

MEETING DATE: May 26, 2016

TITLE: Authorization to Execute a Memorandum of Understanding with the City of Medina for Enforcement of the Deerhill Preserve Conservation Easement

RESOLUTION NUMBER: 16-053

PREPARED BY: Laura Domyancich

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REVIEWED BY: Administrator Counsel Program Mgr.: Tiffany Schaufler
 Board Committee Engineer Other

WORKSHOP ACTION:

<input type="checkbox"/> Advance to Board mtg. Consent Agenda.	<input type="checkbox"/> Advance to Board meeting for discussion prior to action.
<input type="checkbox"/> Refer to a future workshop (date):_____	<input type="checkbox"/> Refer to taskforce or committee (date):_____
<input type="checkbox"/> Return to staff for additional work.	<input type="checkbox"/> No further action requested.
<input checked="" type="checkbox"/> Other (specify): Not reviewed at Board Workshop. Requesting authorization at May 26 Board Meeting.	

PURPOSE or ACTION REQUESTED: Authorization to execute a memorandum of understanding (Attachment 1) with the City of Medina to define roles related to the enforcement of the Deerhill Preserve Conservation Easement.

PROJECT/PROGRAM LOCATION: Deerhill Conservation Design-Planned Unit Development (CD-PUD), Medina (formerly known as Stonegate CD-PUD)

PROJECT TIMELINE: March 11, 2016: Developer submitted Final Plat documents for review to City of Medina staff
April 5, 2016: Final Plat, Development Agreement, and Conservation Easement considered by Medina City Council. Council directed staff to prepare resolution of approval for a future council meeting. Final plat to be considered for approval on June 7, 2016

PROJECT/PROGRAM COST:

Fund name and number: Land Conservation, 200-2004
Current Budget: \$2,795,204
Expenditures to date: \$336,252
Requested amount of funding: \$0

PAST BOARD ACTION: Resolution 15-011: Authorization to Execute a Memorandum of Understanding with Stonegate Farm, Inc. and Property Resource Development Corporation (January 29, 2015)

Resolution 16-028: Resolution of Support for the Concept of Acting as the Conservation Easement Holder for the Deerhill Preserve CD-PUD (March 24, 2016)

**DRAFT for discussion purposes only and subject to Board approval and the availability of funds.
Resolutions are not final until approved by the Board and signed by the Board Secretary.**

SUMMARY: Stonegate Farm, Incorporated owns approximately 191 acres of land in the Cities of Medina and Orono. Property Resources Development Corporation (PRDC) proposes to develop the property into a 41-lot single family subdivision. Both entities are parties to a Contingent Settlement Agreement (CSA) with the City of Medina that stipulates the development of the property utilizing a conservation design planned unit development (CD-PUD).

The CSA requires Stonegate Farm and PRDC to comply with the CD-PUD process which includes dedication of conservation areas within the development that encompass all wetlands and wetland buffers, all steep slopes in excess of 18% grade, and a minimum of 30% of the remaining buildable land area. As such, the conservation areas offer the potential to restore, connect, and regionally integrate approximately 90 acres of degraded farmed wetland, existing tamarack bog, and uplands that could create a significant habitat corridor.

The City of Medina CD-PUD ordinance requires the developer to create a Land Stewardship Plan for the conservation areas and to seek a holder of the conservation easement. In January 2015, PRDC approached the District about the potential to serve in this role. This opportunity was discussed at the March 19, 2015 Policy and Planning Committee Meeting, and the committee recommended to the Board of Managers that staff indicate support for, and negotiate, the role of easement holder within the Stonegate conservation subdivision. Staff also provided project updates to the Policy and Planning Committee (PPC) on November 19, 2015, February 18, 2016, March 17, 2016, and May 12, 2016, and the PPC expressed support to staff in the continued drafting of documents and for the conservation area planning as a whole. On March 24, 2016, the Board of Managers also passed a resolution of support for the concept of MCWD serving as the conservation easement holder.

The City of Medina is not a party to the conservation easement, but the City does have third-party right of enforcement and will coordinate with the District on specific enforcement roles. Primary enforcement of the easement will be managed by District staff and will include, at least, annual monitoring for compliance, issuing notice to the Homeowner's Association (HOA) in the case of noncompliance, and stipulating corrective action. The City also holds these rights, and in addition, may assess the HOA for legal and technical costs to investigate and correct noncompliance issues.

