



## MAYOR AND COUNCIL COMMUNICATION

DATE: 07/19/2016

**CONSENT**

ITEM #: 15

**AGENDA ITEM:** Agreement with Property Owner of 8004 50th Street for Repairs Related to Hazardous Building Abatement Orders

**SUBMITTED BY:** Mike Bent, Building Official

**THROUGH:** Mike Bent, Building Official

**REVIEWED BY:** Sarah Sonsalla, City Attorney

**SUMMARY AND ACTION REQUESTED:** As part of its Consent Agenda, the City Council is asked to accept the Agreement with the Property Owner of 8004 50th Street for Repairs Related to Hazardous Building Abatement Orders. This agreement is based on the ongoing abatement proceeding of the property and has been prepared by the city attorney.

No specific motion is needed, as this is recommended to be part of the overall approval of the *Consent Agenda*.

**STAFF REPORT:** The property owners of 8004 50<sup>th</sup> Street N have agreed to enter into a restoration agreement with the city. The owner agrees to pay the city \$2,500.00 prior to execution of the agreement in order to reimburse the City for costs incurred related to the enforcement of the abatement orders.

The owner has agreed to abate all of the conditions outlined in the previously approved Abatement orders (Exhibit A) by August 31, 2016. The owner further agrees that if they fail to comply with the terms of the agreement, they waive their right to object to the City assessment of 100 percent of the expenses of execution by the city of the abatement orders (not to exceed \$50,000) and waive their right to appeal the levy of special assessment of all costs related to the abatement.

**RECOMMENDATION:** Based on the aforementioned, staff recommends the City Council accept the Agreement with Property Owner of 8004 50th Street for Repairs Related to Hazardous Building Abatement Orders

### **ATTACHMENTS:**

1. Restoration Agreement
2. Abatement Order (Exhibit A)

## **RESTORATION AGREEMENT**

This Restoration Agreement (this “Agreement”) is entered into as of July \_\_\_\_, 2016 by and between the City of Lake Elmo, a municipal corporation under the laws of Minnesota (the “City”) and Marysville LLC, a limited liability corporation formed under the laws of the state of Wyoming.

### **RECITALS**

**WHEREAS**, Marysville LLC is the fee owner (the “Owner”) of the property located at 8004 50<sup>th</sup> Street, Lake Elmo, Minnesota and legally described as:

Lots Thirty-eight (38), Thirty-nine (39), Forty (40), Forty-one (41), Forty-two (42), Fifty-seven (57), Fifty-eight (58), Fifty-nine (59), Sixty (60), and Sixty-one (61), LANE’S DEMONTREVILLE COUNTRY CLUB, as surveyed and platted and now on file and of record in the office of the Registrar of Titles of Washington County, Minnesota.

(the “Property”); and

**WHEREAS**, on June 21, 2016, the City Council passed Resolution No. 2016-48 which concluded that the building on the Property is hazardous within the meaning of Minnesota Statutes Section 463.15 and authorized issuance of an order for abatement thereof (the “Resolution”); and

**WHEREAS**, the Resolution and the City’s Order for Abatement of a Hazardous Building dated July 1, 2016 (the “City Order”) was personally served on registered agent for the Owner on July 7, 2016 along with a Summons; and

**WHEREAS**, the City recorded a notice of lis pendens against the Property; and

**WHEREAS**, the Owner seeks to rehabilitate the Property; and

**WHEREAS**, the City consents to the rehabilitation of the Property without further court action on this matter subject to the terms of this Agreement; and

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by both parties to this Agreement, the City and the Owner agree as follows:

