



STAFF REPORT

DATE: October 2, 2018

REGULAR #8

AGENDA ITEM: Repossess Outlot F for Sanctuary Neighborhood

SUBMITTED BY: Kristina Handt, City Administrator

BACKGROUND:

As discussed at the April work session, Outlot F in the Sanctuary Development has gone into tax forfeiture. The Homeowners Association (HOA) would like to gain ownership of the property since their community septic system is located there. In trying to gain back ownership the HOA contacted Washington County who informed them there were essentially two options to regain ownership.

Option 1. Wait for the property to go up for auction and attempt to buy it back. But they risk not being highest bidder.

Option 2. The City buy the property from Washington County at a value of \$10,000 and then deed it over to the HOA. (There will be other fees associated with this transfer – see Fiscal Impact section)

The HOA president had reached out to the City for help in obtaining the property through option 2.

Since April when Council gave direction to move forward with purchasing the parcel in exchange for a minor subdivision for the portion likely needed for the TH36/Manning Interchange, staff has reached out to the MN Land Trust and found they would not be willing to amend the conservation easement over the portion needed for the interchange unless judicial action was taken. Therefore, rather than a subdivision a Memorandum of Understanding between the City and HOA is proposed.

ISSUE BEFORE COUNCIL:

Should the City Council Purchase Outlot F in Sanctuary and convey it to the HOA under the terms in the Memorandum of Understanding?

PROPOSAL DETAILS/ANALYSIS:

The council may request to buy the property through resolution in the amount of \$10,000. In addition to approving the purchase, the resolution also approves the Memorandum of Understanding (MOU). The MOU lays out the costs (Washington County costs and City costs) that the HOA will pay, addresses the conveyance of the property from the City to the HOA and the future right of way area needed for the TH36/Manning Interchange.

Once the MOU is approved by the City and the HOA, then the resolution would be sent to Washington County for the City to purchase the property. After the City purchases the property it would be conveyed to the HOA.

FISCAL IMPACT:

Though the price for the property is \$10,000 there are other fees associate with the process.

1. Basic Sale Price	\$10,000
2. State Deed Fee	\$25
3. 3% Surcharge	\$300
4. State Deed Tax	\$33
5. County Recording Fee	\$46
6. <u>Agricultural Conservation Fee</u>	<u>\$5</u>

Total Cost for All Fees and Sale Price \$10,409

In addition, staff estimates a not to exceed costs of \$5,000 to cover the legal time into the process so far and additional costs the city will incur in the transfer to the HOA. The estimate is high as a precaution and staff would expect it to be about \$1,000 less provided the purchase agreement process goes smoothly.

All of the costs incurred by the City are expected to be reimbursed by the HOA.

OPTIONS:

- 1) Approve Resolution No 2018-112
- 2) Amend and then Approve Resolution No 2018-112
- 3) Do not agree to purchase Outlot F

RECOMMENDATION:

“Motion to Approve Resolution No 2018-112.”

ATTACHMENTS

- Resolution No 2018-112
- Memorandum of Understanding

**MEMORANDUM OF UNDERSTANDING REGARDING OUTLOT F, ST. CROIX'S
SANCTUARY**

This Memorandum of Understanding (this "MOU") is made this ___ day of _____, 2018, by and between the City of Lake Elmo, a Minnesota municipal corporation (the "City") and Sanctuary of Lake Elmo Homeowners Association, a Minnesota nonprofit corporation ("Sanctuary HOA").

RECITALS

WHEREAS, in 2005, the plat of "St. Croix's Sanctuary" was approved by the City and recorded in Washington County, Minnesota (the "Subdivision"); and

WHEREAS, the Subdivision consists of numerous residential lots and outlots; and

WHEREAS, Outlot F of the Subdivision ("Outlot F") contains the community septic system for the residential lots of the Subdivision and all homes within the Subdivision use the system; and

WHEREAS, Outlot F was owned by Sanctuary LLC which was operated by Case Arkel, the original developer of the Subdivision; and

WHEREAS, Outlot F was not conveyed by Sanctuary LLC to Sanctuary HOA and eventually went into tax forfeiture; and

WHEREAS, Outlot F will be auctioned off by Washington County at a tax forfeiture sale and Sanctuary HOA risks not being the highest bidder; and

WHEREAS, the City is able to purchase Outlot F from Washington County prior to it being sold to the public; and

WHEREAS, Sanctuary HOA has requested that the City purchase Outlot F from Washington County and then convey it to the Sanctuary HOA; and

WHEREAS, a portion of Outlot F will be needed by the City in the future for right-of-way purposes; and

WHEREAS, the City is willing to purchase Outlot F and convey it to Sanctuary HOA provided that Sanctuary HOA convey, at such date that the City requests, any portion of Outlot F that the City determines, in its sole discretion, is needed for right-of-way purposes; and

NOW, THEREFORE, on the basis of the mutual covenants and agreements hereinafter provided, it is hereby agreed by and between the parties hereto as follows:

1. The City agrees to purchase Outlot F from Washington County. The purchase price for Outlot F shall not exceed \$10,000.

