPMENT APPLICATION FORM

pk 2 → 4/9/61

Comprehensive Plan Amendment

Simple Lot Division

Zoning District Amendment

Large Lot Subdivision

Text Amendment

Subdivision

Conditional Use Permit

Sketch

Preliminary

Final

Variance

Subdivision Variance

Appeals

Trailer Park

Flood Plain Conditional Use Permit

Site & Bldg. Plan Review

Shoreland Permit

Mining Permits

Planned Unit Development

| | | | |
|-----------|-----------------|--------------------|--------------|
| Applicant | DEAN A JOHNSTON | 1377 VAN BUREN | (W) 733-0787 |
| | (Name) | ST PAUL, MN, 55104 | (H) 644-5088 |
| | | (Address) | (phone) |

| | | | |
|-------|-----------------|--------------------|--------------|
| Owner | DEAN A JOHNSTON | 1377 VAN BUREN | (W) 733-0787 |
| | (Name) | ST PAUL, MN, 55104 | (H) 644-5088 |
| | | (Address) | (phone) |

Property location (Street Address and Legal Description):

- ① 8200 Hill Trail, Lake Elmo
- or ② Lot 5, Block 1, J.L. Cohn Subdivision, Lake Elmo
- or ③ Gov Lot 3, Section 9, Township 29, Range 21

Description and/or Reason for Request (Cite Ordinance Section):

- ① Variance allowing building (home) within 50 ft of O.H.W. [Ord + 10']
- ② Variance allowing drainfield within 3 ft of street and property line [Ord + 10']
- ③ Variance allowing septic tank [and drainfield] within 10 ft of garage [Ord + 20']
- ④ Variance allowing building on lot with >25,000 ft² above O.H.W

In signing this application, I hereby acknowledge that I have read and fully understand the applicable provisions of the Zoning and Subdivision Ordinances and current administrative procedures. I further acknowledge the fee explanation as outlined in the application procedures and hereby agree to pay all statements received from the City pertaining to addition application expense.

Dean A Johnston
Signature of Applicant

July 12, 1982
Date