



## MAYOR & COUNCIL COMMUNICATION

DATE: 7/06/2010  
**PUBLIC HEARING**  
ITEM # 7  
**MOTION** *Resolution 2010-033*

**AGENDA ITEM:** Drainage and Utility Easement Vacation – 11950 21<sup>st</sup> Street North

**SUBMITTED BY:** Kyle Klatt, Planning Director

**THROUGH:** Bruce Messelt, Cit Administrator

**REVIEWED BY:** Kelli Matzek, City Planner  
Ryan Stempski, Assistant City Engineer

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**SUMMARY AND ACTION REQUESTED:** The City Council is asked to convene a *Public Hearing* and then, following this, consider a request from Richard and Elizabeth Heath, 11950 21<sup>st</sup> Street North, to vacate a portion of an existing drainage and utility easement on their property and to further accept the dedication of a new easement on this property to replace the one being vacated. This request has been made to comply with a condition of the Variance that was recently granted for this property. The recommended motion to act on this is as follows:

***SUGGESTED MOTION:*** *“Move to adopt Resolution No. 2010-033 vacating a drainage and utility easement and dedicating a new easement over a portion of Lot 1, Block 1 of Eden Park 2<sup>nd</sup> Addition”*

**BACKGROUND INFORMATION:** The City Council approved a variance request by the applicants on June 1, 2010 that allowed them to remove an existing attached garage on the property and to replace it with a new garage with living space above it. The old garage had been built in the early 1980’s over a portion of the 30-foot wide drainage and utility easement that follows the eastern property line.

The new garage will be moved further away from the property line, but would still encroach slightly into the easement area. In order to address the past encroachment issues and to provide some additional benefit to the City, the applicant has proposed to dedicate a new easement over all portions of their property below the 100-year flood elevation. This new dedication is consistent with the City’s storm water and erosion control ordinance and would provide the City an easement over a larger portion of the site than presently exists.

The proposed action to vacate and rededicate easements over the applicant’s property will not significantly alter the original intent of the 30-foot wide easement, and should actually be more consistent with the City’s current regulations since all the easement would cover all portions of

the site that are subject to regulation under the Flood Plain Management Ordinance. Please note that prior to taking action on a request to vacate an easement, the City Council must conduct a public hearing in accordance with State Statutes. Notice of a public hearing has been published in the local paper and was mailed to all property owners within Eden Park 2<sup>nd</sup> Addition.

**RECOMMENDATION:** Based upon the above background information and findings documented in the attached Resolution No. 2010-033, Staff recommends that the City Council approve the request to vacate an existing drainage and utility easement over a portion of Lot 1, Block 1 Eden Park 2<sup>nd</sup> Addition as described in the attached materials and to further accept the dedication of a new drainage and utility easement over the same property and also as described in the attached materials..

***“Move to adopt Resolution No. 2010-033 vacating a drainage and utility easement and dedicating a new easement over a portion of Lot 1, Block 1 of Eden Park 2<sup>nd</sup> Addition”***

Alternatively, the City Council may consider denial of the request if it can make findings that the proposed vacation and rededication is not in the public interest. To do so, the following alternative motion should be used:

***“Move to deny the vacation of a drainage and utility easement and dedication of a new easement over a portion of Lot 1, Block 1 of Eden Park 2<sup>nd</sup> Addition, based upon the following findings of fact [as articulated at tonight’s meeting].”***

**ATTACHMENTS:**

1. Resolution No. 2010-033
2. Notice of Completion of Vacation Proceeding
3. Easement Conveyance Agreement
4. Easement Descriptions
5. Site Plan Depicting Areas to be Vacated and Dedicated

**SUGGESTED ORDER OF BUSINESS:**

- Introduction of Item ..... City Administrator
- Report/Presentation..... Planning Director
- Questions from Council to Staff ..... Mayor Facilitates
- Open the Public Hearing ..... Mayor Facilitates
- Close the Public Hearing ..... Mayor Facilitates
- Call for Motion ..... Mayor & City Council
- Discussion ..... Mayor & City Council
- Action on Motion..... Mayor Facilitates