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MEMORANDUM

TO: Sunfish Lake Mayor and City Council

FROM: Emily Shively/ Alan Brixius

DATE: September 25, 2013

RE: Sunfish Lake – Planning Update for September City Council Meeting

NAC FILE: 211.02 - General

10/1/13 CC Mtg.
**Agenda
Item
6c**

Planning Commission

There were no applications submitted by the August 19, 2013 deadline and as the Planning Commission did not have any other issues to discuss, the September 18th meeting was cancelled.

No applications were submitted by the September 16, 2013 deadline for review. The October 16, 2013 Planning Commission meeting has been cancelled due to a lack of agenda items.

Items Carried Over from the September 3, 2013 City Council Meeting

Flynn/Park Minor Subdivision. Linda Flynn and William and Mary Park have submitted an application requesting approval of a minor subdivision for a jointly owned lot between their properties at 2324 Angell Road and 15 Sunnyside Lane. The applicants are proposing to split the parcel in half and recombine the north half with the existing Flynn parcel and the south half with the existing Park parcel. Existing drainage and utility easements will be vacated and new drainage and utility easements along the perimeter of the new lots will be dedicated to the City.

At the September 3, 2013 City Council meeting, it was determined that a public hearing is necessary before the existing drainage and utility easements can be vacated and new easements established. This process is outlined in Minnesota State Statutes §412.851 *Vacation of Streets*, a portion of which follows:

“The council may by resolution vacate any street, alley, public grounds, public way, or any part thereof, on its own motion or on petition of a majority of the owners of land abutting on the street, alley, public grounds, public way, or part thereof to be vacated. When there has been no petition, the resolution may be adopted only by a vote of four-fifths of all members of the council. No vacation shall be made unless it appears in the interest of the public to do so after a

hearing preceded by two weeks' published and posted notice. The council shall cause written notice of the hearing to be mailed to each property owner affected by the proposed vacation at least ten days before the hearing. The notice must contain, at minimum, a copy of the petition or proposed resolution as well as the time, place, and date of the hearing.

After a resolution of vacation is adopted, the clerk shall prepare a notice of completion of the proceedings which shall contain the name of the city, an identification of the vacation, a statement of the time of completion thereof, and a description of the real estate and lands affected thereby. The notice shall be presented to the county auditor who shall enter the same in the transfer records and note upon the instrument, over official signature, the words "entered in the transfer record." The notice shall then be recorded with the county recorder. Any failure to file the notice shall not invalidate any vacation proceedings."

Drainage and utility easements are considered "public way" and thus are covered by this statute. A review of the Sunfish Lake Subdivision Ordinance shows that this process for the vacation of easements is not outlined in the procedures, nor is the state statute referenced. The Council may wish to consider an ordinance amendment to ensure that this is clear for future cases.

The applicants have provided a site survey detailing the proposed lot line adjustment and existing conditions on the subject property. City staff has reviewed the survey and recommends to the City Council approval of the proposed lot division and recombination. A planning report is attached that provides analysis of the provided survey. Our review shows that the minor subdivision will have minimal impact on site conditions related to vegetation, land alteration, and neighboring property. All other Zoning Ordinance requirements are met.

The Subdivision Ordinance does not require that a minor subdivision undergo a public hearing or review by the Planning Commission. With the submission of the minor subdivision application, we will be presenting our report and recommendations to the City Council for review and action at the October 1, 2013 meeting. A public hearing on the vacation of drainage and utility easements will also be held at that time.

2154 Charlton Road. At the September 3, 2013 Sunfish Lake City Council meeting, the Council recommended approval of a major site and building plan review and conditional use permit for 2154 Charlton Road with the exception of the grading and drainage plans. The property owners, John and Shannon Nelson, are proposing to renovate their existing home and property and construct a new detached garage. The detached garage will be a second accessory structure on the lot (there is an existing swimming pool), which requires a conditional use permit. The parcel is zoned R-1, Single Family Residential and falls within the Shoreland Overlay District for Sunfish Lake.

The applicant has submitted revised grading and drainage plans for the proposed home renovations and detached garage for review. The plans include a site demolition plan (Exhibit A), site grading, drainage, and erosion control plan (Exhibit B), and the City

Engineer's report (Exhibit C). The City Engineer has recommended approval of the grading and drainage plans.

With the submission of these revised grading and drainage plans, we are recommending approval and request Council action on the remainder of the development application for 2154 Charlton Road. A Council resolution is attached for consideration.

Other Items

Cell Tower Inquiries. We have received three calls in the last several weeks regarding the process for increasing the height of the cell tower at 2035 Charlton Road (St. Anne's Church). The calls were from Crown Castle, Willin Consulting and Ericsson.

These calls are related to ongoing negotiations between cell providers and the ISD 197 School Board regarding a new lease agreement for facilities located on Henry Sibley High School in Mendota Heights. The companies explained that they are exploring other options that may be considered in the event that an agreement cannot be reached with the School Board.

The existing tower is at the maximum height allowed in the ordinance (75 feet). It appears that the cell tower is at capacity for the amount of equipment that can be attached to the monopole at its current height. Any increase in height would require an application for a variance. All three representatives were informed that it is highly unlikely that Sunfish Lake would grant a variance to increase the height of the cell tower.

One gentleman offered to remove the existing monopole and build a "stealth structure" – such as a cell tower disguised as a pine tree – that would be taller than 75 feet to accommodate more equipment. It is my understanding from the brief mention I made at the last City Council meeting that Sunfish Lake is not interested in accommodating anything related to cell towers outside of what is outlined and regulated in our ordinance, even if the visual impact were somehow mitigated. However, since we did not have a full discussion of this issue, I did not want to speak for the Council and give a determinative answer one way or the other.

I was also asked if Sunfish Lake would permit a "cell on wheels" temporary facility on church property that could be utilized while a more permanent facility was being located. I was told that this type of structure is essentially a 22 foot by 9 foot trailer with an antenna mast that is raised 20-30 feet high. After reviewing the ordinance, we concluded that this would not be allowed as it is a use that is not specifically allowed or denied in the ordinance and is therefore prohibited (Section 1201.08).

An additional inquiry related to the process for permitting a "drop and swap" where a new tower would be built near the existing tower followed by the removal of the existing tower when the new structure was up and operational. A review of the ordinance indicates that the new tower would go through a conditional use permitting process. However, since the two towers would be built in close proximity and on the same lot, we

would need an ordinance amendment to set up an interim use permitting process to establish the terms and conditions for this temporary situation. If the proposed tower were to exceed the 75 foot height maximum, it would still require a variance.

We are looking for guidance on how to respond to these inquiries to ensure that we are accurately communicating the policies and position of Sunfish Lake with regard to this issue. Let me know if we can correctly assume that the City is not likely to grant a variance if an application were submitted, regardless of factors presented such as mitigation of visual impact or demonstrated need for additional service, etc., and that we will not permit anything not specifically allowed in our ordinances.

cc: Catherine Iago, City Clerk
Tim Kuntz, City Attorney
Don Sterna, City Engineer
David Neameyer, Building Official
Jim Naves, City Forester
Ron Wasmund, Septic System Inspector