



MAYOR & COUNCIL COMMUNICATION

DATE: February 2, 2016

CONSENT

ITEM # 7

AGENDA ITEM: Driveway Encroachment & Maintenance Agreement

SUBMITTED BY: Joan Ziertman, Planning Program Assistant

THROUGH: Clark Schroeder, City Administrator

REVIEWED BY: Stephen Wensman, City Planner

SUGGESTED ORDER OF BUSINESS (if removed from consent agenda):

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

POLICY RECCOMENDER: Staff recommends that the City Council approve the Driveway Encroachment and Maintenance agreement for Jeerasak Poophakumanart at PID #24.029.21.13.0004.

FISCAL IMPACT: None

SUMMARY AND ACTION REQUESTED: The City Council is respectfully requested to authorize as part of tonight's consent agenda, the execution of a driveway encroachment and maintenance agreement. The City has received a request to install a driveway within an unimproved portion of the public right-of-way owned by the City. Homeowner and City intend that Homeowner shall be responsible for maintaining, repairing and replacing the Private Driveway.

Staff is recommending that the City Council approve the driveway encroachment and maintenance agreement as part of the Consent Agenda. If the City Council removes the item from the Consent Agenda, the recommended action can be completed through the following motion:

“Move to approve the driveway encroachment and maintenance agreement for Jeerasak Poophakumpanart to install a driveway within an unimproved portion of the public right-of-way owned by the City.”

LEGISLATIVE HISTORY: The Driveway Encroachment and Maintenance Agreement that has been submitted for Council consideration is for a driveway and has been reviewed by planning and engineering staff. The proposed driveway meets all city code requirements and Staff would have otherwise authorized construction of the driveway if it did not encroach into the unimproved portion of the public right-of-way owned by the City.

BACKGROUND INFORMATION (SWOT):

Strengths: The Driveway encroachment and maintenance agreement is a legal document that all property owners seeking to install driveways within unimproved portions of public right-of-way owned by the City are required to sign. The document, among other things, indemnifies the city from responsibility if damage occurs to the improvement or if it needs to be removed at some point in the future.

Weaknesses: None

Opportunities: None

Threats: None

RECOMMENDATION:

Based on the aforementioned, Staff is recommending that the City Council approve the driveway encroachment and maintenance agreement as part of the Consent Agenda. If the City Council removes the item from the Consent Agenda, the recommended action can be completed through the following motion:

“Move to approve the driveway encroachment and maintenance agreement for Jeerasak Poophakumpanart to install a driveway within an unimproved portion of the public right-of-way owned by the City.”



0 480 960 1,920 Feet

Parcel ID: 2402921130004

Parcel Address:
CITY OF LAKE ELMO

MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

This drawing is the result of the compilation and reproduction of land records as they appear in various Washington County offices. The drawing should be used for reference purposes only. Washington County is not responsible for any inaccuracies.

Created on 11/30/2015

Return to:
David K. Snyder
Johnson / Turner Legal
56 East Broadway Avenue, Suite 206
Forest Lake, MN 55025

DRIVEWAY ENCROACHMENT AND MAINTENANCE AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2015, by and between the City of Lake Elmo, a Minnesota municipality (hereinafter "City"), and _____, [married / an individual] (hereinafter "Owner"), and their successors in title.

WHEREAS, the City has public road right-of-way known as "_____" dividing the property as legally described on "Exhibit A" hereto; and,

WHEREAS, Owner is the owner of property identified on "Exhibit B" hereto and is desirous of constructing a driveway ("The Improvements") within the right-of-way; and,

WHEREAS, the permission granted herein is limited to The Improvements proposed within the right-of-way.

NOW, THEREFORE, in consideration of the premises and for good and valuable consideration, the receipt of which is acknowledged, the City will permit the encroachment on its right-of-way area as set forth herein and subject to the conditions set forth below:

1. Owner and their successors in title may install and maintain The Improvements in the configuration directed by the City and in accordance herewith.

2. Owner must notify the City at least forty-eight (48) hours before construction, repair and/or maintenance work commences within the right-of-way. No such work shall take place without the City staff being given the opportunity to be present at the site. Further, if the City determines in its reasonable estimation that any proposed work may potentially cause an unsafe condition or damage or impair the City's right-of-way area, the City shall have the authority to prevent such work from being done by giving notice to Owner; notwithstanding the foregoing, in the event of an emergency situation and/or the existence of an unsafe condition of Owner's land, the prescribed forty-eight (48) hour notice requirement shall be waived by the City. However, in the event of such situation, said waiver shall not relieve Owner from his obligation to notify the City in a timely and practical manner. The City shall have no obligation to notify Owner of its intent to do work.

3. To the fullest extent permitted by law, Owner, their successors and assigns agree to release, defend, protect, indemnify, save and hold harmless the City, its agents, directors, employees and contractors against any and all claims, costs and liabilities, including the costs of defense for damages, injury or death arising from or in any way connected to the installation, maintenance, repair, removal and/or presence of The Improvements permitted hereunder, regardless of whether such harm is to Owner, the City, the employees or officers of either or any other person or entity, except Owner shall not be liable under this paragraph for loss or damage to the extent resulting from the negligence or intentional acts of the indemnified parties.

4. The private driveway shall be the sole and exclusive property and responsibility of Owner and shall not be a public driveway whether or not the private driveway is located

within the public right-of-way.

5. Owner shall, at its sole cost, maintain, repair and replace the private driveway as needed, and agrees to indemnify, defend and hold the City harmless from any claims, actions, demands, or liability, including attorneys' fees, arising out of or relating to the Private Driveway.

6. The permission granted herein is limited exclusively to the proposed Improvements within the City's right-of-way. Owner shall not alter the grade, perform any other site disturbing activities, or permit such alteration anywhere upon the land upon which the City has reserved its right-of-way without proper express written consent of the City. Owner shall construct and maintain The Improvements in compliance with all applicable laws and in good repair.

7. Owner shall, at all times, use their best efforts to conduct all of his activities on said right-of-way area in such a manner as to not interfere with or impede the operation of the City's right-of-way and related activities in any manner whatsoever, and shall remove The Improvements at no cost to the City when directed by the City. The work shall be done and The Improvements maintained in conformance with the direction of the City. The right to install The Improvements shall be on a non-exclusive basis and subject to placement of other and different improvements as directed by the City.

8. This Agreement shall be governed in all respects by Minnesota law.

9. This Agreement shall be recorded as to the Property in the office of the County Recorder or Registrar of Titles in and for Washington County, Minnesota.

IN WITNESS WHEREOF the parties hereto execute this Agreement the day and year first above-written.

CITY OF LAKE ELMO

By _____
Mike Pearson, Mayor

By _____
Julie Johnson, City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

On this _____ day of _____, 2015, before me, a Notary Public, personally appeared Mike Pearson, Mayor of the City of Lake Elmo, a Minnesota municipality within the State of Minnesota, and that said instrument was signed on behalf of the City of Lake Elmo by the authority of the City Council of the City of Lake Elmo, and acknowledged said instrument to be the free act and deed of said City of Lake Elmo.

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

On this _____ day of _____, 2015, before me, a Notary Public, personally appeared Julie Johnson, Clerk of the City of Lake Elmo, a Minnesota municipality within the State of Minnesota, and that said instrument was signed on behalf of the City of Lake Elmo by the authority of the City Council of the City of Lake Elmo, and acknowledged said instrument to be the free act and deed of said City of Lake Elmo.

Notary Public

OWNER

By _____
[insert name]

By _____
[insert name]

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

On this _____ day of _____, 2015, before me, a Notary Public,
personally appeared _____ and _____, married, who signed the foregoing
instrument and acknowledged said instrument to be their free act and deed.

Notary Public

THIS INSTRUMENT DRAFTED BY:
David K. Snyder
Johnson / Turner Legal
56 East Broadway Avenue, Suite 206
Forest Lake, MN 55025
651-464-7292

EXHIBIT A

EXHIBIT B