2. Once the City receives Outlot F from Washington County, it will convey Outlot F to Sanctuary HOA for \$10,000. The parties agree to enter into a purchase agreement for the conveyance. Sanctuary HOA agrees to be responsible for all costs of the conveyance both from Washington County to the City and from the City to Sanctuary HOA, including closing costs (recording fees, title work (if requested), deed taxes, conservation fees, etc.), subdivision costs, the City's legal costs associated with this transaction and the drafting of this MOU, not to exceed \$5,000.00.

3. Subsequent to the City's conveyance of Outlot F to Sanctuary HOA, the City may decide that it needs a portion of Outlot F for future right-of-way purposes ("ROW Property"). However, the parties anticipate that, at the time the City conveys Outlot F to Sanctuary HOA, the size and location of the ROW Property will be uncertain. Therefore, in lieu of the City reserving a portion of Outlot F for this potential project, the City and Sanctuary HOA agree that Sanctuary HOA shall convey, at such date that the City requests, any portion of Outlot F that the City determines, in its sole discretion, is needed for right-of-way purposes to the City or its assignee, with the exception of the area in which the septic drainfield is located. The area in which the septic drainfield is located is generally depicted on the attached Exhibit A. The City's rights under this MOU are assignable without the consent of Sanctuary HOA.

4. The City may acquire the ROW Property by condemnation action or by deed-in-lieu of condemnation. Regardless of the process, Sanctuary HOA shall agree that the total damages and compensation, including, without limitation, severance damages to the remainder, interest, appraisal, and legal fees, for the ROW Property shall be no more than \$10.00. Sanctuary HOA hereby waives any and all rights to an appraisal or pre-condemnation negotiation under Minnesota Statutes Section 117.036 and any and all objections to the project's public purpose and necessity. Sanctuary HOA shall be responsible for any costs, including without limitation, attorneys' fees, appraisal fees, and expert fees, not to exceed \$35,000.00, but excluding survey costs incurred by the City or its assignee, associated with the acquisition of the ROW Property from Sanctuary HOA, whether by condemnation action or deed-in-lieu of condemnation.

5. Sanctuary HOA in no manner waives its rights to require and receive any payment of just and adequate compensation from any entity for any acquisition of any portion of Outlot F that the City determines, in its sole discretion, to not be necessary for right-of-way purposes.

6. This MOU is binding on both parties and their successors and assigns. It shall be recorded in the property records of Washington County, Minnesota and shall run with the land.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the day and year written above.

CITY OF LAKE ELMO

By: _____
Mike Pearson
Its: Mayor

By: _____
Julie Johnson
Its: City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Mike Pearson and Julie Johnson, the Mayor and the City Clerk, respectively, of the City of Lake Elmo, a Minnesota municipal corporation, on behalf of the City.

Notary Public

**SANCTUARY OF LAKE ELMO
HOMEOWNERS ASSOCIATION**

By: _____

Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2018,
by _____, the _____, of Sanctuary of Lake Elmo Homeowners'
Association, a Minnesota nonprofit corporation, on behalf of the corporation.

Notary Public

This document was drafted by:

Kennedy & Graven, Chartered (SJS)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

EXHIBIT A

Depiction of the Location of the Septic Drainfield on Outlot F



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

RESOLUTION NO. 2018-109

*A RESOLUTION APPROVING THE PURCHASE OF OUTLOT F, ST. CROIX'S SANCTUARY
AND APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND
THE SANCTUARY OF LAKE ELMO HOMEOWNERS ASSOCIATION REGARDING THE
CONVEYANCE THEREOF*

WHEREAS, in 2005, the plat of "St. Croix's Sanctuary" was approved by the City and recorded in Washington County, Minnesota (the "Subdivision"); and

WHEREAS, the Subdivision consists of numerous residential lots and outlots; and

WHEREAS, Outlot F of the Subdivision contains the community septic system for the residential lots of the Subdivision and all homes within the Subdivision use the system; and

WHEREAS, Outlot F of the Subdivision ("Outlot F") was owned by Sanctuary LLC which was operated by Case Arkel, the original developer of the Subdivision; and

WHEREAS, Outlot F was not conveyed by Sanctuary LLC to Sanctuary of Lake Elmo Homeowners Association ("Sanctuary HOA") and eventually went into tax forfeiture; and

WHEREAS, Outlot F will be auctioned off by Washington County unless the City is able to purchase Outlot F prior to it being sold to the public; and

WHEREAS, Sanctuary HOA has requested that the City purchase Outlot F from Washington County and then convey it to Sanctuary HOA; and

WHEREAS, a portion of Outlot F will be needed by the City in the future for right-of-way purposes; and

WHEREAS, the City is willing to purchase Outlot F and convey it to Sanctuary HOA provided that Sanctuary HOA enter into a memorandum of understanding regarding the conveyance of Outlot F by the City to the HOA and the reconveyance of a portion of Outlot F by Sanctuary HOA to the City in the event that it is needed for right-of-way purposes; and

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Memorandum of Understanding between the City and Sanctuary HOA is hereby approved.
2. Upon execution of the Memorandum of Understanding by both parties, the City will purchase Outlot F from Washington County and pay any fees associated with the

purchase. The purchase price for Outlot F shall not exceed \$10,000 and fees from Washington County shall not exceed \$409 for a total expense of \$10,409.

Passed and duly adopted this ____ day of October, 2018 by the City Council of the City of Lake Elmo, Minnesota.

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk