



CITY OF SPRING PARK  
WORK SESSION AGENDA  
AUGUST 17, 2020 – 6:00 PM  
SPRING PARK CITY HALL

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(Work Session discussion times are approximate)

1. 6:00 – 4000 SUNSET PROPERTY LINE DISCUSSION
2. 6:30 – FIRE DISTRICT DISCUSSION
3. 6:40 – PARK HOURS DISCUSSION
4. 6:55 – CODE ENFORCEMENT POLICY DISCUSSION
5. 6:55 - ADJOURN



## **NORTHWEST ASSOCIATED CONSULTANTS, INC.**

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Telephone: 763.957.1100 Website: [www.nacplanning.com](http://www.nacplanning.com)

### **MEMORANDUM:**

TO: Dan Tolsma  
FROM: Alan Brixius  
DATE: July 1, 2020  
RE: 4000 Sunset Property Boundaries  
FILE NO: 175.01 General  
PROPERTY ADDRESS: 4000 Sunset Drive

### **BACKGROUND:**

Joe Cheney owns the property at 4000 Sunset Drive in Spring Park. The lot contains an existing duplex. Mr. Cheney wishes to renovate and expand the building to provide additional living space and garages for the two units. In review of the lot City Staff discovered a property line concern that differs between past and current surveys. The lot abuts the city owned lake access off of Sunset Drive. This lake access was platted as City street right of way between Lots 13 and 14 Skarp & Lindquist's Hazeldell Addition to Minnetonka in 1906. (See Exhibit A)

Since the original plat Lot 14 has be divided into 6 lots by metes and bound descriptions (no subsequent plat). All of the 6 lots have been developed. In 1993 and revised in 1996 Gronberg Inc prepared a survey of 4000 Sunset Drive for Scott Schulz. (See Exhibit B) This survey illustrates the duplex being located on the lot's north lot line and 2 feet from the lake access pavement. This survey presents a number of hurdles to any expansion of this building.

In 2018, Otto Associates prepared new survey for 4000 Sunset Drive. This survey shows that the duplex is located 8 feet from the north lot line with the City's Lake access drive extending into the Cheney lot.

In 2020, Otto Associates revised the 2018 survey showing a compromise north lot line location. This Survey shows a 10 side yard setback for the proposed building addition.

The uncertainty of the correct location of the north property line has halted any improvement or expansion of the Duplex at 4000 Sunset Drive.

Exhibit A	Skarp & Lindquist's Hazeldell Addition to Minnetonka
Exhibit B	1993/1996 Gronberg Inc. Survey
Exhibit D	2018 Otto Survey
Exhibit E	2020 Otto Survey - Compromise lot line location

## **ANALYSIS:**

The proper location of the Lake access right of way impacts the City and property owners on both sides of this right of way. In an attempt to resolve this matter to the benefit of all parties, City Staff met with Mr. Cheney and Otto at the site to examine available options for the north lot line. Upon examining the physical conditions of the lake access and adjoining lots the following options were identified.

Option 1. The City accept the 2018 Otto survey as being correct with the condition that the property owner provide an street and utility easement over all of the existing paved lake access surface. This option includes:

- The property owner has indicated that he will provide a 10 foot side yard setback from his northern lot line with the new addition. At 10 feet the building expansion will not need a variance from the required 10 foot side yard setback. With resolution of the property boundary the property owner can proceed with needed development applications.
- We would require new lot corner monuments to be established
- The easement would cover the lake access drive encroaching onto the Cheney lot. The easement will allow the lake access drive to continue to exist in its present location and allow the city to maintain and/ or improve this roadway as needed or desired.
- This option would not involve the Driggs property to the north.

Option 2. Otto Associates have prepared a compromise lot line adjustment (See Exhibit C) the red line is the proposed lot line with the intent of have the city and property owner agree on the a new northern boundary for the property. The new property line generally follows the south pavement edge of the lake access drive. This option includes.

- All of the lake access drive lies within the city's right of way exclusive of the Cheney property.

- The existing duplex will be only 2 feet from the property line at its northwest corner with an expanding side yard setback for the existing and new addition as it moves east. This will still require a side yard setback variance in that the new addition would be setback only 8 feet from the north lot line. This option will allow the applicant to precede with his need development applications.
- The new property line will need to be recorded at the county and iron monuments shall be installed at each of the lot corners.
- This will not involve the Driggs property/

Option 3. Vacate the Lake Access Right of Way entirely.

- The right of way would be conveyed to the two adjoining lots. This puts the land back into private ownership. The expanded lot width and lot area would appreciate the adjoining lots and put the vacated land back on the tax rolls.
- Eliminate the Lake Access at this location. Council must determine the need and benefit of this lake access. Whether the city wishes to retain ownership and responsibility for the lake access maintenance. We understand the lake access is important to the Police department.
- We would rely on Mr. Cheney and Mr. Driggs to petition for the right of way vacation and provide new surveys, legal descriptions for their two lots. The new lot description must be recorded at the county and monuments must be placed at each of the corners of the new lots.

Option 4. Vacate the lake access right of way but retain an access easement over the two lots to allow the lake access to remain.

- The right of way would be conveyed to the two adjoining lots. This put the land back into private ownership. The expanded lot width and area would appreciate the adjoining lot and put the land back on the tax rolls.
- With the expanded lot widths no variances are needed for the Cheney lot redevelopment. The setbacks are measured to the property line and not to the edge of an easement.
- The easement would cover the lake access drive. The easement will allow the lake access to continue to exist in its present location and allow the city to maintain and/ or improve this roadway as needed or desired.
- We would rely on Mr. Cheney and Mr. Driggs to petition of the right of way vacation and provide new surveys, legal description for their two lots. We will also require the preparation of an Access Easement dedicated to the city preserving the lake access corridor.

## **CONCLUSION:**

Staff is looking for direction from the City Council as to whether any of the aforementioned options is desirable. From a staff perspective we believe options 2 and 4 provide the best solutions; in that it accomplishes the property owner objective of defining the lot boundary and redeveloping his lot. However, it also retains the city's lake access drive in its current location. We request council direction as to how to proceed.

Mary Tietjen  
Brian Hare  
Theresa Schyma  
Joe Cheney  
Paul Otto





**LEGAL DESCRIPTION OF PREMISES SURVEYED:**

That plot of Lot 14, Skarp and Lindquist's Hazardous Addition to Minnesota described as follows: Beginning at a point in the Southeastly line of said Lot 14 distant 367 feet Northwesterly therefrom along the Southeastly line of said Lot 14 from the most Southern corner thereof; thence North 66 degrees 22 minutes West to the west corner of Lake Minnesota; thence Northwesterly along the said Lake to the most Northern corner of Lot 14; thence Northwesterly along the Southeastly line of said Lot 14 to the most Eastern corner thereof; thence Southwesterly along the Southeastly line of said Lot 14 a distance of 48.5 feet, more or less, to the point of beginning.

\*Note: The above description is defective in that it refers to a proceeding on a bearing of North 55 degrees 22 minutes West bearing witness giving a basis for that bearing; also occupation was not in question; therefore some type of judicial action may have to be taken to solve these problems.

This survey intends to show the boundaries of the above described property, and the location of an existing house thereon. It does not purport to show any other improvements or encroachments.

- : Iron spikes found
- : Iron marker set

Bearings shown are based upon an assumed datum.

SCALE	DATE
1" = 30'	6-17-93
	REV. 11-27-96

SHEET NO.

**CERTIFICATE OF SURVEY FOR**

**SCOTT SCHULZ**

**IN LOT 14, SKARP & LINDQUIST'S HAZELDELL**

**RG, INC.**  
Surveyors







SANFORD | PIERSON  
THONE | STREAM  
ATTORNEYS AT LAW

www.ssmnlaw.com

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Matthew W. Simenstad

August 12, 2020

City of Spring Park  
Attn: Dan Tolsma, City Administrator  
4349 Warren Avenue  
Spring Park, MN 55384  
[dtolsma@ci.spring-park.mn.us](mailto:dtolsma@ci.spring-park.mn.us)

VIA E-MAIL

**Re: Lake Minnetonka Condos, LLC  
4000 Sunset Drive  
Spring Park, MN 55384  
Our File No. 19-0517-2**

Mr. Tolsma:

As you are aware, our firm represents Lake Minnetonka Condos, LLC and its owner, Joe Cheney, in connection with 4000 Sunset Drive (the Property), which is owned by Lake Minnetonka Condos.

First, let me say that we appreciate the City of Spring Park's willingness to openly discuss the issues regarding the Property and work cooperatively with Mr. Cheney to come to a mutually beneficial resolution. The City is well-acquainted with those issues, as Mr. Cheney brought them to the City's attention shortly after he purchased the Property in October 2018. Namely, the paved alleyway adjacent to the northern lot line being used as a public right-of-way to access Lake Minnetonka encroaches substantially on the Property.

