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MEMO

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◊ALSO ADMITTED IN MASSACHUSETTS
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TO: Sunfish Lake Mayor and Councilmembers
FROM: Timothy J. Kuntz, City Attorney
DATE: February 4, 2015
**RE: Report on Coss Driveway Screening – February 10, 2015 Council Meeting;
Agenda Item 8(e)**

Section 1. Background. At the November 5, 2014 Council meeting, Mayor Park related that the Lee family who own property west of Coss 2nd Addition had made inquiry about tree screening on the west side of the Coss driveway (formerly Salem Church Court) which fronts the east side of the Lee property. The Mayor explained that the driveway installation (formerly Salem Church Court) between the Lee and Coss property was discussed by Council in 1998 as part of the application for construction of the Coss residence. The City Code at the time of the first Coss subdivision in April 1998 provided that all roads must be public if they are attached to a City street. The ordinances were then changed and in September 1998 the first Coss subdivision was replatted into Coss 2nd Addition, with a private driveway (formerly Salem Church Court) instead of a public road. With regard to the issue of screening along the west side of the Coss driveway (the east side of the Lee property) the City Attorney explained that the City Planner had identified documents that needed to be researched and that City staff should have the information available by the February 2015 Council meeting. Councilmember Hovey suggested further discussion be delayed until the February 10, 2015 meeting and the Council concurred.

Section 2. Timeline of Council Action. The activity dealing with the Coss property occurred in the time frame of 1998/1999. The following are the Council actions related to the landscaping condition of tree screening:

1. April 7, 1998: The City Council approved Coss 1st Addition with the landscaping condition outlined as number four in the corresponding Findings of Fact and Decision.
2. September 22, 1998: The City Council approved Coss 2nd Addition with the landscaping condition outlined as number nine in the corresponding Findings of Fact and Decision.

3. June 1, 1999: The City Council approved the construction of the Coss residence with the landscaping condition outlined as number eight in the corresponding Findings of Fact and Decision.

Section 3. April 7, 1998. At the April 7, 1998 Council meeting, the Council approved Coss 1st Addition with Salem Church Court being dedicated as a public roadway. In dealing with landscaping the Council imposed the following condition:

4. A landscape plan is also submitted for areas within and/or adjacent to the western border of the Salem Church Court right-of-way to show the manner in which screening will be accomplished. The plan shall be submitted for review and approval of the Planning Commission, City Council, City Forester and City Planner following installation of the roadway and shall be coordinated with the builder/contractor, project landscape architect and neighboring property owners.

Section 4. September 22, 1998. Between April and September 1998, the Council changed the ordinances to allow a private driveway instead of a public road. At the September 22, 1998 Council meeting, the Council approved Coss 2nd Addition with a driveway (formerly Salem Church Court) being laid out as a private easement. In dealing with landscaping the Council imposed the following condition:

9. A landscape plan is submitted for areas adjacent to the Lindeke property to show the manner in which screening will be accomplished (intended to enhance the natural vegetation which is to remain). The plan shall be submitted for review and approval of the City Council, City Forester and City Planner following installation of the driveway and shall be coordinated with the builder/contractor, project landscape architect and neighboring property owners.

Section 5. June 1, 1999. At the June 1, 1999 Council meeting, the Council approved the site and building plan for the Coss residence on Lot 2, Block 1, Coss 2nd Addition. In dealing with landscaping the Council imposed the following condition:

8. The removal of trees and protection of those to remain shall be subject to review and approval of the City Forester who shall monitor the site throughout the construction process. Trees that are to be saved and which are located near areas to be disturbed (e.g.: graded, material storage or refuse areas) shall be protected with some type of visual enclosure until construction is complete.

Section 6. First Amendment to Declaration of Private Driveway Easement. There are two lots in Coss 2nd Addition. Virginia Coss lives on Lot 2, Block 1, Coss 2nd Addition. Lot 1, Block 1, Coss 2nd Addition is owned by a separate party. The owner of Lot 2 owns the driveway easement across Lot 1. The private driveway easement runs through Lot 1 to gain access to Lot 2 from Salem Church Road.

