



Title: Directing Correspondence to Campbell Sevey Concerning Shared Driveway Easement

Resolution number: 25-017

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Recommended action: Authorize distribution of letter to Campbell Sevey, Inc.

Background:

MCWD Campus Project Scope:

The parking and drive areas of the Minnehaha Creek Watershed District (MCWD) property are in disrepair, and reconstruction and resurfacing are needed for purposes of staff and public safety, functionality and maintenance of property value. Therefore, between 2019 and 2020, design was advanced for the reconstruction of parking lots at MCWD's office building located at 15320 Minnetonka Boulevard, to sustainably reconstruct failed pavement and heaved sidewalks that create winter slip and fall hazards, by creating positive drainage and correcting pavement subgrade.

The proposed work triggers the need for a minor amendment to the planned unit development of which MCWD's campus is a part and therefore the design must address specific municipal code requirements such as providing an enclosure for on-site refuse containers and creating acceptable grades for handicap parking access, among others.

Despite proposed restriping and optimized parking configuration, the impact of complying with municipal code, and the inclusion of a modest 12-foot-wide storage shed, would reduce MCWD's parking from 33 spaces to 32 spaces under proposed conditions. Given a staff of 30, a fleet of four vehicles, and the potential for visitors, reducing parking count does not meet the long-term needs of the Minnehaha Creek Watershed District. To offset the loss of parking spaces, the project plan proposes five parallel parking spaces on MCWD property, by moving its driveway curbline east further to expand the total driveway dimension. This driveway expansion, into what presently is landscaping adjacent to the MCWD building, does not affect the curbline of Campbell-Sevey, Inc., the neighboring property to the west.

MCWD-Campbell Sevey Cross Easement:

The project was ultimately not put out for public bid after encountering issues obtaining permission from Campbell Sevey. Pursuant to a 1990 easement over the shared driveway, which extends 30 feet on each side of the shared property line, written consent is required for any expenditure within that area exceeding \$1,000.00. At the time Campbell Sevey expressed concern over financially participating in the project and access disruptions during construction. It also questioned the need for any pavement rehabilitation on the driveway, and did not support any changes in driveway dimensions. Due to these issues, and the COVID-19 pandemic, the project was placed on hold.

2024 MCWD-Campbell Sevey Negotiations:

Engagement with Campbell Sevey was reinitiated in July 2024, in a meeting involving their president, MCWD's Administrator and the Administrative Services Manager. In this initial meeting, the District presented the proposed project plans as they related specifically to past concerns raised by Campbell Sevey. Based on feedback provided by the Campbell Sevey President, at that meeting, memorialized subsequently in email, the MCWD Board was informed that Campbell Sevey had no interest in preventing MCWD's proposed work using the existing cross easement, and that the parties would work together in partnership to drive the project forward in a reasonable way.

MCWD was asked by Campbell Sevey in late July to draft a revised easement to address the long-standing issues with the 1990 document. MCWD delivered a draft easement to Campbell Sevey in late September. Upon delivery to

Campbell Sevey, and after presentation of the project to its attorney, MCWD was advised that an easement revision wasn't needed. MCWD was instead asked to draft a letter of permission under the 1990 easement, with attached exhibits visually depicting the work within the easement consistent with plans presented to both Campbell Sevey's President and attorney. After MCWD delivered the draft to Campbell Sevey's attorney, it was discarded without review.

After abandoning both the revised easement and letter of permission it had requested be drafted, Campbell Sevey delivered to MCWD a "consent agreement." MCWD counsel found this document to be legally and practically problematic; for example, it purported to allow MCWD to perform work on Campbell Sevey property but prohibited "intrusion" onto the property. Campbell Sevey's was not receptive to efforts to revise language to address these issues.

In exhibits depicting the proposed work within the shared driveway, Campbell Sevey provided explicit written concurrence with the proposed parallel parking along the east side of the driveway, to be expanded onto MCWD property. However, in subsequent written exchanges in October and November 2024, Campbell Sevey's attorney then opposed the parallel parking.

Recommended Action:

The shared driveway easement that spans both MCWD and Campbell Sevey properties is poorly drafted, obsolete, and would benefit from both parties removing purposeless constraints on each party's ability to use and improve its property. Easement revisions would bring focus and clarity to relieve potential sources of dispute between the neighboring properties while maintaining each owner's ability to ingress and egress to Minnetonka Boulevard over the shared driveway area.

While MCWD recognizes that using eminent domain to reconfigure the shared driveway easement as it lies on the MCWD property would, be an avoidable expense by both parties, and likely would introduce friction into neighborly relations, absent Campbell Sevey's cooperative engagement in revising the easement, MCWD will need to consider this option to properly address safety concerns, manage public liability and risk, and maintain the function and value of its property.

Before taking that course of action, staff recommends that the Board of Managers authorize the District Administrator, on advice of legal counsel, to once more seek Campbell-Sevey's engagement in a revision of the easement and to also advise Campbell-Sevey that absent prompt progress in that effort, the MCWD, from necessity, will initiate eminent domain proceedings to revise the easement so that it may perform the necessary reconstruction and resurfacing work on its own property.



RESOLUTION

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WHEREAS the parking and drive areas of the Minnehaha Creek Watershed District (MCWD) premises are in disrepair, and reconstruction and resurfacing is needed for purposes of staff and public safety, functionality, and maintenance of property value;

WHEREAS these areas, or portions thereof, are subject to a 1990 shared driveway easement that encumbers the MCWD property and the adjacent property of Campbell-Sevey, Inc.;

WHEREAS under the easement terms, a design for the work that achieves basic MCWD needs and meets city code standards requires Campbell-Sevey approval, even where the work is restricted to MCWD property;

WHEREAS the easement excessively encumbers both properties, is poorly drafted, and is obsolete, and its revision would benefit both parties by removing purposeless constraints on each party’s ability to use and improve its property and relieving sources of dispute between neighbors, while maintaining each property owner’s ability to ingress from and egress to Minnetonka Boulevard over a shared drive area;

WHEREAS in 2020, and again in 2024, MCWD sought Campbell-Sevey’s approval of the MCWD work, and Campbell-Sevey’s engagement in a mutual revision of the easement, and invested staff, engineering and legal resources in that effort, and in each case Campbell-Sevey withheld its approval and declined to engage in an easement revision;

WHEREAS the reconstruction and resurfacing work is a priority and should proceed without further delay; and

WHEREAS the MCWD Board of Managers recognizes that using eminent domain to reconfigure the shared driveway easement would be an avoidable expense by both parties, and likely would introduce friction into neighborly relations, but absent Campbell-Sevey’s cooperative engagement in revising the easement, MCWD will need to do so in order to properly attend to safety concerns, manage public liability risk, and maintain the functionality and value of its property.

NOW, THEREFORE, BE IT RESOLVED that the MCWD Board of Managers directs the District Administrator, on advice of legal counsel, to once more seek Campbell-Sevey’s engagement in a revision of the easement, and to advise Campbell-Sevey that absent prompt progress in that effort, the MCWD, from necessity, will initiate eminent domain proceedings to revise the easement so that it may perform the necessary reconstruction and resurfacing work on its property.

Resolution Number 25-017 was moved by Manager _____, seconded by Manager _____. Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: 2/27/2025

Secretary Date: _____