It is our understanding the City has had several internal discussions on this matter and plans to address it further at its Work Session and Board Meeting on August 17, 2020. This letter is intended to inform that discussion and propose a solution.

Mr. Cheney previously provided the City with a Certificate of Survey from Otto Associates Engineers & Land Surveyors, Inc. dated October 30, 2018, a copy of which is attached to this letter. That survey clearly shows that the bituminous-surfaced alleyway constructed by the City encroaches on the Property between approximately 6.8 and 10.4 feet at various points. To be sure, the original plat from 1906 does dedicate the alley between Lots 14 (the Property) and Lot 13 to the public. However, the alley was either mistakenly constructed too far to the south and therefore on Lot 14, or the paved surface has expanded over the years to encroach on the Property. Mr.

Cheney presented the City with these findings and the attached survey shortly after the survey was conducted.

The City has continued to maintain the mis-located alleyway and allow the public to use it to access Lake Minnetonka, thereby trespassing on and damaging the Property and Lake Minnetonka Condos in the process. Additionally, the mis-located alley is not monitored by any state, city, or county agencies, resulting in little to no enforcement of applicable city codes, state law, or environmental regulations. It is also not used as an access point for emergency vehicles. A short distance from the alley is a more optimal public access point in Spring Park that draws far more traffic and is used by first responders and other public officials.

Thus, the alley serves as more of a “backdoor” entrance to Lake Minnetonka that creates potential health and safety hazards for the City and its residents and visitors, as well as liability for the City and Lake Minnetonka Condos. The following are just some examples of the issues created by the alley that give rise to those hazards and liability, and continue to interfere with Lake Minnetonka Condos’ ownership of the Property:

- 1) There is no public parking, which results in in boats, trailers, and recreational vehicles parking on the Property;
- 2) Public using the private dock belonging to Lake Minnetonka Condos while loading boats;
- 3) No inspection of boats for invasive species;
- 4) Sharp angle of access from Sunset Drive, which forces the public to trespass on the Property while accessing the lake;
- 5) Insufficient signage indicating thin ice during the winter;
- 6) Snow being plowed onto the Property, blocking the driveway and piling up on other areas of the Property, which results in water melting into building on the Property;
- 7) Inadequate enforcement of curfew resulting in people accessing the lake at all hours;
- 8) Inadequate monitoring and enforcement of access to the lake during winter, allowing snowmobiles to drive dangerously on the lake and trespass on the Property; and
- 9) Allowing the public to access neighboring lots by driving on the Property.

As that non-exhaustive list shows, the mis-located alley is simply not a workable location for any kind of public access without terrific hardship to the neighboring landowners and risk to the public. Additional issues include, among other things, members of the public leaving trash on the Property, piling rocks on the Property, and water flowing into the lake directly from the street.

Mr. Cheney would like to resolve this matter once and for all to the mutual benefit of the City, Lake Minnetonka Condos, and neighboring landowner. To that end, we propose the City vacate the alley as a public right of way. Such a measure is allowed by Minnesota law, subject to certain notice and other requirements—I will simply list the relevant statutes here; I am happy to provide further detail in a separate letter to the City Council and City Attorney if necessary:

§440.13	Council may vacate streets in cities of the fourth class.
§440.135	Vacating streets, home rule charter city of the third class.
§412.851	Vacation of streets (statutory cities.)
§164.07	Establishment, alteration; or vacation of town road.

§505.14 Vacation (court action.)

In short, Mr. Cheney is prepared to petition the City, along with the neighboring landowner to the north, Don Driggs, pursuant to Minn. Stat. §440.13. Alternatively, it appears the City Council may, pursuant to Minn. Stat. §412.851, do the same by resolution, subject certain requirements.

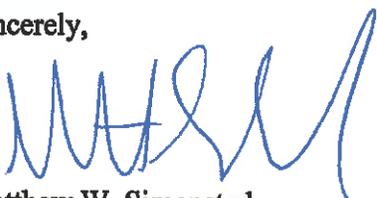
Mr. Cheney would like to cooperate with the City's prompt efforts to do this efficiently and economically. He obviously has an incentive to prevent any further damage and trespass on the Property; but also has the City's best interest in mind to eliminate the hazards and risks to the environment and public health and safety. If the City does not vacate the alley, it will need to be moved to its correct location. Not only would that require substantial work at the City's expense, it would also entail tearing up and paving a piece of land that the neighboring landowner has occupied and used as his own, apparently with the City's blessing, for many years.

