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BRADLEY R. HUTTER
ARIEL A. PITTMER
•
HAROLD LEVANDER
1910-1992
•
ARTHUR GILLEN
1919-2005
•
ROGER C. MILLER
1924-2009

MEMO

*ALSO ADMITTED IN WISCONSIN
◊ALSO ADMITTED IN NORTH DAKOTA
◊ALSO ADMITTED IN MASSACHUSETTS
◻ALSO ADMITTED IN OKLAHOMA
◡ALSO ADMITTED IN ARIZONA

**TO: Sunfish Lake Mayor and Councilmembers
Sunfish Lake Consultants**

FROM: Timothy J. Kuntz, City Attorney

DATE: November 30, 2016

**RE: 273 Salem Church Road – Consider Correspondence Concerning the
Virginia Coss Property – Agenda Item 8(h); December 6, 2016 Council
Meeting**

Section 1. Background. Virginia C. Coss owns property located at 295 Salem Church Road identified as Lot 2, Block 1, Coss 2nd Addition. A map depicting the location of the property owned by Virginia C. Coss is attached to this memo. Iridium Investments LLC (Robert L. Brackey) owns property located at 273 Salem Church Road identified as Lot 1, Block 1, Coss 2nd Addition. A map depicting the property owned by Robert L. Brackey is attached to this memo.

Virginia C. Coss (“Coss”) and Robert L. Brackey (“Brackey”) have had several disputes in the past few years relating to their respective properties, including use of the driveway easement. The City of Sunfish Lake has informed Coss and Brackey that their disputes are private civil matters.

The City has received correspondence from the attorney for Coss (Jason R. Asmus of Briggs and Morgan) relating to the most recent dispute between Coss and Brackey. A letter and enclosures dated October 24, 2016 was received by the City. A subsequent letter and enclosures dated November 10, 2016 was also received by the City. As background, I will be mailing hard copies of both of the letters and enclosures to each of you, together with the other agenda items for the December 6, 2016 Council meeting. The two letters without the enclosures are enclosed with this memo.

Section 2. October 24, 2016 Letter. The letter dated October 24, 2016 from the Coss attorney relates to issues involving grading, erosion control, landscaping, trees, grass and shrub removal at the Brackey property. The letter requests that the City implement an action plan to repair and correct any damage caused to the Coss property resulting from the activities by Brackey.

On Tuesday, November 1, 2016, City Attorney Tim Kuntz, City Planner Ryan Grittman, City Engineer Don Sterna and City Forester Jim Nayes met to discuss the October 24, 2016 letter received from the Coss attorney relating to the dispute between Coss and Brackey. The following conclusions were reached at that meeting:

- The Brackey work can be characterized as re-landscaping of certain areas of the Brackey property.
- There was no need for a site plan approval.
- The City Engineer reported no stormwater management standard was being violated.
- The Brackey work did not expose one acre or more of soil.
- The City Engineer reported that the drainage pattern had not changed.
- The City Engineer, City Planner and City Forester agreed that Brackey did not move 50 cubic yards or more of dirt; had he done so, it would have triggered a site plan approval process.
- The City Engineer pointed out that the work did not trigger a NPDS permit requirement.
- No City enforcement action was necessary.

Section 3. November 1, 2016 Letter. The attorney for Coss sent another letter to the City dated November 10, 2016. The November 1st letter indicates that a recent survey obtained by Coss of the Coss property showed various boundary encroachments by Brackey on the Coss property. The letter requests that the City implement an action plan to repair and correct any damage caused to the Coss property resulting from the activities by Brackey and that the City ensure any encroachments by Brackey depicted on the survey obtained by Coss are removed from the Coss property.

Section 4. Council Action. At the December 6, 2016 Council meeting, the Council will be discussing the ongoing dispute between Coss and Brackey and the two letters received by the City from the attorney for Coss.

As I stated above, I will be sending hard copies (by regular mail) of this memo and the two letters (with enclosures) received from the attorney for Coss.

Enclosure

Coss Property (Lot 2, Block 1, Coss 2nd Addition):



Brackey Property (Lot 1, Block 1, Coss 2nd Addition):



BRIGGS

BRIGGS AND MORGAN

2200 IDS Center
80 South 8th Street
Minneapolis MN 55402-2157
tel 612.977.8400
fax 612.977.8650

October 24, 2016

OCT 25 2016

Jason R. Asmus
(612) 977-8649
JAsmus@Briggs.com

VIA U.S. MAIL

Timothy Kuntz
LeVander, Gillen & Miller, P.A.
633 Concord St. S, Suite 400
South St. Paul, MN 55075

Northwest Associated Consultants, Inc.
4150 Olson Memorial Hwy., Suite 320
Golden Valley, MN 55422
ATTN: Ryan Grittman/Alan Brixius

Mike Andrejka
c/o City of Lilydale
1101 Sibley Memorial Highway
Lilydale, MN 55118

Re: Activities at 273 Salem Church Road, Sunfish Lake, MN 55118

Dear Sirs:

Briggs and Morgan, P.A. represents Salem Church Road, LLC and its principal Virginia C. Coss. Salem Church Road, LLC owns the property located at 295 Salem Church Road (Lot 2, Block 1, COSS 2nd ADDITION ("Lot 2")), which is adjacent to the property located at 273 Salem Church Road (Lot 1, Block 1, COSS 2nd ADDITION ("Lot 1")) that is owned by Iridium Investments and its principal, Robert L. Brackey.

