



## **STAFF REPORT**

DATE: July 2<sup>nd</sup>, 2019

### **CONSENT**

**AGENDA ITEM:** Approval to Obtain Tax Forfeiture Properties for ROW

**SUBMITTED BY:** Ben Prchal, City Planner

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### **BACKGROUND:**

The City has been notified by Washington County about a few parcels of land in Lake Elmo that have gone into Tax Forfeiture. Internally Staff has reviewed the list of properties that are available and have determined it would be advantageous for the City to try and acquire the parcels identified as 02.029.21.12.0001, 36.029.21.33.0012, 36.029.21.33.0013, and 36.029.21.33.0015. Having these properties would provide the City with more right-of-way (ROW) which allows for flexibility and gives the City needed ROW for future road projects. The Minnesota Department of Transportation (MNDOT) also has expressed interest in a few of the properties. Because there are more than one agency interested in the properties, the Washington County Board will need vote to determine which agency will have the right to acquire the properties. There is no guarantee that the City will be able to obtain any or all of them.

### **ISSUE BEFORE COUNCIL:**

Would the City Council like to acquire the listed parcels? If so, the Council also will need to approve the required expenditure to do so.

### **DETAILS AND ANALYSIS**

Staff has discussed the value of the parcels and have determined that it would be in the City's interest to obtain the properties for right-of-way. The parcels are identified as 02.029.21.12.0001, 36.029.21.33.0012, 36.029.21.33.0013, and 36.029.21.33.0015. Staff further believes that allowing the properties to go back on the tax roll or under the ownership of a different government agency would be less valuable to the City than having them for ROW purposes. The maps on the following page shows each of the parcels under consideration.

There are two approvals that the City must obtain before gaining the properties. First, the Washington County Board will need to vote to determine who will receive the right to acquire the properties. The second step would be a review from the State of Minnesota as they also will review the City's request. The City Council should know that the City's requests can be denied by the State. If denied, the City would be reimbursed \$150 of the \$250 paid to the Commissioner of Revenue (see financial section for a breakout). Staff is not under the impression that the money paid to Washington County would be returned if the City does not receive approval to acquire the properties.

Nonetheless, Conditional Use Deed option starts on page 2 of the attached "Governmental Sub..." The property(s) will be free of charge as long as it continues to be used for the authorized public use. A conditional use deed contains two clauses that distinguish it from other state deeds. One states the authorized public use of the property and the other declares that the title is restricted by the authorized use. This means the title will revert to the State if the parcel does not continue to be used for the authorized public use. The City would have three years from the date of conveyance to implement the authorized public use on the tax forfeited land. The limitations of the authorized public uses are enumerated in statute. The following are the only uses valid under "authorized public use." The City intends to use the four properties as road-right-of way.

1. A road, or right-of way for a road. (M.S. 282.01, Subd. 1a, para. (e)(1)).
2. A park that is both available to, and accessible by, the public that contains amenities such as campgrounds, playgrounds, athletic fields, trails, or shelters. (M.S. 282.01, Subd. 1a, para. (e)(2)).
3. Trails for walking, bicycling, snowmobiling, or other recreational purposes, along with a reasonable amount of surrounding land maintained in its natural state. (M.S. 282.01, Subd. 1a, para. (e)(3)).
4. Transit facilities for buses, light rail transit, commuter rail or passenger rail, including transit ways, park-and-ride lots, transit stations, maintenance and garage facilities, and other facilities related to a public transit system. (M.S. 282.01, Subd. 1a, para. (e)(4)).
5. Public beaches or boat launches. (M.S. 282.01, Subd. 1a, para. (e)(5)).

6. Public parking. (M.S. 282.01, Subd. 1a, para. (e)(6)).
7. Civil recreation or conference facilities. (M.S. 282.01, Subd. 1a, para. (e)(7))
8. Public service facilities such as fire halls, police stations, lift stations, water towers, sanitation facilities, water treatment facilities, and administrative offices. (M.S. 282.01, Subd. 1a, para (e) (8)).