I suggest we recognize that the purpose for this alley as a public right of way was frustrated years ago when the City allowed the alley to encroach on Lot 14 so substantially. Removing and correcting the existing encroachment will only result in further detriment to the owner of Lot 13 without correcting the other issues created by the access. Again, the alley is simply not a workable location for the public to access Lake Minnetonka and, therefore, should be vacated.

With the above in mind, we urge you to consider vacating the alley as a public right of way. It appears to be a reasonable solution and in the best interests of all parties. Please contact me at [matts@ssmnlaw.com](mailto:matts@ssmnlaw.com) or (952) 404 - 2100 or Mr. Cheney if you have any questions or require further information.

Please provide this information to the Council and/or as appropriate so it can be considered at the upcoming LMCD work session and meeting on August 12, and City Council Work Session and Regular Meeting on August 17. We look forward to working with you further. Thank you for your time.

Sincerely,



Matthew W. Simenstad

cc: Joseph Cheney  
enc.





**CITY OF SPRING PARK**  
**REPORT OF SUSPECTED**  
**ORDINANCE VIOLATION**

**Complaint Based Enforcement:** The Spring Park City Council has adopted ordinances to preserve and protect the health, safety, and welfare of our community. The primary goal is to obtain voluntary compliance by all Spring Park residents. Because limits to city resources do not permit a comprehensive, city-wide inspection and enforcement program, the city generally enforces its ordinances by responding to complaints regarding alleged violations of the ordinance provisions. City staff is directed to investigate and initiate enforcement procedures as follows:

1. Upon any complaint alleging an imminent threat to public health, safety or welfare.
2. Upon a complaint by one or more residents or property owners in the immediate neighborhood of the alleged ordinance violation. "Immediate neighborhood" includes:
  - o The area within 400 feet of the property where the violation is alleged to exist; or
  - o Property from which the alleged violation can be clearly seen; or
  - o Property that is primarily accessed by driving past the location of the alleged violation.
3. Upon observation of a suspected violation by city staff during the ordinary course of duties, as time permits.

In most cases, if a violation is found the property owner will be given a reasonable amount of time to resolve a violation. The investigation and enforcement process take time and you may not see immediate results in response to a complaint. Thank you for your concern and for bringing this matter to our attention.

**ALL FIELDS ON THIS FORM ARE REQUIRED**

**COMPLAINANT INFORMATION\*:**

Name	Street Address
Telephone #	E-mail Address

\*Please note that your personal contact information will be kept confidential in accordance with the MN Data Practices Act.

**PLEASE SELECT YOUR CATEGORY FOR CONCERN:**

<p align="center"><b>GENERAL NUISANCE</b></p> <p><input type="checkbox"/> Abandoned Vehicle/Property</p> <p><input type="checkbox"/> Garbage/Trash/Junk</p> <p><input type="checkbox"/> Property Maintenance</p> <p><input type="checkbox"/> Public Nuisance</p> <p><input type="checkbox"/> Sidewalk (obstruction)</p> <p><input type="checkbox"/> Sidewalk (snow/ice)</p> <p><input type="checkbox"/> Snow Dumping</p> <p><input type="checkbox"/> Street/Right of Way Obstruction</p> <p><input type="checkbox"/> Trees (overhanging/diseased)</p> <p><input type="checkbox"/> Vacant Building</p> <p><input type="checkbox"/> Weeds/Tall Grass</p>	<p align="center"><b>POLICE</b></p> <p><input type="checkbox"/> Animal Complaint</p> <p><input type="checkbox"/> Graffiti</p> <p><input type="checkbox"/> Noise</p> <p><input type="checkbox"/> Parking</p> <p><input type="checkbox"/> Peddler/Solicitor</p> <p align="center"><b>ZONING</b></p> <p><input type="checkbox"/> Building Construction/Violation</p> <p><input type="checkbox"/> Home Occupation</p> <p><input type="checkbox"/> Rental Property Complaint</p> <p><input type="checkbox"/> Zoning Violation/Non-Permitted Use</p> <p align="center"><b>DOCKS</b></p> <p><input type="checkbox"/> Dock Usage/Rental</p>
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**Please turn over and complete the remainder of this form.**

