



# MAYOR & COUNCIL COMMUNICATION

**DATE: May 20, 2014**  
**REGULAR**  
**ITEM # 14**  
**RESOLUTION 2014-33**

**AGENDA ITEM:** Kupferschmidt/Toft Request to Vacate 12<sup>th</sup> Street Right-of-Way

**SUBMITTED BY:** Kyle Klatt, Community Development Director

**THROUGH:** Dean Zuleger, City Administrator

**REVIEWED BY:** Jack Griffin, City Engineer  
Nick Johnson, City Planner

**SUGGESTED ORDER OF BUSINESS:**

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

**POLICY RECCOMENDER:** Staff is recommending that the City Council approve a request to vacate a portion of the 12<sup>th</sup> Street right-of-way located within the Myron Ellman Subdivision. The City Council has reviewed a similar request at two different times in the past few years, and the present request complies with the information requested of the applicants the last time this issue was addressed by the City Council in 2013. This action requires a public hearing, and Staff has scheduled the required hearing for the May 20, 2014 City Council meeting.

**FISCAL IMPACT:** None – the proposed vacation reserves easements over the vacated portion of the right-of-way, which will ensure that no easements of property acquisitions will be needed to maintain the City’s existing infrastructure in this area.

**SUMMARY AND ACTION REQUESTED:** The City Council is being asked to consider a request from Rodney and Judy Toft (owners of 2764 Legion Avenue North) and Alan and Ralea Kupferschmidt (owners of 2769 Legion Avenue North) to vacate a portion of the 12<sup>th</sup> Street

right-of-way that is located immediately south of their respective lots in the Myron Ellman Subdivision. This right-of-way was platted as part of the subdivision approved in 1969, but was never improved for use as a public road. Although this street is not paved for use as a public roadway, there are utilities currently located with the right-of-way, including a lift station, pipes leading to a City 201 drain field to the east, and a paved turn-around area.

In June of 2013, the applicants made a similar request of the Council to consider vacating this right-of-way; however, the City Council decided at that time that additional information was needed before it would be able to take action on the request. Specifically, the City Council requested:

- A survey documenting the existence and location of all public infrastructure within the right-of-way adjacent to Lot 9, Block 2 and Lot 10, Block 1 of the Myron Ellman Subdivision; and
- Utility, drainage, access, or other easements deemed necessary by the City Engineer in the absence of a platted right-of-way.

The applicant has subsequently provided the attached survey documenting the location of all City infrastructure within this area. This survey also includes a description of easements to be retained by the City in place of the vacated right-of-way.

Staff is recommending that the City Council approve the applicant's request to vacate a portion of 12<sup>th</sup> Street within the Myron Ellman subdivision in accordance with the attached survey prepared by Cornerstone Land Surveying, Inc. with revisions dated May 15, 2015. Staff is further recommending that this approval be contingent upon the dedication of the drainage and utility easements as described in this survey. The recommended motion to take action on the request is as follows:

***“Move to adopt Resolution 2014-33, approving a request to vacate a portion of the 12<sup>th</sup> Street right-of-way located within the Myron Ellman Subdivision”***

**LEGISLATIVE HISTORY/STAFF REPORT:** As part of its previous research on this matter, Staff was not able to find much information concerning the Myron Ellman Subdivision other than the signed plat itself and documentation from the construction and installation of the 201 system along Legion Avenue. The plat was approved by the Village of Lake Elmo in 1969 and therefore predates the City's current zoning and subdivision regulations. Most of the homes in the subdivision were built in the early to late 1970's, including the homes on the Kupferschmidt and Toft properties. Sometime after many of these homes were built, Legion Pond, which was located to the east the subdivision, experienced a dramatic rise in water level. This water level rise was one of the factors that led to the installation of a 201 system along Legion Avenue, which includes a drain field site immediately to the east of Block 2 of the subdivision. Staff has previously provided the City Council with a copy of an older Valley Branch Watershed District plan that includes a more detailed history/summary of issues associated with the past rise of Legion Pond.

