



MAYOR & COUNCIL COMMUNICATION

DATE: February 03, 2015

REGULAR

ITEM # 11

AGENDA ITEM: Blinkoff Pool- Demontreville Wildlife Park Vacation: Portion of Public Park Land

SUBMITTED BY: Adam Bell, City Clerk

THROUGH: Dean Zuleger, City Administrator

REVIEWED BY: Nick Johnson, City Planner
David Snyder, City Attorney
Planning Commission
Parks Commission

SUGGESTED ORDER OF BUSINESS:

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

POLICY RECOMMENDER: Under state statute, a City must hold a public hearing for the vacation of any public land. The proposed vacation is required for the sale of a 6,300 square foot triangle of land (0.15 acres), and is intended to correct an encroachment of a swimming pool that was constructed in 2005. Staff is recommending that the City Council hold the required public hearing, consider and approve the resolution authorizing the vacation of the respective portion of park land, and approve the resolution authorizing the sale of the land.

FISCAL IMPACT:

The negotiated consideration given for the portion of land is \$3,000.00. This amount is based on the City Assessor's market value appraisal of \$1,800.00 and the initial City demand of \$5,000.00.

SUMMARY AND ACTION REQUESTED:

The City Council is respectfully requested to hold a public hearing to consider the vacation of the subject property, a portion of public park land. Following the hearing, Council is further requested to approve Resolution No. 2015-05, A Resolution Vacating a Portion of Public Park Land by taking the following action:

“Move to approve Resolution No. 2015-05, A Resolution Vacating a Portion of Public Park Land.”

In addition, Council is also respectfully requested to approve Resolution No. 2015-06, A Resolution Authorizing the Sale of City Property by taking the following action:

“Move to approve Resolution No. 2015-06, A Resolution Authorizing the Sale of City Property.”

LEGISLATIVE HISTORY:

In the process of preparing their property for sale, property owners David and Mary Blinkoff of 7920 DeMontreville Trail North were notified that their pool was partially located on municipal park land in the DeMontreville Wildlife Park. Based on staff research, it appears that the final pool location was not correctly placed according to the survey or verified in reference to the proposed survey during the permitting process in 2005. The issue now creates a potential liability problem for both the City as well as the property owner. After consulting with the City Attorney as to the various options, staff and the owners have agreed that selling to the property owners the impacted land where the pool is located, consisting of approximately 6,300 square feet, is the best option for all parties.

Pursuant to Minn. Stat. §§ 412.861 and 462.358, subd. 7, a city may vacate public land in the same manner as vacating streets. By law, in order to vacate public park land, Council must hold a public hearing on the vacation and then pass a resolution vacating the public park land.

A resolution granting a vacation commenced solely on the initiative of the city council requires a four-fifths majority vote in favor of the resolution. The City Planning, Legal, and Administration Departments have all reviewed this item. The Parks Commission reviewed this item at their December 15th meeting. It voted 7-0 to recommend selling the land to the owners at market value. The Planning Commission reviewed the vacation/sale proposal and the compliance with the Comprehensive Plan at its January 26, 2015 meeting and unanimously recommended the sale of the subject property to resolve the pool encroachment. In making a recommendation to sell the land, the Planning Commission included two findings of fact:

1. That the pool encroachment is a unique occurrence and has created extreme circumstances for the property owners that do not otherwise apply to other properties in the community. The sale of this public land therefore does not create precedence for such property transfers in the future; and
2. That the lot line adjustment and subsequent transfer of property is the reasonable, minimal amount to bring the pool into conformance with City subdivision and zoning regulations.

In addition, the Planning Commission noted that any sale of the land should be a fair market value.

On January 13, 2015 Council approved Resolution No. 2015-03 calling for the public hearing to vacate the portion of public park land. Notice of the hearing was published, posted, and mailed to affected property owners by the City Clerk as required by law. Tonight Council is expected to hold that public hearing.

The sale of the property and the vacation process is time sensitive and does have an impact on the property owners' real estate transaction, therefore Council is respectfully asked to hold the public hearing and approve both recommendations without delay.

BACKGROUND INFORMATION (SWOT):

Strengths Granting this vacation will eliminate the potential liability that currently exists with the fact that there is a private structure, a below-ground pool, constructed on public park land. The conveyance of the land to the affected property owners is the best option presented. The other options were a) to do nothing, b) offer an encroachment agreement, and c) grant a permanent easement. Clearly, doing nothing is not an option for either party. An encroachment agreement would not satisfy title and mortgage companies to allow for the transfer of the related property. This also does not address all potential liability issues. An easement is not recommended as it does not eliminate any of the liability issues created by having a pool structure on public land. Lastly, approving the vacation and subsequent sale of the property will allow the Blinkoffs to sell their property with the pool intact.

Weaknesses A small portion (6,300 square foot triangle of land (0.15 acres)) of Demontreville Wildlife Park is no longer available for public use. The appraised value of the subject land is only \$1,800.00, but it has a much greater benefit to the Blinkoffs.

Opportunities This situation provides an opportunity to review current permitting and final inspection procedures to ensure that this type of situation does not occur again.

Threats The nature of this encroaching type of structure has a high inherent potential liability for all property owners. The City has no interest in maintaining the pool as a public facility or continuing to assume the liability for its use. If the vacation and sale are not approved, the current property owners will not be able to sell their property.

A resolution granting a vacation commenced solely on the initiative of the city council requires a four-fifths majority vote in favor of the resolution. Staff and the City Attorney have reviewed this process.

RECOMMENDATION: Based on the aforementioned, following the public hearing, the staff recommends the appropriate guiding motions:

“Move to approve Resolution No. 2015-05, A Resolution Vacating a Portion of Public Park Land.”

and:

“Move to approve Resolution No. 2015-06, A Resolution Authorizing the Sale of City Property.”

ATTACHMENTS:

1. Resolution No. 2015-05, A Resolution Vacating a Portion of Public Park Land
2. Resolution No. 2015-06, A Resolution Authorizing the Sale of City Property
3. Location map
4. Blinkoff Request w/Surveys and Maps
5. Original Building Permit