In 2002, the owners of Lots 1 and 2 entered into a First Amendment to Declaration of Private Driveway Easement (First Amendment). The First Amendment provides in part as follows:

Section 2.5 Metzen has reviewed and approved a landscaping plan involving the part of Lot 1 subject to the original easement and Coss agrees to comply with such landscaping plan at Coss's cost and expense. In addition, Coss agrees that if any trees located on Lot 1, within 10 feet of the easterly boundary of Easement die within two years of the date of this agreement from causes directly related to the construction activities in the Easement as verified by a recognized expert, such trees will be replaced with the variety of evergreen tree which will reasonably provide year-round privacy for the owners of both Lot 1 and Lot 2, all at Coss's cost and expense.

It does not appear that the First Amendment in 2002 between the owners of Lots 1 and 2 has any relevance to the screening along the west side of the driveway easement. The First Amendment appears to refer to trees along the east side of the easement which would be the side closest to the house on Lot 1. So, although the First Amendment refers to landscaping and screening, it does not appear that the First Amendment addressed screening along the Lee property.

Section 7. Discussion. The September 1998 action dealing with the re-plat superseded the April 1998 action. As a result, the relevant landscaping condition is found in the September 1998 Findings of Fact, which required a landscaping plan to be reviewed and approved by a number of entities such as the City Council, City Forester and the City Planner after coordination with the contractor, landscape architect and neighboring property owners. The Sunfish Lake Planner has searched the planning files and the document which appears to be the approved landscape plan is attached to this memo. That document was prepared by Dean Bailey Associates, Inc., a landscape architectural firm and is dated April 26, 1999.

The attached landscape plan appears to show that Austrian pines 8 feet to 10 feet in size would be planted 12 feet from each other as permitted with existing trees and that the Austrian pines would continue on the west side of the driveway from the north end thereof to the public street, namely Salem Church Road.

Section 8. Ordinance Requirement for Ongoing Screening and Maintenance of Screening. Section 1218.02 of the City's Zoning Code provides that if the Council has required landscaping as part of a City approval, then "any plant material which is diseased or dies shall be replaced with like kind of the original size." Section 1218.02 states:

Section 1218.02 General Landscaping and Maintenance:

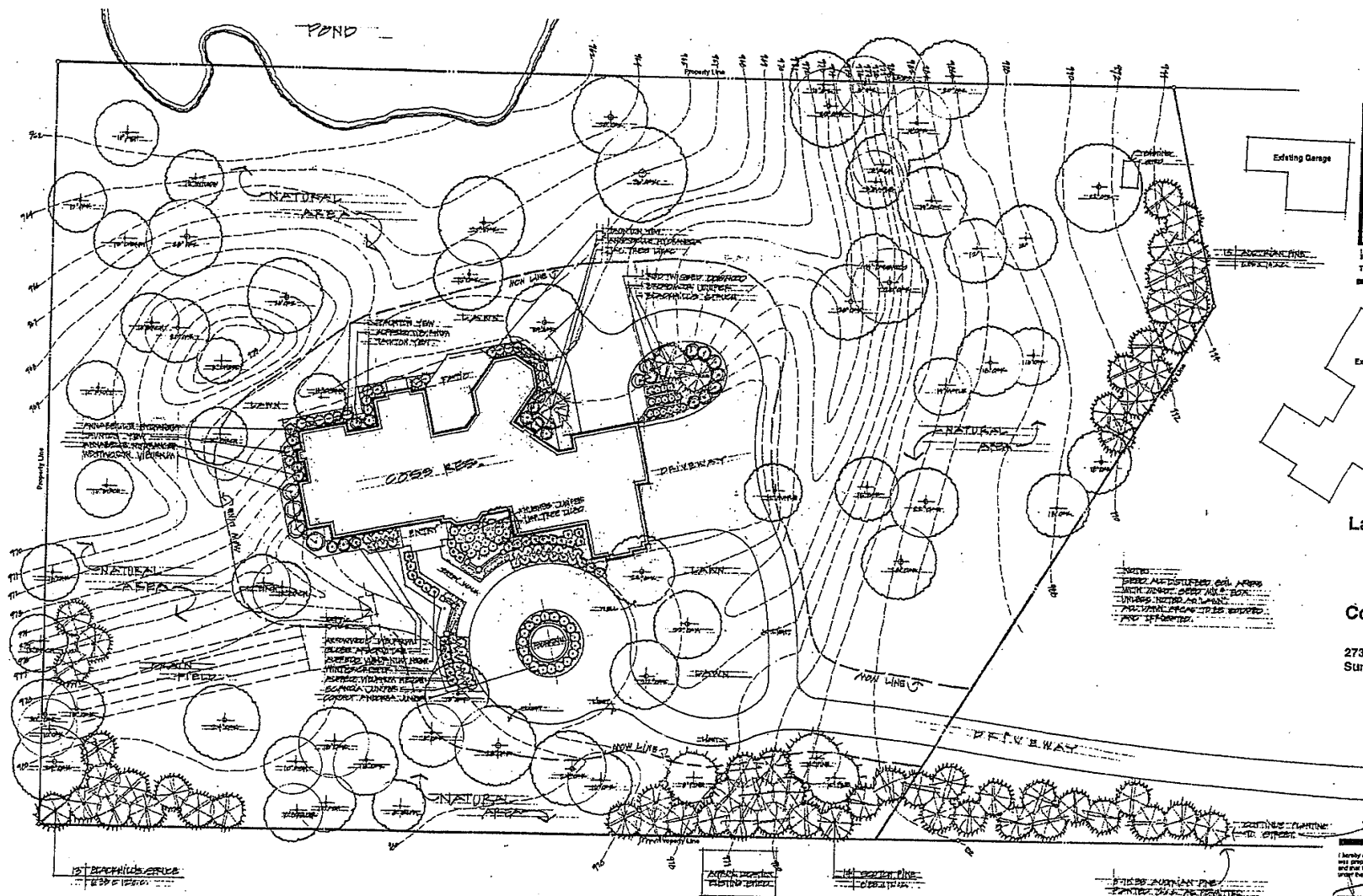
All exposed ground areas, including street boulevards, and areas not devoted to parking areas, drives, sidewalks, patios or other such uses shall be landscaped with native plants (excluding noxious weeds), grass, shrubs, trees or other ornamental landscape materials within one (1) year following the date of building occupancy. **All landscaped areas shall be kept neat, clean and uncluttered,**

and in those cases where landscaping is required as part of City approvals, any plant material which is diseased or dies shall be replaced with like kind of the original size. No such landscaped areas which are in public view shall be used for the parking of vehicles or for the storage of material or supplies except as allowed by Section 1216.12 Exterior Storage. Fences and/or plantings placed upon utility easements are subject to removal by the City or utility company if required for maintenance or improvement of the utility. In such cases, costs for removal and replacement shall be the responsibility of the property owner.

Section 9. Summary and Council Action. As part of the September 1998 plat approval, a landscape plan was required to be follows. The April 26, 1999 landscape plan shows a row of Austrian pines along the west side of the driveway from the north point of the driveway to the south terminus of the driveway as it connects to Salem Church Road. Section 1218.02 states that required landscaping has to be replaced if it dies or becomes diseased.

Virginia Coss has indicated that the original landscaping was installed but that many of the trees died. The Council may wish to consider requesting that a revised landscape plan be submitted by the easement holder to the City Planner to specify another type of tree or vegetation that has a better chance of survival and that the owner of the easement then undertake to implement the revised landscape plan. Once the revised landscape plan is submitted, the Council by resolution should formally adopt and approve the revised landscape plan and the Council resolution should be recorded with the Dakota County Recorder against Lot 2, Block 1, Coss 2nd Addition. The owner of Lot 2 is the easement holder.

Attachment



DEAN BAILEY ASSOCIATES, INC.
 LANDSCAPE ARCHITECTS & SITE PLANNERS
 MINNEAPOLIS, MINNESOTA



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Landscape Plan

Coss Residence

273 Salem Church Road
 Sunfish Lake, Minnesota

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly registered landscape architect under the laws of the State of Minnesota.

Dean Bailey
 Dean Bailey, AIA, L.A.S.

Scale:	1" = 10'
Drawn by:	DBA
Check by:	DBA
Date:	8-14-88
Project:	Coss Residence