Mrs. Coss has contacted various officials with the City of Sunfish Lake a number of times in the past several months to notify the City of the issues that have arisen as a result of the grading, landscaping, tree, grass and shrub removal and other soil-disturbing activities that have been conducted by Mr. Brackey on Lot 1 in 2015-16. Attachs. 1-6. Unfortunately, the City has not taken appropriate action to ensure that Mr. Brackey is in compliance with all City requirements that pertain to the activities that he is conducting on Lot 1. As such, Mrs. Coss has asked that we formally contact the City of Sunfish Lake on her behalf.

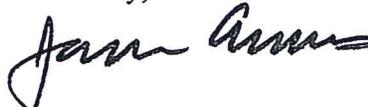
As Mrs. Coss has communicated to various City Officials, Mr. Brackey did not use any silt fencing or erosion control system for a majority of the time that he was conducting the above-described activities on Lot 1. In fact, it was only very recently that Mr. Brackey placed some erosion tubes on parts of his property. But, as the City Engineer noted during his recent inspection of the property earlier this Fall, the tubes were not placed correctly and there were numerous gaps therein that allowed run-off from Lot 1 onto Lot 2. Attach. 7. And, to date, there are still large portions of Lot 1 that have fresh, uncovered dirt that will inevitably wash onto Lot 2, creating more damage.

Timothy Kuntz
Northwest Associated Consultants, Inc.
Mike Andrejka
October 24, 2016
Page 2

On behalf of Mrs. Coss, we request that the City provide a copy of any and all (1) site plans submitted to and/or approved by the City per Section 1208 of the Zoning Ordinance, (2) grading permits requested and/or issued by the City per Section 1208.02 of the Zoning Ordinance, and (3) documents evidencing the City's actions to ensure compliance with the grading and filling standards in Section 1216.04(F) of the Zoning Ordinance. Moreover, we further request that the City immediately provide a specific action plan that it will implement with respect to Mr. Brackey's above-described activities on Lot 1 to (1) repair and correct any and all damage that has resulted to Lot 2 and (2) ensure that such activities do not in the future in any way detrimentally impact Lot 2.

Thank you in advance for your cooperation. Please feel free to contact me with any questions.

Sincerely,



Jason R. Asmus

JRA
Attachs. 1-7
cc: Mayor Molly Park
Salem Church Road, LLC, ATTN: Virginia Coss
D. Cole/B. Kajer



2200 IDS Center
80 South 8th Street
Minneapolis MN 55402-2157
tel 612.977.8400
fax 612.977.8650

NOV 14 2016

November 10, 2016

Jason R. Asmus
(612) 977-8649
JAsmus@Briggs.com

VIA U.S. MAIL

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LeVander, Gillen & Miller, P.A.
633 Concord St. S, Suite 400
South St. Paul, MN 55075

Northwest Associated Consultants, Inc.
4150 Olson Memorial Hwy., Suite 320
Golden Valley, MN 55422
ATTN: Ryan Grittman/Alan Brixius

Mike Andrejka
c/o City of Lilydale
1101 Sibley Memorial Highway
Lilydale, MN 55118

Re: Activities at 273 Salem Church Road, Sunfish Lake, MN 55118

Dear Sirs:

As you are aware, Briggs and Morgan, P.A. represents Salem Church Road, LLC, the owner of the property at 295 Salem Church Road, and its principal Virginia C. Coss. We have received no response to our October 24, 2016 letter (copy attached) regarding various issues pertaining to the activities on the adjacent property at 273 Salem Church Road, which is owned by Iridium Investments and its principal, Robert L. Brackey. A prompt response is needed and would be appreciated.

Mrs. Coss has retained a survey company to re-stake the boundary lines of her property. That process has revealed significant boundary encroachments resulting from Mr. Brackey's grading, landscaping, tree, grass and shrub removal and other soil-disturbing activities that were described in the October 24, 2016 letter. A survey and various photographs depicting the encroachments are attached for your reference. Attachs. 8-9. As you can see, Mr. Brackey's activities have clearly trespassed onto Mrs. Coss' property and unlawfully interfered with her possession, use and enjoyment thereof.

Mrs. Coss firmly believes that the City's enforcement of the applicable Zoning Ordinance requirements pertaining to site plans, grading permits and the like in connection with Mr. Brackey's project would have prevented not only this newly-confirmed encroachment issue, but also the damage to Mrs. Coss' property that was noted in the unresponded-to October 24, 2016 letter.

Timothy Kuntz
Northwest Associated Consultants, Inc.
Mike Andrejka
November 10, 2016
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Accordingly, on behalf of Mrs. Coss, we renew our request that the City immediately provide (1) a copy of any and all (a) site plans submitted to and/or approved by the City per Section 1208 of the Zoning Ordinance, (b) grading permits requested and/or issued by the City per Section 1208.02 of the Zoning Ordinance, and (c) documents evidencing the City's actions to ensure compliance with the grading and filling standards in Section 1216.04(F) of the Zoning Ordinance and (2) a specific action plan that the City will implement with respect to Mr. Brackey's activities to (a) repair and correct any and all damage that has resulted to Mrs. Coss' property and (b) ensure that any and all encroachments on Mrs. Coss' property are immediately removed and all damage is immediately repaired.

Thank you in advance for your cooperation. Please feel free to contact me with any questions.

Sincerely,



Jason R. Asmus

JRA

Attachs. 8-9

cc: Mayor Molly Park/Mayor-Elect Richard A. Williams, Jr.
Salem Church Road, LLC, ATTN: Virginia Coss
D. Cole/B. Kajer