This memorandum of understanding memorializes enforcement roles and also confirms the City of Medina's willingness and legal authority to assess for District costs to investigate and address noncompliance issues as detailed in the Conservation Easement and associated Land Stewardship Plan.

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WHEREAS, Stonegate Farm Inc. and Property Resources Development Corporation (PRDC) are parties to a contingent settlement agreement to develop 171 acres with approximately 41 single-family homes utilizing a conservation design planned unit development named Deerhill Preserve; and

WHEREAS, the City of Medina's ordinances require the creation of a land stewardship plan for all conservation areas associated with the project and the designation of a land steward to ensure these areas are protected in perpetuity; and

WHEREAS, the District and PRDC have worked proactively and collaboratively to bring conservation considerations to bear on the proposed development of the property in order to optimize the water resource and ecological benefits of the development and facilitate an orderly development review process while securing the desired economic outcomes of PRDC and Stonegate Farm, Inc.; and

WHEREAS, the District recognizes that there is great public benefit provided by the water resource protection aspects of this project including the restoration of 41 acres of wetland and upland areas and the preservation of an additional 48 acres of wetland and forested habitats, which will be protected in perpetuity by conservation easement, and that this public benefit exceeds the limited public cost to potentially undertake the role of easement holder; and

WHEREAS, the District, as land steward and conservation easement holder is positioned to ensure the provisions of the easement are upheld and to provide technical and regulatory guidance; and

WHEREAS, the conservation easement extends third-party right of enforcement to the City of Medina, however, the City is not a party to the conservation easement; and

WHEREAS, the District and the City of Medina desire to memorialize their respective roles of enforcing the conservation easement and the process by which investigation and correction of noncompliance will be assessed against the Deerhill Preserve Homeowners' Association by the City of Medina.

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby authorizes the execution of the Memorandum of Understanding with the City of Medina for enforcement of the Deerhill Preserve Conservation Easement.

Resolution Number 16-053 was moved by Manager _____, seconded by Manager _____.
Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: _____.

Secretary Date: _____

Memorandum of Understanding

Minnehaha Creek Watershed District and City of Medina Deerhill Preserve Conservation Development

1. The City of Medina (“City”) has approved the Deerhill Preserve plat, 170 acres more or less, as a Conservation Design-Planned Unit Development with 41 single-family lots. Within that development, about 89 acres are to be protected as conservation land subject to a Conservation Easement (“Easement”), within the meaning of Minnesota Statutes chapter 84C, conveyed to the Minnehaha Creek Watershed District (“District”) as holder.
2. Under the Easement, the District has the responsibility and authority to monitor the conservation land and compliance with the Easement terms and to take appropriate action to enforce the Easement. The City also has enforcement authority as both the local police power authority and having been granted a third-party right of enforcement under the Easement.
3. The District and the City each may undertake compliance and enforcement actions independently under the authority each possesses. However, the parties intend that the District will be primarily responsible for such actions and in the ordinary case will coordinate on potential noncompliance matters as follows:
 - a. The District will monitor the Easement and communicate potential noncompliance to the City. The parties will consult to mutually confirm noncompliance and to determine appropriate corrective action.
 - b. The District will notify the owner of the conservation land, which will be the homeowners’ association (HOA), detailing the violation and stipulating the corrective action.
 - c. If the violation is not addressed within the applicable time specified in the Conservation Easement, the District will take appropriate enforcement action pursuant to the terms of the Easement, which may include entering the premises under its authority to take corrective action.
 - d. The City may assist with or independently take enforcement and corrective action under its third party right of enforcement and City regulations.
4. The Easement, including the land stewardship plan, also states that the HOA will reimburse the District and City for costs each incurs to investigate and address noncompliance issues, including reasonable costs of technical and legal assistance. It further states that the HOA will not contest the City’s authority to assess these District costs against residential lots and outlots within the residential community in the same manner as assessable City costs. The City has consulted with its counsel and represents that it has the legal authority to assess for District

costs in accordance with the foregoing. The parties will coordinate as needed to provide for the efficient administration of any such assessment.

5. The parties otherwise will coordinate in good faith to achieve the conservation purposes set forth in the Easement.

6. This memorandum of understanding does not state any legally binding responsibilities or obligations but documents the understanding of the parties and establishes a cooperative framework for the matters addressed herein consistent with the Easement.

CITY of MEDINA

By: Bob Mitchell, Mayor

Date:

By: Scott Johnson, City Administrator

Date:

MINNEHAHA CREEK WATERSHED DISTRICT

By: Sherry Davis White, President

Date: