
**LEVANDER,
GILLEN &
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ATTORNEYS AT LAW

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TONA T. DOVE
AARON S. PRICE
•
HAROLD LEVANDER
1910-1992
•
ARTHUR GILLEN
1919-2005
•
ROGER C. MILLER
1924-2009

*ALSO ADMITTED IN WISCONSIN
◊ALSO ADMITTED IN NORTH DAKOTA
ΔALSO ADMITTED IN MASSACHUSETTS
□ALSO ADMITTED IN OKLAHOMA
ΔALSO ADMITTED IN ARIZONA

MEMO

TO: Sunfish Lake Mayor and Councilmembers
FROM: Timothy J. Kuntz, City Attorney
DATE: November 1, 2017
RE: City Project 2017-02 – Charlton Road Street Reconstruction
November 7, 2017 Council Meeting; Agenda Item 8(b)

Section 1. Background. The City of Sunfish Lake is considering an improvement project to reconstruct the existing gravel roadway surface on Charlton Road from CSAH 63 (Delaware Avenue) to TH 110 including the installation of drainage improvements (the “Project”). Charlton Road is currently a rural section roadway that extends approximately 3,500 feet between Delaware Avenue and TH 110. Charlton Road varies in width between 19 to 25 feet with an average width of 21 feet. The roadway consists of 4 to 8 inches of class 5 aggregate base with intermittent ditching along both sides of the road and trees very close to the roadway edges. There are 21 parcels that adjoin or front Charlton Road. Of those 21 parcels, 6 of the parcels contain platted, dedicated right-of-way. The other 15 parcels do not contain dedicated right-of-way. Acquiring permanent easements for roadway, drainage and utility purposes has, in the past, been the biggest challenge for financing the improvements. Without the granting of these necessary permanent easement rights to the City, Charlton Road has been financially unfeasible to improve.

Section 2. Voluntary Easement Acquisition. In order to meet the financial obligations of the Project, the City is requesting that the easement rights be dedicated by the affected landowners to the City without compensation to the landowners. The City seeks to obtain permanent easement rights for street, drainage and utility purposes along a portion of parcels adjoining Charlton Road. There are 15 affected parcels where the City is seeking to obtain easement rights. The list of the 15 affected landowners is attached to this memo. Also attached is a map showing the location of the affected parcels.

A draft template Permanent Street, Drainage and Utility Easement Agreement (“Easement”) is attached for reference. Within the one Easement document there are two separate easements being conveyed to the City. One easement is for street, drainage and utility purposes. The other

easement is for drainage and utility purposes only.

Section 3. Demarcation of Easements. The City Engineer intends to have the separate easement areas demarcated on the affected parcels by November 14, 2017. There will be separate demarcation for the following two types of easements: (a) street, drainage and utility easement and (b) drainage and utility easement.

Section 4. Open House. The City Engineer has scheduled an open house for Thursday, November 16, 2017 at 6:00 p.m. at the Mendota Heights Fire Department located at 2121 Dodd Rd, Mendota Heights, MN 55120. The purpose of the open house is to allow affected landowners to ask questions and receive more detailed information about the Project.

Section 5. Deadline for Signed Easements. The letter to the affected landowner asks for the signed Easement to be returned to the City Attorney by December 11, 2017. If a landowner is unwilling to sign the Easement, the letter asks that the landowner provide the landowner's position to the City.

Section 6. Memo from Mayor. Also enclosed with the letter to the affected landowners is a memo I prepared on behalf of the Mayor expressing his support for the Project. The Mayor is free to re-draft the memo as he deems appropriate.

Section 7. Schedule. Below is the proposed schedule for the easement acquisition process:

Tuesday, November 7, 2017:

- City Attorney and City Engineer report to Council on title commitments, drafts of easements, letter to landowners, supplemental memo from Mayor and process for requesting easements
- Council authorizes sending of letters to landowners to request easements

Friday, November 9, 2017:

- City Attorney sends letters to landowners enclosing easements
- City Engineer sends separate invitation to landowners for open house

Monday, November 13, 2017:

- City Engineer marks all easements in the field to show scope and size of the easements

Thursday, November 16, 2017:

- City Engineer conducts open house at 6:00 p.m. at Mendota Heights Fire Station

Friday, December 15, 2017:

- Deadline to return signed easements to City Attorney

Tuesday, January 2, 2018:

- At the Council meeting, the City Engineer and City Attorney report on status of signed easements

Tuesday, February 6, 2018:

- Council passes resolution calling for public hearing to order project on April 3, 2018

Tuesday, April 3, 2018:

- Council conducts public hearing to order project
- Council orders project
- Council approves engineering plans and specifications
- Council authorizes bids

Friday, May 11, 2018:

- City opens bids

June 4, 2018:

- City awards construction contract

June 25, 2018:

- Contractor begins construction

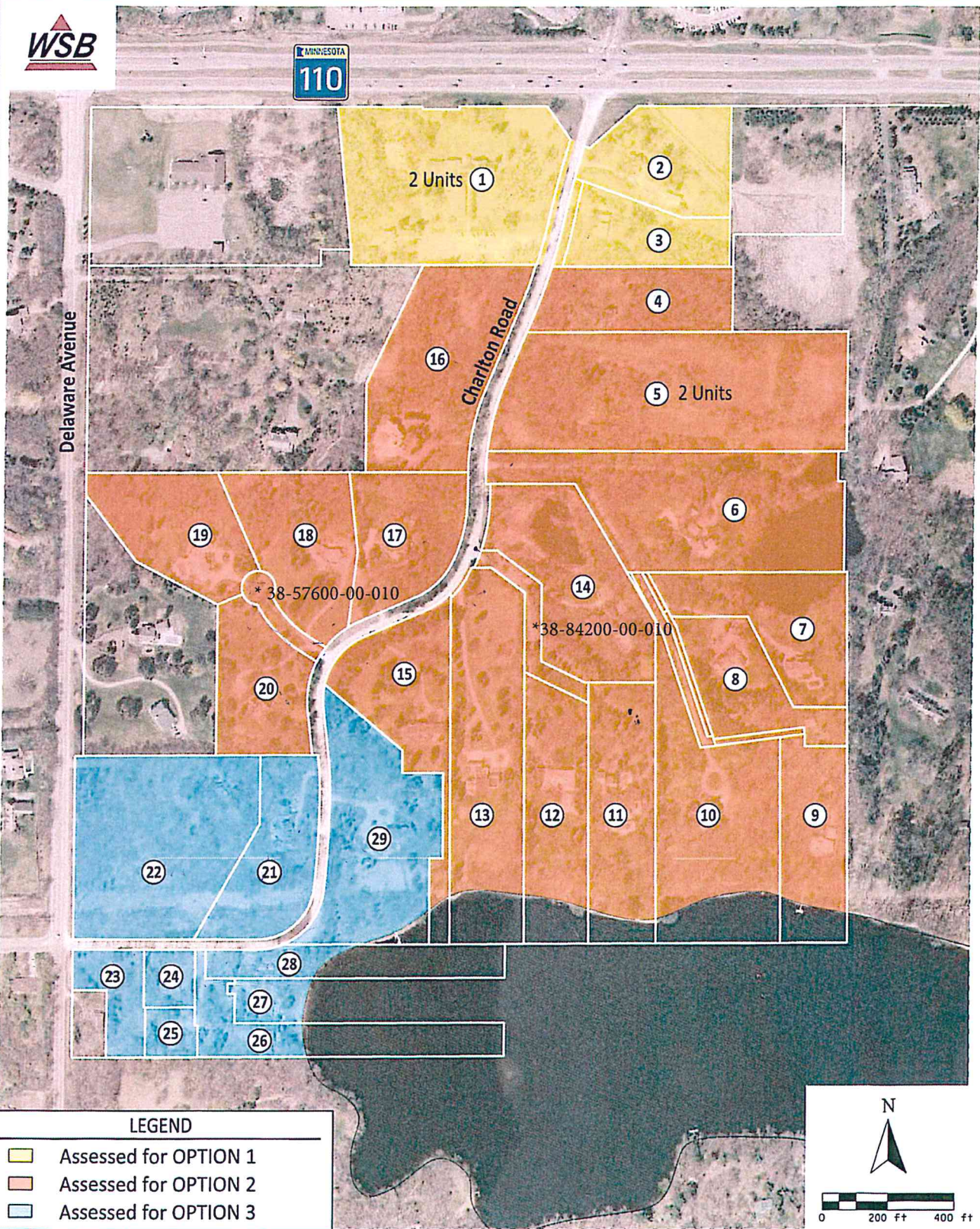
Friday, July 27, 2018:

- Construction substantially completed

Section 8. Council Action. The Council is asked to consider authorizing the City Attorney's office to send the attached letter together with the Memo from the Mayor and the Easement to the affected landowners. If approved, the letter together with the draft Memo from the Mayor (subject to changes from the Mayor) and the Easement will be sent to the affected landowners on November 9, 2017.

Attachments

Parcel 1	38-03000-50-030	Saint Anne's Episcopal Church, a Minnesota non-profit corporation	2035 Charlton Rd, Sunfish Lake, MN 55118
Parcel 2	38-03000-51-010	Michael A. Hovey and Margaret M. Hovey, as joint tenants	2030 Charlton Rd, Sunfish Lake, MN 55118
Parcel 3	38-03000-51-020	Mary J. Malachway, a single person	2040 Charlton Rd, Sunfish Lake, MN 55118
Parcel 4	38-03000-51-030	John Gary Gustafson, a single person	2058 Charlton Rd, Sunfish Lake, MN 55118
Parcel 5	38-03000-52-013	Violet Dobrantz, Elroy R.E. Dobrantz, Donna Dobrantz, Gladys Dobrantz and Raymond Dobrantz, as tenants in common	2078 Charlton Rd, Sunfish Lake, MN 55118
Parcel 6	38-03000-52-020	Aydin Moradian and Rebecca Lynn Reich Moradian, as joint tenants	2120 Charlton Rd, Sunfish Lake, MN 55118
Parcel 13	38-03000-54-031	Michael Silverman and Joanne Silverman, as joint tenants	2158 Charlton Rd, Sunfish Lake, MN 55118
Parcel 15	38-03000-54-021	David L. Smith and Wendy Smith, as tenants in common	2162 Charlton Rd, Sunfish Lake, MN 55118
Parcel 21	38-03000-53-022	Shannon Michael Werb and Margaret Ann Gehrig, as Trustees of the Shannon Michael Werb Revocable Trust U/A June 28, 2017, a one-half interest and Margaret Ann Gehrig and Shannon Michael Werb, as Trustees of the Margaret Ann Gehrig Revocable Trust U/A June 28, 2017, a one-half interest	2165 Charlton Rd, Sunfish Lake, MN 55118
Parcel 22	38-03000-53-021	Martha H. Norton, a single person	2148 Delaware Ave, Sunfish Lake, MN 55118
Parcel 23	38-03100-27-010	Elizabeth Ann Hammett and Katherine Carol Ginkel, as joint tenants	2198 Delaware Ave, Sunfish Lake, MN 55118
Parcel 24	38-03100-27-020	John Hutchinson and Sharon Hutchinson, as joint tenants	2194 Charlton Rd, Sunfish Lake, MN 55118
Parcel 28	38-03100-27-040	Brent J. Brooks and Rebecca A. Brooks, as joint tenants	2180 Charlton Rd, Sunfish Lake, MN 55118
Parcel 29	38-03000-54-011	Rebecca Ann Debertin, a single person	2166 Charlton Rd, Sunfish Lake, MN 55118
Parcel 26	38-03100-27-060	J. Edward Corn, Jr. and Jane Wu Corn, as joint tenants	2190 Charlton Rd, Sunfish Lake, MN 55118



Date: 4/28/2017
WSB Filename: K:\0629-74\Cad\Exhibits\Feeblity\629-74L_fig-09_Proposed Assessment Area.dgn



Charlton Road Improvements Sunfish Lake, Minnesota

Figure 9

Proposed Assement Area

November 9, 2017

Landowner Name
Landowner Address

**BY CERTIFIED MAIL RETURN
RECEIPT REQUESTED AND BY
U.S. MAIL**

RE: City of Sunfish Lake - Charlton Road Street Reconstruction Project

Dear Landowner:

The City of Sunfish Lake is considering an improvement project to reconstruct the existing gravel roadway surface on Charlton Road from CSAH 63 (Delaware Avenue) to TH 110 including the installation of drainage improvements (the "Project"). Charlton Road is currently a rural section roadway that extends approximately 3,500 feet between Delaware Avenue and TH 110. Charlton Road varies in width between 19 to 25 feet with an average width of 21 feet. The roadway consists of 4 to 8 inches of class 5 aggregate base with intermittent ditching along both sides of the road and trees very close to the roadway edges. There are 21 parcels fronting Charlton Road. Of those 21 parcels, 6 of the parcels contain platted, dedicated right-of-way. The other 15 parcels do not contain dedicated right-of-way. Acquiring permanent easements for roadway, drainage and utility purposes has, in the past, been the biggest challenge for financing the improvements. Without the granting of these necessary permanent easement rights to the City, Charlton Road has been financially unfeasible to improve.

You are receiving this letter because your property abuts Charlton Road and the City seeks to obtain permanent easement rights for street, drainage and utility purposes along a portion of your property adjoining Charlton Road. In order to meet the financial obligations of the Project, the City is requesting that the easement rights be conveyed by you to the City without compensation.

Enclosed with this letter is a draft Permanent Street, Drainage and Utility Easement Agreement ("Easement") for your property. Within the one Easement document there are two separate easements being conveyed to the City. One easement is for street, drainage and utility purposes. The other easement is for drainage and utility purposes only. The sketches attached as Exhibit B and Exhibit C identify the location and configuration of the two easements.

The Easement was drafted based on ownership information found in the Dakota County land records. If the ownership of your property is incorrect in the Easement or if you have any questions or comments about the Easement document, please contact Leah Rose of my office at 651-451-1831 or lrose@levander.com. If the spelling of your name is incorrect or if the identification of marital status is incorrect, please contact Leah Rose and we will provide a substitute Easement.

Should you have any question regarding the easement legal descriptions, locations of the easements or the easement sketches depicted in the Easement, please contact City Engineer Don Sterna at 763-287-7189 (office) or 612-360-1289 (mobile). The City Engineer intends to have the easement areas marked on your property by November 14, 2017. There will be separate demarcation for the following two types of easements: (a) street, drainage and utility easement and (b) drainage and utility easement. The City Engineer will be sending you an invitation for an open house to allow you to ask questions and receive more detailed information about the Project. The open house is scheduled for **Thursday, November 16, 2017 at 6:00 p.m.** at the Mendota Heights Fire Department located at 2121 Dodd Rd, Mendota Heights, MN 55120.

Should you choose to sign the Easement, I have enclosed a self-addressed, stamped envelope for you to return the Easement to my office. Please note your signature(s) need to be notarized. You may contact my office to arrange for notarizing services if you wish. If the Project is not ordered by the Sunfish Lake City Council, the signed Easement will be returned to you and will not be recorded. If the Project is ordered by the City, the signed Easement will be recorded. After recording, the City will provide you with a copy of the recorded Easement document with the recording information.

I kindly request that you return the signed Easement to my office on or before **December 11, 2017**. It is critical that you send the signed Easement as soon as possible to keep the Project on schedule. The City Council wants to secure the Easement rights before the Council orders the Project. In the event you are unwilling to sign the Easement, please contact my office by phone, letter or e-mail so that the City is aware of your position.

Finally, I have enclosed with this letter a memo from Sunfish Lake Mayor Richard Williams expressing his support for the Project and appreciation for your anticipated cooperation.

Very truly yours,

Timothy J. Kuntz
City Attorney for the City of Sunfish Lake

Enclosures

City of Sunfish Lake

Dear Charlton Road Citizens,

Since 1994, the City Council of Sunfish Lake has been discussing and considering the need to order a street reconstruction improvement project for Charlton Road. In 2016, residents again communicated interest in making improvements to Charlton Road and further expressed a desire to cooperate in conveying the necessary easements required to construct and maintain the road.

I encourage you to consider signing the enclosed Easement Agreement and conveying the necessary easement rights needed by the City without compensation so that the City can proceed with ordering the improvement project. Your cooperation and understanding are greatly appreciated. Without the City receiving the easement rights from the Charlton Road citizens, the street reconstruction project cannot move forward as planned.

Again, thank you for your support and cooperation.

Sincerely,

Mayor Richard Williams
rwilliams@williamslawmn.com
651-554-1201

**PERMANENT PUBLIC STREET, DRAINAGE AND UTILITY
EASEMENT AGREEMENT**

THIS PERMANENT PUBLIC STREET, DRAINAGE AND UTILITY EASEMENT AGREEMENT (“**Easement**”) is made, granted and conveyed this _____ day of _____, 2017, by and between John Smith and Jane Smith, husband and wife, hereinafter collectively referred to as the “Landowner,” and the City of Sunfish Lake, a Minnesota municipal corporation, hereinafter referred to as the “City.”

The Landowner owns the real property situated within Dakota County, Minnesota as described on the attached **Exhibit A** (hereinafter “Landowner’s Property”).

The Landowner for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby convey and quitclaim to the City, its successors and assigns, the following:

- A permanent easement for public street and public way purposes and for utility and drainage purposes and for all such purposes ancillary, incident or related thereto (hereinafter “**Permanent Easement Area #1**”) under, over, across, through and upon that real property identified and legally described and depicted on **Exhibit B** attached hereto and incorporated herein by reference.
- A permanent easement for utility and drainage purposes and for all such purposes ancillary, incident or related thereto (hereinafter “**Permanent Easement Area #2**”) under, over, across, through and upon that real property identified and legally described and depicted on **Exhibit C** attached hereto and incorporated herein by reference.

Permanent Easement Area #1 and Permanent Easement Area #2 shall be collectively referred to as “**Permanent Easement Areas**”.

The permanent easement rights granted herein are forever and shall include, but not be limited to, the construction, maintenance, repair and replacement of any public street, public way, drainage facilities and utilities and all facilities, appurtenances and improvements ancillary, incident or related thereto, under, over, across, through and upon the Permanent Easement Areas.

EXEMPT FROM STATE DEED TAX

The rights of the City also include the right of the City, its contractors, agents and servants:

- a.) to enter upon the Permanent Easement Areas at all reasonable times for the purposes of construction, reconstruction, inspection, repair, replacement, grading, sloping, and restoration relating to the purposes of this Easement; and
- b.) to maintain the Permanent Easement Areas and any City improvements located therein, together with the right to excavate and refill ditches or trenches; and
- c.) to remove from the Permanent Easement Areas trees, brush, herbage, aggregate, undergrowth and other obstructions interfering with the location, construction and maintenance of the public street, public way, drainage facilities and utilities; and to deposit earthen material in and upon the Permanent Easement Areas; and
- d.) to remove or otherwise dispose of all earth or other material excavated from the Permanent Easement Areas as the City may deem appropriate.

The City shall not be responsible for any costs, expenses, damages, demands, obligations, penalties, attorneys' fees and losses resulting from any claims, actions, suits, or proceedings based upon a release or threat of release of any hazardous substances, petroleum, pollutants, and contaminants which may have existed on, or which relate to, the Permanent Easement Areas or the Landowner's Property prior to the date hereof.

Nothing contained herein shall be deemed a waiver by the City of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by the Landowner, their successors or assigns, shall be subject to any governmental immunity defenses of the City and the maximum liability limits provided by Minnesota Statute, Chapter 466.

The Landowner, for themselves and their successors and assigns, do hereby warrant to and covenant with the City, its successors and assigns, that they are well seized in fee of the Landowner's Property described on Exhibit A and the Permanent Easement Areas described and depicted on Exhibit B and Exhibit C and that they have good right to grant and convey the Permanent Easement Areas to the City.

The City shall indemnify, defend and hold harmless the Landowner from all claims brought by third parties against Landowner arising from the City's negligent exercise of its rights under this Easement.

The Landowner is not responsible or obligated to maintain the public street, public way, drainage facilities or utilities located within the Permanent Easement Areas on the Landowner's Property.

This Permanent Public Street, Drainage and Utility Easement Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[the remainder of this page has been intentionally left blank]

IN TESTIMONY WHEREOF, the Landowner and the City have caused this Permanent Public Street, Drainage and Utility Easement Agreement to be executed as of the day and year first above written.

LANDOWNER:

John Smith

Jane Smith

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

On this ____ day of _____, 2017, before me a Notary Public within and for said County, personally appeared John Smith and Jane Smith, husband and wife, to me personally known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

Notary Public

CITY OF SUNFISH LAKE

By: _____
Richard Williams
Its Mayor

ATTEST:

Catherine Iago, City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this _____ day of _____, 2017, before me a Notary Public within and for said County, personally appeared Richard Williams and Catherine Iago to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Sunfish Lake, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said Mayor and Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

This instrument was drafted by:
Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street, Suite 400
South St. Paul, Minnesota 55075
(651) 451-1831

After recording, please return to:
Timothy J. Kuntz
LeVander, Gillen & Miller
633 South Concord Street, Suite 400
South St. Paul, Minnesota 55075
(651) 451-1831

EXHIBIT A
LEGAL DESCRIPTION OF LANDOWNER'S PROPERTY

Real Property located in the City of Sunfish Lake, Dakota County, Minnesota, described as follows:

Lot 1, Block 1, Black Acre, Dakota County, Minnesota.

EXHIBIT B
LEGAL DESCRIPTION OF PERMANENT EASEMENT AREA #1 AND
DEPICTION OF PERMANENT EASEMENT AREA #1

A permanent easement for street, public way, drainage and utility purposes under, over, across, through and upon that portion of Lot 1, Block 1, Black Acre, Dakota County, Minnesota, described as follows:

A permanent easement for street, public way, drainage and utility purposes lying southerly of the following described line:

Commencing at the southwest corner of said Lot 1, thence northerly along the west line of said Lot 1 a distance of 22.00 feet to the point of beginning of the line to be described; thence easterly to a point on the east line of said Lot 1, said point being 22.00 feet northerly of the southeast corner of said Lot 1 as measured along the east line of said Lot 1, and said line there terminating.

EXHIBIT C
LEGAL DESCRIPTION OF PERMANENT EASEMENT AREA #2 AND
DEPICTION OF PERMANENT EASEMENT AREA #2

A permanent easement for drainage and utility purposes under, over, across, through and upon that portion of Lot 1, Block 1, Black Acre, Dakota County, Minnesota, described as follows:

A permanent easement for drainage and utility purposes lying southerly of the following described line:

Commencing at the southwest corner of said Lot 1, thence northerly along the west line of said Lot 1 a distance of 22.00 feet to the point of beginning of the line to be described; thence easterly to a point on the east line of said Lot 1, said point being 22.00 feet northerly of the southeast corner of said Lot 1 as measured along the east line of said Lot 1, and said line there terminating.