## **AGREEMENT**

1. **Recitals.** The City and Owner agree that the foregoing Recitals are true and correct and are fully incorporated into this Agreement.
2. **Repair or Removal of the Building.** The Owner agrees that it will either repair the building on the Property or demolish it no later than August 31, 2016. All items specified in the City Order must be completed no later than August 31, 2016. The City Order is attached as Exhibit A and is hereby incorporated into this Agreement. The Owner agrees to apply for all necessary permits from the City. The Owner further agrees to allow the City to inspect the Property in order to ensure that all work specified in the City Order and this Agreement has been completed. This Agreement is neither a substitute for nor a waiver of the City's permitting and inspection requirements.
3. **Consideration.** The Owner agrees to pay the City \$2,500.00 prior to the execution of this Agreement in order to reimburse the City for the costs it has incurred related to the enforcement of the City Order.
4. **Performance.** So long as the Owner complies with the terms of paragraph 2 of this Agreement, the City agrees that it will not enforce the City Order, will discharge the notice of lis pendens against the Property, and will record a release of this Agreement with the County. If the Owner fails to comply with the terms of paragraph 2 of this Agreement, then it agrees that the City may immediately perform any outstanding work specified in the City Order and assess its costs as set forth in paragraph 5 of this Agreement without the need for further action or approval by the court. The Owner also agrees that the City may opt to remove the building as specified in the City Order instead of performing the outstanding repair work if it is deemed by the City to be more cost-effective to do so.
5. **Special Assessment of City Expenses; Waiver.** The City is authorized pursuant to Minnesota Statutes Sections 463.21 and 463.22 to assess the expenses that it incurs as a result of its enforcement of the City Order, including specifically, but not exclusively, demolition or repair costs, filing fees, service fees, publication fees, attorneys' fees, witness fees and traveling expenses (the "Expenses") not to exceed \$50,000. If the Owner fails to comply with the terms of this Agreement, then it hereby waives its right to object to the City's assessment of 100 percent of the Expenses that have been incurred by the City (less the \$2,500.00 already paid to the City by the Owner pursuant to paragraph 3 of this Agreement). The Owner hereby further waives its right to appeal the levy of the special assessment pursuant to Minnesota Statutes Section 429.081, or reapportionment thereof upon land division pursuant to Minnesota Statutes Section

429.071, subdivision 3, or otherwise; and further specifically agrees with respect to such special assessment against the Property that:

- a. Any requirements of Minnesota Statutes Chapter 429, with which the City does not comply are hereby waived by the Owner;
- b. The Owner's waiver of its right to object to the City's assessment of 100 percent of the Expenses against the Property as outlined above is reasonable, fair and equitable and there are no other properties against which the Expenses should be assessed; and
- a. It is the intention of the City to provide for the payment of such special assessment in one annual installment in the year 2017, with interest at the annual rate of eight percent accruing from the date of the assessment hearing.

6. **General Provisions.** This Agreement represents the entire agreement between the parties and supersedes in all respects all prior agreements of the parties, whether written or otherwise, with respect to the Property. No change, modification or waiver of any provisions of this Agreement will be binding unless it is in writing and signed by both parties. This Agreement shall be construed according to the laws of the state of Minnesota. Any provision of this Agreement which is void or unenforceable may be severed from the remaining provisions without affecting the enforceability of the remaining provisions.

7. **Execution in Counterparts.** This Agreement may be executed and delivered in two or more counterparts, each of which, when so delivered, shall be an original, but such counterparts shall together constitute but one and the same instrument and agreement. This Agreement shall be deemed to be effective on the last such day any such counterpart is executed.

8. **Run with the Land.** The provisions of this Agreement shall run with the land and be binding upon the Owner and its respective heirs, successors, and assigns.

9. **Recording.** The City will record this Agreement against the Property in the land records of Washington County.

10. **Right to Bind Corporation.** The person signing this Agreement on behalf of the Owner of the Property hereby warrants that he or she has full legal authority to sign on behalf of the limited liability company and that such signature shall be binding on the company. The signer also personally guarantees that the limited liability is in good standing in both its state of incorporation as well as under the laws of the State of Minnesota, including Minnesota Statutes Chapter 322B.

**IN WITNESS WHEREOF,** the City and the Owner have caused this Restoration Agreement to be duly executed in their names and on their behalf on or as of the date first above written.

OWNER – MARYSVILLE LLC

By: [Signature]

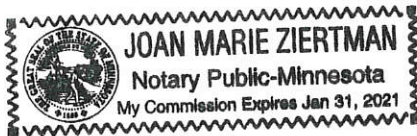
Its: Owner.

STATE OF Minnesota )  
 ) SS.

