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MEMORANDUM

To: Mayor Maloney and City Council

CC: Joe Gilmore, Interim City Manager
Jim Brown, CP&D Director

From: Julie Tappendorf
Adam Simon

Subject: Options for Murphy Lake Protections

Date: May 11, 2017

At its April 24, 2017 COW meeting, the Council discussed various issues regarding the protection of Murphy Lake. Some residents of the Murphy Lake subdivision were present at the COW meeting to express their desire that the City take over enforcement of the private restrictions established by the HOA in 1998. In this memorandum, we have summarized the three options for the City to consider regarding this issue and provided some background as well. The discussion has been continued to the May 22, 2017 COW meeting.

Background

In July of 1997, the Murphy Lake Improvement Association (Association)[1] enacted certain restrictions on the use of Murphy Lake, including a prohibition on filling the lake. These restrictions were recorded with the Cook County Recorders' Office on March 11, 1998, but they were recorded only against property owned by the Association, including the center of the lake. As such, these recorded restrictions may not be a condition of the homeowners' title, but there may be an enforceable contract among the neighbors.

In June of 1998, the Association asked the City of Park Ridge to enact its own ordinance to prohibit fill in Murphy Lake. Specifically, the Association asked that the City amend its zoning regulations to establish these restrictions. The City's Planning & Zoning Commission conducted a public hearing on the proposed zoning amendments and made a recommendation to the City. The City Council did not, however, adopt an ordinance amending the zoning regulations to establish restrictions on filling activities into Murphy Lake. Instead, the City Council adopted

[1] There are two associations related to Murphy Lake: (1) the Murphy Lake Improvement Association, and (2) the Murphy Lake Properties Homeowners Association. For the purpose of this memo, references to the Association only refer to the Improvement Association. We are unaware of the activities conducted by the Homeowners Association, but note that it is currently in good standing with the State of Illinois.

Resolution 98-43 authorizing the Director of Public Works to refuse to issue a permit for alteration of land grade or construction in Murphy Lake and Park Lake. Subsequently, the City adopted a comprehensive rewrite of the Zoning Code in 2007 which did not incorporate any regulations affecting Murphy Lake.

Recently, Oscar Marquis, one of the homeowners in the Murphy Lake subdivision approached the City asking the City to enforce Resolution 98-43 to prevent another homeowner from constructing improvements in and around Murphy Lake. City Staff and the City Attorney reviewed the various actions taken in 1998, and the City Attorney advised that the City's Resolution 98-43 had little enforcement value because the City could not amend, modify, or supplement its land grading regulations contained in the City's zoning regulations through a resolution (only an ordinance would suffice). Furthermore, the adoption of the new Zoning Code in 2007 without reference to the Murphy Lake resolution superseded the enforceability, if any, of the former resolution.

City Staff and the City Attorney met with Mr. Marquis to discuss his concerns about construction activities in and around Murphy Lake. We explained that the City's Resolution was not legally enforceable, and that the City had no authority to enforce the private Association restrictions.

Following that meeting, Mr. Marquis requested that the City adopt an Ordinance to amend the City's zoning regulations to regulate and restrict construction activities. That request went to the COW in April for discussion.

Options

The following are three options to enforcing construction and grading restrictions in and around Murphy Lake:

- First, the City could adopt an Ordinance amending its zoning regulations to replace the previous City Resolution to restrict activities in and around private lakes such as Murphy and Park Lakes.
- Alternatively, the Association could enforce the existing private restrictions that the Association previously established and recorded against its own properties.
- Finally, any individual that resides within the Murphy Lake subdivision and is a member of the Improvement Association could attempt to enforce the existing private restrictions as a breach of contract claim.

Option #1 – City Adopt and Enforce Zoning Restrictions

As discussed above, the City's Resolution 98-43 has limited legal enforceability because the City cannot amend its zoning regulations through a resolution. The City could, if it chooses to, repeal that Resolution and replace it with an Ordinance that amends the zoning regulations to establish

restrictions on construction activity in and around private lakes. Notice would have to be published for the P&Z to conduct a public hearing on proposed amendments to the City's zoning regulations to incorporate the lake restrictions. The P&Z's recommendation would then come back to the City Council for final action, in ordinance form. Should the City Council choose this course of action, there are a few issues that the City should be aware of.