At present, the two property owners that have requested consideration of a street vacation are the southernmost property owners within the subdivision, and both own lots immediately north of the street that was platted as “Twelfth Street”. The City never improved this right of way as a street, but did install infrastructure related to the 201 system within the right-of-way and also installed a paved turn-around area at the end of Legion Avenue. In the case of Mr. Toft, his home was built, for reasons that are not very clear in the historical record, at a setback of roughly three feet from the 12th Street right-of-way line. Mr. Kupferschmidt also recently received a variance from the City to build a porch addition to his home that is located 15 feet from the right-of-way line.

In both cases, the property owners believe that vacating the right-of-way is justified because: 1) it is highly unlikely that the City would ever need to build a road over this property, 2) the infrastructure that is presently in place may no longer be needed once public sanitary sewer is brought into the neighborhood, and 3) past planning and development decisions have left them with substandard building setbacks that already inhibit and restrict the public use of the right-of-way.

Please note that prior to taking action on a request to vacate a road right-of-way, the City Council must conduct a public hearing in accordance with State Statutes. Notice of a public hearing has been published in the local newspaper and was mailed to all property owners within the Myron Ellman Subdivision as well as property owners adjacent to the land proposed for vacation. Under Minnesota State Statutes, a municipality may vacate public rights-of-way when it can be found that there is no longer any public interest in retaining said right-of-way.

The applicants’ have submitted the attached surveying depicting the proposed portion of 12<sup>th</sup> Street to be vacated along with the area to be retained by the City with a drainage and utility easement. The portion of 12<sup>th</sup> Street that would not be subject to the vacation extends out a minimum of 15 feet from both the east and west side of the Legion Avenue right-of-way. Because there is an existing City right-of-way south of the Myron Ellman subdivision, the eastern segment of 12<sup>th</sup> Street has been modified to provide a seamless connection to the southern right-of-way. This segment therefore extends out 30 feet to the east of Legion Avenue at the southernmost edge of the Myron Ellman Subdivision.

Please note that the survey complies with the recommendations of the City Engineer with one exception: the Engineer requested that 20 feet of right-of-way be retained to the west of Legion Avenue while the survey depicts a smaller area of 15 feet. Staff is recommending that the vacation be approved with the 15-foot amount as shown since this still retains sufficient room to access the lift station and because this the right-of-way west of the lift station cannot be used for a turn-around given the location of the station within the right-of-way. All other aspects of the survey comply with the City Council’s action from 2013.

**BACKGROUND INFORMATION (SWOT):**

**Strengths:** The proposed vacation will allow the property owners adjacent to the present 12<sup>th</sup> Street right-of-way expanded use of their property by eliminating a corner lot setback situation.

The proposed drainage and utility easements still provide for public access to the infrastructure in this area.

**Weaknesses:** The City's retention of the existing right-of-way provides for the most protection of existing infrastructure.

The existing turn-around at the end of Legion Avenue is marginal and does not allow for proper turning movements for larger vehicles. This situation is not made any worse with the proposed vacation.

**Opportunities:** At some point in the future, Legion Avenue could be extended to the south to provide a second access to the subdivision.

Once sewer is provided to this portion of Legion Avenue, the existing lift station and other associated improvements may no longer be needed.

**Threats:** The vacation would allow the applicants to build a structure up to the easement line, which could impact the City's ability to install and maintain infrastructure in the future.

**RECOMMENDATION:** Based on the above Staff report, Staff is recommending that the City Council approve the request to vacate a portion of the 12<sup>th</sup> Street right-of-way located within the Myron Ellman Subdivision, provided the following condition is met:

- 1) The petitioners shall record with Washington County the drainage and utility easements to be retained by the City as described in the survey from Cornerstone Land Surveying, Inc. dated May 15, 2015.

The suggested motion to adopt the Staff recommendation is as follows:

***“Move to adopt Resolution 2014-33, approving a request to vacate a portion of the 12<sup>th</sup> Street right-of-way located within the Myron Ellman Subdivision”***

**ATTACHMENTS:**

1. Resolution 2014-33
2. Petition for the Vacation of 12<sup>th</sup> Street
3. Street Vacation Survey – Cornerstone Land Surveying, Inc.
4. Review Comments – City Engineer 2/17/14
5. Aerial Photograph of Site