COUNTY OF Washington )

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of July, 2016, by Trevor Jarvis, the Owner of Marysville LLC, a Wyoming limited liability company, on behalf of the company.

[Signature]  
Notary Public



THIS INSTRUMENT DRAFTED BY:

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

**EXHIBIT A**

**City Order**

[to be attached]

**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 \_\_\_\_\_, 2016, by Mike Pearson and Julie Johnson, the Mayor and City Clerk, respectively of the City of Lake Elmo, a Minnesota municipal corporation, on behalf of the City.

\_\_\_\_\_  
Notary Public

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

**RESOLUTION NO. 2016-48**

*A RESOLUTION ORDERING THE ABATEMENT OF CONDITIONS CREATING A NUISANCE  
AND A HAZARDOUS PROPERTY EXISTING AT 8004 50<sup>th</sup> STREET NORTH, IN THE CITY OF  
LAKE ELMO*

**WHEREAS**, the property located at 8004 50<sup>th</sup> Street North, legally described as:

Lots Thirty-eight (38), Thirty-nine (39), Forty (40), Forty-one (41), Forty-two (42), Fifty-seven (57), Fifty-eight (58), Fifty-nine (59), Sixty (60), and Sixty-one (61), LANE'S DEMONTREVILLE COUNTRY CLUB, as surveyed and platted and now on file and of record in the office of the Registrar of Titles of Washington County, Minnesota

contains a single family dwelling (the "Subject Property"); and

**WHEREAS**, a physical inspection by the City Building Official of the Subject Property on May 12, 2016 found that the foundation has caved in and no longer supports the structure, siding, windows, soffits and fascia are rotting and have mold and water damage, there is exposed high voltage electrical wiring, and there are broken windows and doors; and

**WHEREAS**, by notice dated May 16, 2016, the owner was ordered by the City of Lake Elmo to repair these items; and

**WHEREAS**, the owner did not complete the repairs as required by the notice; and

**WHEREAS**, the City Building Official has determined that failing foundation, the exposed high voltage electrical wiring, the rotting windows, siding, soffits and fascia, and the broken windows and doors are a violation of Section 96.03(B)(10) of the City Code and create hazardous and nuisance conditions and that the City must perform all work necessary in order to abate the hazardous and nuisance conditions on the Subject Property unless the owner performs all work set out in the attached order; and

**WHEREAS**, Marysville LLC, the owner of the Subject Property has taken no steps to abate the hazardous conditions; and

**WHEREAS**, Minnesota Statutes Section 463.161 authorizes the governing body of any city or town to order the owners of any hazardous building within the municipality to correct or remove the hazardous condition; and

**WHEREAS**, Minnesota Statutes Section 463.15, subdivision 3 defines a "hazardous building" as "any building..., which because of inadequate maintenance, dilapidation, physical damage, unsanitary condition or abandonment, constitutes a fire hazard or a hazard to public safety or health;" and



**WHEREAS**, Minnesota Statutes Section 463.161 et seq. authorizes a city to correct or remove a hazardous condition of any hazardous building if the owner of record fails to do so after a reasonable time and the district court enters a judgment sustaining the city's order; and

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Lake Elmo as follows:

1. The house and garage located on the Subject Property, specifically the foundation, siding, soffits, fascia, exterior doors and windows, are hazardous as defined by Minnesota Statutes Section 463.15.
2. The house and garage also constitute a public nuisance within the meaning of Minnesota Statutes Section 609.74 and Section 96.03(B)(10) of the Lake Elmo City Code.
3. An Abatement Order substantially similar to that attached hereto as Exhibit A shall be served upon all parties with an interest in the Subject Property in order to effectuate this Resolution.
4. The City Attorney is authorized to take all necessary legal steps to secure compliance with the Order and to obtain authority to remove and abate the hazardous conditions on the Subject Property by court order or consent and assess the costs thereof against the Subject Property.

Passed and duly adopted this 21<sup>st</sup> day of June, 2016, by the City Council of the City of Lake Elmo, Minnesota.



Mike Pearson, Mayor

ATTEST:



Julie Johnson, City Clerk