02.029.21.12.0001  
8.94 Acres



36.029.21.33.0012  
.47 Acres



36.029.21.33.0013  
.25 Acres



36.029.21.33.0015  
.26 Acres



**FISCAL IMPACT:**

If the City is not approved to acquire the properties we would be given back \$150 for the deed application fee. The breakout below is the cost to acquire one parcel. The cost per parcel must be multiplied by four to get the total cost to obtain all four properties, which is also shown.

1. Deed Application Fee	\$250	Paid to the Commissioner of Revenue
2. State Deed Tax	\$1.65	Paid to Washington County
3. County Recording Fee	\$46	Paid to Washington County
4. Agricultural Conservation Fee	\$5	Paid to Washington County
<b>Total Cost for Per Parcel</b>	<b>\$302.65</b>	
<b>Cost for all four parcels</b>	<b>\$1,210.6</b>	

**OPTIONS:**

- Approve the acquisition of the tax forfeiture properties and the required expenditure.
- Approve acquisition of some, but not all of the properties.
- Deny the request to acquire the tax forfeiture properties and the related expenditure.

**RECOMMENDATION:**

Staff is recommending that the City Council approval of the acquisition of the properties. If this item is removed from the consent agenda the following motion is suggested.

***“Move to approve resolution 2019-048 that authorizes City Staff to move forward with the acquisition process and process the payment for the discussed tax-forfeit properties.”***

**ATTACHMENTS:**

- Resolution of approval
- Governmental Subdivision Acquisition

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

**RESOLUTION NO. 2019-048**

*A RESOLUTION APPROVING THE CITY OF LAKE ELMO ACQUISITION OF PARCELS  
02.029.21.12.0001, 36.029.21.33.0012, 36.029.21.33.0013, AND 36.029.21.33.0015*

**RECITALS**

**WHEREAS**, in 2019, Washington County notified the City of Lake Elmo there were properties available for acquisition; and

**WHEREAS**, the Staff has determined that it would be advantageous for the City to have ownership of these properties for future projects requiring right-of-way; and

**WHEREAS**, the City has intentions of obtaining the properties through Conditional use Deeds and using the parcels for either a road or right-of way for a road; and

**WHEREAS**, the City has interest in the properties identified as 02.029.21.12.0001, 36.029.21.33.0012, 36.029.21.33.0013, and 36.029.21.33.0015, which are further shown and described on exhibits A, B, C, and D; and

**NOW, THEREFORE**, The City agrees to acquire the properties and pay the fees associated with the acquisition of the listed properties within Washington County. The fees are understood to be \$250 per parcel for the Conditional Use Deeds Application for the State of Minnesota with a separate payment for each parcel made out to Commissioner of Revenue; and one payment made out to Washington County for \$210.60, which is broken out as \$1.65 for State Deed tax, Washington County Recording fee of \$46.00, and an Agricultural Conservation fee of \$5.00. The total expenditure from the City will be \$1,210.6 to acquire all four parcels.

ADOPTED, by the Lake Elmo City Council on the \_\_\_\_\_ day of \_\_\_\_\_ 2019.