First, because these are private lakes (not publicly owned lakes), there is limited authority for government regulation of these bodies of water. Thus, the City would have to tie any restriction on construction activities to its zoning authority to protect and preserve the health, safety, and welfare of its residents. The City may also consider whether there is incremental public benefit resulting from enforcing construction regulations that differ from the storm water regulations adopted and enforced by the Metropolitan Water Reclamation District.

Second, the City will need to consider the practical implications of taking on the enforcement of restrictions on private lakes, including the amount of staff time in administering these restrictions (including making determinations on what activities will trigger applicability of the restrictions) and enforcing these restrictions (through its permitting authority). City Staff may have additional thoughts and input on these impacts.

Third, by taking on the enforcement of these restrictions, the City has the potential for legal liability in reviewing permit applications for development in these areas, interpreting and applying the new restrictions, and enforcing these restrictions. Although the City does have a number of immunities it could assert through the Tort Immunity Act, these are not absolute and any new restriction or regulation could expose the City to new liabilities.

Fourth, the City should consider the potential precedence of agreeing to adopt and then enforce restrictions on private property. There are many homeowner associations that have enacted private restrictions on their homeowners. These associations often struggle with the cost and time necessary to enforce these private restrictions no different than the concerns raised by the Murphy Lake Association. Should the City Council decide to take on enforcement of the lake restrictions in Murphy Lake, it may encounter requests from other homeowners' associations to enforce their private restrictions as well. While this is more of a policy issue rather than a legal one, it is an issue the City Council should be aware of in choosing between the various enforcement options.

Finally, the City Council should also consider whether or not the homeowners within the Murphy Lake subdivision are even in favor of the City establishing and enforcing these zoning restrictions. In some communities, the municipality will require a certain percentage of homeowners to sign a petition asking the City to take over enforcement to demonstrate that the request has the support of more than just a couple homeowners. The City Council might consider requiring a majority or 75% of the homeowners' consent prior to enacting zoning regulations that will affect these homeowners.

One of the disadvantages to this option is that it places the entire cost and burden on the City for the enforcement activities, and it opens up the possibility of other associations asking the City to enforce its private restrictions and covenants through the City's zoning regulations. To offset the cost to enforce the local regulations some communities enact special service areas to collect special taxes from the benefited area. The process of adopting a special service area would also test the willingness of a majority of homeowners to pay for this service since they have the right to object to the collection of the special tax.

Option #2 – Association Enforce Private Restrictions

As discussed above, the Murphy Lake Improvement Association (Association) had previously established private restrictions, which were recorded against the properties the Association owns, including nearly all of the lake. These restrictions prohibit filling of Murphy Lake. As the authority over these restrictions, the Association has the power to enforce the restrictions against homeowners who violate them.

One of the board members of the Association has expressed concerns with the enforceability of the private restrictions. But since the Association is the owner of the middle of the lake, it can exercise complete control over whether that area is ever filled.

The enforceability of the restrictions as applied to other homeowners' property, which primarily includes shoreline areas, could be strengthened by action of the Association with the approval of its members if there is sufficient local support for the change. There were also concerns raised about the cost of enforcement by the Association. Like other covenants adopted and enforced by other homeowners' associations throughout the City, the Association could pass on those costs to its members through dues or possibility even against the violating homeowner through any enforcement action in court.

The advantage to this option is that it does not establish a precedent that the City would take over enforcement of private restrictions at the request of a particular homeowners association. It also results in no additional expense to the City.

Option #3 – Homeowners Enforce Private Restrictions

There have been concerns raised by the Association and others that the Association is not in a position to enforce the private restrictions. Another alternative enforcement option is for an individual homeowner to bring an enforcement action against a violator of the private restrictions. While the Association's resolution was not recorded against all of the property within the Association, the resolution was still approved as an amendment to the contract among the members. Any homeowner that is a member of the Association could seek to enforce these

private restrictions in court as a breach of contract. The advantage of this option is similar to the Association exercising its enforcement authority.

Conclusion

In sum, there are a variety of options available to dealing with the issue of enforcing construction activities in and around private lakes. The City Council should consider the pros and cons of each option, including the potential for establishing precedent should the City decide to take over enforcement of the private lake restrictions.

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