**CITY OF LAKE ELMO**

By: \_\_\_\_\_  
Mike Pearson  
Its: Mayor

By: \_\_\_\_\_  
Julie Johnson  
Its: City Clerk

### EXHIBIT A

W1/2-NE1/4 OF SEC 2 EXCEPT HIGHWAY AND ALSO EXCEPT: COMMENCING AT A POINT ON THE NORTHEAST CORNER WHERE SOUTHERLY BOUNDARY OF STATE HIGHWAY NUMBER 36 RIGHT OF WAY CROSSES EAST LINE AND THEN WEST ALONG SOUTHERLY RIGHT OF WAY LINE A DISTANCE OF 465 FEET THENCE SOUTH PARALLEL WITH EAST LINE OF W1/2-NE1/4 DISTANCE OF 208.7 FEET TO A POINT THENCE WEST PARALLEL WITH SOUTHERLY HIGHWAY RIGHT OF WAY LINE 208.7 FEET TO A POINT THENCE NORTH PARALLEL WITH EAST LINE A DISTANCE OF 208.7 FEET TO A POINT ON SOUTHERLY HIGHWAY RIGHT OF WAY LINE AND THENCE EAST ALONG SOUTHERLY HIGHWAY RIGHT OF WAY 280.7 FEET TO POINT OF BEGINNING - EXCEPT: 02.029.21.12.0002 AND EXCEPT: ALL THAT PART OF THE W1/2-NE1/4 DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE EASTERLY LINE OF SAID W1/2-NE1/4 WITH THE SOUTHERLY RIGHT OF WAY LINE OF MINNESOTA TRUNK HIGHWAY NUMBER 36 AS LOCATED TRAVELLED AND MONUMENTED THENCE SOUTHERLY ALONG SAID EASTERLY LINE 760 FEET THENCE WESTERLY PARALLEL WITH SAID SOUTHERLY RIGHT OF WAY LINE 569.35 FEET THENCE NORTHERLY PARALLEL WITH SAID EASTERLY LINE 760 FEET MORE OR LESS TO SAID SOUTHERLY RIGHT OF WAY LINE THENCE EASTERLY ALONG SAID SOUTHERLY RIGHT OF WAY LINE 569.35 FEET MORE OR LESS TO THE POB TOGETHER WITH AND SUBJECT TO AN EASEMENT FOR ROADWAY AND UTILITY PURPOSES SECTION 02 TOWNSHIP 029 RANGE 021

02.029.21.12.0001





**EXHIBIT B**

PT SW1/4-SW1/4 DESC AS FOLL COM AT SW COR SD SEC THN E ALG S LN SD SEC 472.3FT TO POB THN N00DEG03' E 219.5FT THN E PARL WITH SD S LN 146.7FT THN S00DEG03' W 219.5FT TO SD S LN SEC THN W ALG SD S LN 146.7FT TO POB EXC THAT PT LYING S OF N R/W LN HWY 94 AS DESC IN BK 220 DEEDS PG 11 WHICH IS ALSO BDRY LN BETW CITY WOODBURY & CITY LK ELMO ALSO EXC R/W PARCL 42A MNDOT R/W 82-46 SECTION 36 TOWNSHIP 029 RANGE 021

36.029.21.33.0012



**EXHIBIT C**

ALL THAT PT SW1/4-SW1/4 DESC AS FOLL COM AT SW COR SD SEC THN E ALG S LN SD SEC 472.3FT TO POB THN N00DEG03' E 219.5FT THN E PARL WITH SD S LN 146.7FT THN S00DEG03' W 219.5FT TO SD S LN THN W ALG SD S LN SEC 146.7FT TO POB EXC THAT PT LYING N OF N R/W LN HWY 94 AS DESC IN BK 220 DEEDS PG 11 WHICH IS ALSO BDRY LN BETW CITY WOODBURY & CITY LK ELMO SECTION 36 TOWNSHIP 029 RANGE 021

36.029.21.33.0013



**EXHIBIT D**

PT OF SW1/4 SD SEC 36 COM AT SW COR OF SD SEC THN E ALG S LN OF SD SEC DIST 869.0FT TO POB THN N00DEG03'E DIST 219.5FT TO PT MARKED BY IRN STK THN E DIST 396.7FT TO PT MARKED BY IRN STK THN S00DEG03'W DIST 219.5FT TO S LN OF SD SEC THN W ALG SD S LN DIST 396.7FT TO POB SUBJ TO HWY 12 EXCEPT: ELY 246.7FT OF ABOVE DESC PRCL ALSO EXCEPT: PT SW1/4-SW1/4 S36T29R21 BEING PRCL 42C MN DOT R/W PLAT 82-46 TRK HWY SP8282 (94=392) 904 ALSO EXCEPT: THE S 219.50FT OF W 1019.00FT OF SE1/4-SW1/4 SD SEC 36 LYING N OF N R/W LN I-94 BEING ALSO N LN MNDOT PLAT 82-52 SECTION 36 TOWNSHIP 029 RANGE 021

36.029.21.33.0015





# *Governmental Subdivision Acquisition*

## **Tax Forfeited Parcels**

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A governmental subdivision may acquire a tax forfeited parcel either:

- (1) free of charge as long as it continues to be used for the authorized public use**
- (2) by paying market value for an authorized public purpose**
- (3) by paying less than the market value if the intentions for the property meet the requirements of M.S. 282.01, Subd. 1a, para. (d).**

**DEFINITION: "GOVERNMENTAL SUBDIVISION"**. A governmental subdivision may request to purchase a parcel of tax-forfeited land or to acquire it free of charge with a "conditional use deed." The statutes do not define the term, "governmental subdivision," for the purpose of either purchasing tax-forfeited land or acquiring it free of charge with a conditional use deed. (M.S. 282.01, Subd. 1a)

The Department of Revenue (DOR) recommends that the term, "governmental subdivision," be defined in the same way as the term, "political subdivision," is defined for property tax purposes. This definition includes the following local taxing districts: counties, cities, townships, school districts, and special taxing districts.

Examples of the special taxing districts that are most likely to purchase tax-forfeited land include, but are not limited to, the following:

- (1) housing and redevelopment authorities (HRA's) under sections 469.001 to 469.047**
- (2) economic development authorities (EDA's) under sections 469.090 to 469.1081**
- (3) port authorities under sections 469.048 to 469.068**
- (4) watershed districts under chapter 103D**

See MN Stat 275.066 for a definition of special taxing districts and other entities that apply.

<b>(1) free of charge as long as it continues to be used for the AUTHORIZED PUBLIC USE</b>
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A county may convey tax-forfeited property free of charge to a governmental subdivision that uses the land for an authorized public use.

Authorized public use means a use that allows an indefinite segment of the public to physically use and enjoy the property in numbers appropriate to its size and use, or is for a public service facility. (M.S. 282.01, Subd. 1a, para (e)). The limitations of authorized public uses are enumerated in statute. The following list details the only property uses valid under the term “authorized public use”:

1. A road, or right-of way for a road. (M.S. 282.01, Subd. 1a, para. (e)(1)).
2. A park that is both available to, and accessible by, the public that contains amenities such as campgrounds, playgrounds, athletic fields, trails, or shelters. (M.S. 282.01, Subd. 1a, para. (e)(2)).
3. Trails for walking, bicycling, snowmobiling, or other recreational purposes, along with a reasonable amount of surrounding land maintained in its natural state. (M.S. 282.01, Subd. 1a, para. (e)(3)).
4. Transit facilities for buses, light rail transit, commuter rail or passenger rail, including transit ways, park-and-ride lots, transit stations, maintenance and garage facilities, and other facilities related to a public transit system. (M.S. 282.01, Subd. 1a, para. (e)(4)).
5. Public beaches or boat launches. (M.S. 282.01, Subd. 1a, para. (e)(5)).
6. Public parking. (M.S. 282.01, Subd. 1a, para. (e)(6)).
7. Civil recreation or conference facilities. (M.S. 282.01, Subd. 1a, para. (e)(7)).
8. Public service facilities such as fire halls, police stations, lift stations, water towers, sanitation facilities, water treatment facilities, and administrative offices. (M.S. 282.01, Subd. 1a, para (e)(8)).

**CONDITIONAL USE DEEDS.** The state deed which is issued by the Department of Revenue (DOR) for this method of acquisition is commonly called a conditional use deed. A conditional use deed contains two clauses that distinguish it from other state deeds. One states the authorized public use, and the other declares that the title is restricted by the authorized public use. This means that the title will revert to the state if the parcel does not continue to be used for the authorized public use. (M.S. 282.01, Subd. 1c)

The county auditor must present the governmental subdivision's conveyance request to the county board. Approval by the county board is completed by resolution.

The resolution should contain the following information: (1) a statement approving the conveyance, (2) the names of the governmental subdivisions, (3) the identification number (PID) of each parcel, (4) a summary of

the authorized public use for each parcel, (5) the names of each board member with an indication of how each one voted, and (6) the date and signature of the clerk of the county board.

The Property Tax Division, acting for the DOR, will review the information on the form and either approve or disapprove the conveyance. If the conveyance is approved, the Property Tax Division will execute a conditional use deed in the name of the governmental subdivision and mail it to the county auditor. The county auditor is to have the deed recorded before forwarding it to the governmental subdivision.

**RULE OF REVERSION.** The governmental subdivision has three years from the date of conveyance to implement the authorized public use on the tax-forfeited land. If after those three years the governmental subdivision has failed to put the land to the intended use, or has abandoned that use, the governing body of the subdivision must do one of two things:

1. With the approval of the county board, the governing body may purchase the property for an authorized public purpose at the present market value as determined by the county board, OR
2. The governing body of the subdivision may authorize the proper officers to convey the land, or the part of the land not required for an authorized public use, to the state of Minnesota in trust for the taxing districts.

**COST OF GOVT. ACQUISITION FOR USE DEEDS.** When an application is approved, the Department of Revenue (DOR) will issue a state deed ("use deed") in the name of the governmental subdivision free of charge. (M.S. 282.01, Subd. 1a)

- The issuance of the state deed "free of charge" means that the governmental subdivision does not have to pay the following costs which are charged when the parcel is sold at a private or public auction: (1) the basic sale price, (2) the state deed fee, and (3) the 3% surcharge.
- The governmental subdivision does have to pay the following costs in order to record the state deed ("use deed"): (1) the state deed tax, (2) the county recording fee, and (3) the agricultural conservation fee.
- The 2010 changes to M.S. 282.01 incorporated a conditional use deed fee. The new provision (M.S. 282.01, Subd. 1g) establishes an application fee of \$250 for use deeds, \$150 of which is refunded if the application is denied. The proceeds from the deed fee are deposited in a Department of Revenue revolving fund and are appropriated to the commissioner of revenue for making the \$150 refunds and administering conditional use deed laws. Conditional use deeds are more administratively burdensome than other deeds.

## **(2) by paying market value for an AUTHORIZED PUBLIC PURPOSE**

Non-conservation tax-forfeited lands may be sold by the county board for their market value as determined by the county board, to an organized or incorporated governmental subdivision of the state for any public purpose for which the subdivision is authorized to acquire property. (M.S. 282.01, Subd. 1a, para. (b)) The governmental subdivision must apply to the county board for such a sale.

For a governmental subdivision, the language reads: "...for any public purpose for which the subdivision is authorized to acquire property." (M.S. 282.01, Subd. 1a, para b). This means that the only restriction on the sale of tax-forfeited land to a governmental subdivision is that the parcel must be used for a purpose authorized by statute, law, or local charter.

The parcel does not have to be available to the general public as it does if it is acquired free of charge. Access to the parcel may be limited to a select group of people as long as the purpose is authorized by statute, law, or local charter.

Let's use the example to illustrate this point. A city wants to acquire a parcel of tax-forfeited land to build a parking lot next to the city's municipal garage. The parking lot is to be used exclusively by the city employees who work at the garage. The sale of the parcel to the city would not be disapproved. If it pays for the parcel, the city can use it for an employee parking lot. The general public does not have to have access to it.

**COUNTY BOARD APPROVAL.** The county board may sell a parcel of tax-forfeited land to a governmental subdivision or state agency for an authorized public purpose. The verb, "may," indicates that the county board is responsible for approving or denying each purchase request.

In order to make a decision, the county board has the right to require the governmental subdivision or state agency to submit a written application containing at least the following information: (1) a description of the proposed public purpose for which the parcel will be used, and (2) a citation for the statute, law, or charter provision that authorizes it to acquire property for the proposed public purpose.

Before ruling on a sale, the county board may want to ask the following questions: (1) Is the proposed purpose authorized by statute, law, or local charter?, and (2) Will the proposed purpose serve the public interest as much or more than having the parcel back on the tax rolls? If both questions can be answered in the affirmative, the county board may choose to approve the request. Approvals should be confirmed by resolution.

Unlike the "conditional use deed", the governmental subdivision or state agency does not need the approval of the Department of Revenue (DOR) to purchase a parcel of tax-forfeited land. The purchase request must be made directly to the county auditor and must be approved by the county board.

**NO RULE OF REVERSION FOR GOVT. PURCHASES.** The rule of reversion (M.S. 282.01, Subd. 1c-1e) does not apply to the purchase of a parcel of tax-forfeited land by a governmental subdivision or state agency. Once the sale has been approved by the county board and the state deed has been recorded, the title does not have to be reconveyed to the state regardless of what the governmental subdivision does with the parcel



### **(3) by paying LESS THAN MARKET VALUE**

#### **Correcting Blight and Creating Affordable Housing**

Non-conservation tax-forfeited lands may be sold by the county board to an organized or incorporated governmental subdivision of the state or state agency for less than their market value if:

1. The county board determines that a sale at a reduced price is in the public interest because a reduced price is necessary to provide an incentive to correct the blighted conditions that make the lands undesirable on the open market, or the reduced price will lead to the development of affordable housing; AND
2. The governmental subdivision has documented its specific plans for correcting the blighted conditions or developing affordable housing, and the specific law or laws that empower it to acquire real property in furtherance of the plans. (M.S. 282.01, Subd. 1a, para. (d))

The Department of Revenue has not defined what a “specific plan” is or is not. The county is therefore given some discretion as to what is specific enough, reliable enough, or extensive enough to meet this requirement. The Department of Revenue does not need a copy of the plan and it will not directly officiate whether it meets the “specific plan” threshold. However, the plan does need to be in written form and describe with some specificity the intentions for the use of the land. Perceived abuses may cause the Department to consider proposing law changes with more specific requirements. The intent behind M.S. 282.01, Subd. 1a, para. (d) is to avoid general economic development land speculation. A discounted price for the land is earned by the public good associated with blight removal or affordable housing. Citing generic pursuits within the entirety of the Housing and Redevelopment Authority statutes is not sufficient to qualify for the discounted price for the sale of land. A county that suspects economic development land speculation is a motivating factor for the application by the governmental subdivision should not approve the sale.

The county must recite the specific statute or law that empowers the local unit to acquire the property. The Department of Revenue may provide some direct oversight in this area to ensure that there is authority since the deed and the act of acquisition are immediately relevant.

If the laws outlined above are complied with for a tax-forfeited land sale at less than market value, the commissioner of revenue must convey the property on behalf of the state by quit claim deed. If the sale is to a state agency, the commissioner must issue a conveyance document that releases the property from the trust in favor of the taxing districts. (M.S.282.01, Subd.1a, para. (d))

### ***Conservation Purposes***

Conservation tax-forfeited land may also be sold to a governmental subdivision of the state for less than its market value for the following purposes:

1. Creation or preservation of wetlands
2. Drainage or storage of storm water under a storm water management plan, OR
3. Preservation, or restoration and preservation, of the land in its natural state.

(M.S.282.01, Subd. 1a, para. (h))

The options under M.S. 282.01, Subd. 1a, para. (h) require a restrictive covenant for 30 years. The lands may be reconveyed back to the state, at which point the restrictive covenant would cease. If reconveyed lands are to be sold, the county board can take into account the original amount paid when setting the terms of the sale. If the reconveyed lands are unplatted and located outside of an incorporated municipality, the sale is subject to the approval of the commissioner of the Department of Natural Resources if the commissioner determines there is a mineral use potential.

<b>Other Information</b>
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COST OF GOVT. PURCHASE. (applies to options 2 & 3) A governmental subdivision is required to pay not less than the value of the property as determined by the county board plus the other costs that would be charged to any other purchaser. In most cases, the value of the property will be the same as the basic sale price which other purchasers must pay. The county board makes the final decision after negotiating with the governmental subdivision.

The specific costs that must be paid by a governmental subdivision or state agency to purchase a parcel of tax-forfeited land are outlined below. The list assumes that the basic sale price is paid.

1. The Basic Sale Price
2. The State Deed Fee
3. The 3% Surcharge
4. The State Deed Tax
5. The County Recording Fee
6. The Agricultural Conservation Fee