

Addenda
Minnetonka City Council Meeting
Meeting of April 26, 2021

**ITEM 13B – Resolution vacating a portion of a drainage and utility easement at
05-117-22-12-0033**

The resolution for this item was revised after distribution of the packet. The following documents are attached:

- A memo from Public Works Director Will Manchester and City Engineer Phil Olson explaining why changes were made to the resolution; and
- A copy of the updated resolution

Also attached is a public comment received after distribution of the packet.



14600 Minnetonka Blvd. | Minnetonka, MN 55345 | 952-939-8200 | eminnetonka.com

TO: City Council

FROM: Sarah Krake, Right of Way/Property Coordinator
Phil Olson, City Engineer

DATE: April 26, 2021

SUBJECT: Change Memo for April 26, 2021 City Council Meeting

**ITEM 13B – Resolution vacating a portion of a drainage and utility easement at
05-117-22-12-0033**

The attached memo was written and the resolution was updated after the distribution of the packet.



14600 Minnetonka Blvd. | Minnetonka, MN 55345 | 952-939-8200 | minnetonkamn.gov

TO: Corrine Heine, City Attorney

FROM: Will Manchester, P.E., Public Works Director
Phil Olson, P.E., City Engineer

DATE: April 23, 2021

SUBJECT: Vacation of drainage and utility easement at 05-117-22-12-0033

After the packet for this item was prepared, staff received a phone call from Mario Goessl, who lives at 16511 Black Oaks Circle. Mr. Goessl informed staff that the Declaration of Covenants, Conditions, Easements and Restrictions for the Black Oak Estates development created private rain garden easements over portions of the applicant's properties, as well as two other lots in the development. That declaration was recorded as Document No. A9794637 in the office of the Hennepin County Recorder.

I have reviewed Document No. A9794637 and have confirmed that it creates private rain garden easements over portions of the applicant's properties. The easements run in favor of the homeowners' association and the owners of the seven lots and one outlot in Black Oak Estates. The declaration specifically provides that the rain garden easements are for the benefit of the private parties and do not create rights in the public or the City of Minnetonka.

The city staff has determined that there is not a continuing need for a rain garden easement in favor of the city, with respect to the area that is the subject of the vacation. The existence of the private easement does not prevent the city from vacating the public easement. To avoid any misunderstanding, I have revised the proposed resolution by adding a finding that the private easement exists, as well as a statement that the vacation of the public easement does not affect or impair the private easement rights. Sarah Krake has informed the applicants about the private easements in the declaration and the need to address those easements through the homeowners' association.

Resolution No. 2021-

Resolution vacating a portion of a drainage and utility easement at 05-117-22-12-0033

Be it resolved by the City Council of the City of Minnetonka, Minnesota, as follows:

Section 1. Background.

1.01 Joseph Humann has petitioned the Minnetonka City Council to vacate a portion of a drainage and utility easement located on the unaddressed parcel owned by the Humanns, with a PID of 05-117-22-12-0033, adjacent to their home at 16520 Black Oaks Circle. The easement to be vacated, in part, was originally created by dedication in the plat of BLACK OAK ESTATES and by instrument recorded as Document No. A9807102 in the files of the Hennepin County Recorder.

1.02 The portion of easement to be vacated (the "Vacation Area") is described as follows:

That part of Outlot A, BLACK OAK ESTATES, commencing at the most easterly corner of said Outlot A; thence on an assumed bearing North 78 degrees 56 minutes 00 seconds West along the northeast line of said Outlot A, a distance of 107.41 feet to the point of beginning; thence South 74 degrees 49 minutes 41 seconds West along the northwest line of said Outlot A, a distance of 57.60 feet to the 10 foot wide easement as per the plat of Black Oaks Estates; thence along said platted easement on a non-tangential curve, concave to the west, with a radius of 60.00 feet, a central angle of 29 degrees 14 minutes 50 seconds, a length of 30.63 feet, a chord distance of 30.30 feet, and a chord bearing of South 00 degrees 32 minutes 49 seconds East; thence North 62 degrees 08 minutes 45 seconds East, not tangent to the last described curve and along said platted easement a distance of 75.87 feet; thence North 49 degrees 52 minutes 21 seconds West, a distance of 15.40 feet to the point of beginning and there terminating.

1.03 As required by City Charter Section 12.06 a hearing notice on said petition was published in the City of Minnetonka's official newspaper and written notice was mailed to the owners of each abutting property and to all landowners in the plat.

1.04 On April 26, 2021, the city council held a hearing on the vacation petition, at which time all persons for and against the granting of said petition were heard.

Section 2. Standards.

2.01 Section 12.06 of the City Charter states that "A vacation may be approved only if the council determines that it is in the public interest."

Section 3. Findings.

3.01 The Minnetonka City Council makes the following findings:

1. The owner of the land containing the subject drainage and utility easement is a proper petitioner.

2. There are no public utilities located within the Vacation Area.
3. The original need for the easement was for a rain garden, which has been relocated elsewhere on the property.
4. There is no anticipated future need for a rain garden easement in favor of the city.
5. The vacation is not counter to the public interest.
6. There is a private rain garden easement covering the Vacation Area, as created by a declaration Document No. A9794637. The existence of a private easement does not alter the lack of a need for a public easement, and the vacation of the public easement will not affect the private easement.

Section 4. Council Action.

4.01 The above-described easement is vacated, subject to the following condition.

1. The vacation is only effective upon recording of a covenant that the properties with PID 05-117-22-12-0030 and PID 05-117-22-12-0033 will be combined as a single tax parcel.

4.02 Nothing in this resolution affects or impairs the private easement rights created by Document No. A9794637.

Adopted by the City Council of the City of Minnetonka, Minnesota, on April 26, 2021.

Brad Wiersum, Mayor

Attest:

Becky Koosman, City Clerk

Action on this resolution:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on April 26, 2021.

Becky Koosman, City Clerk

From: City of Minnetonka, MN
To: Kyle Salage
Subject: *NEW SUBMISSION* City council and EDA email comments
Date: Friday, April 23, 2021 12:17:45 PM

City council and EDA email comments

Submission Date: 04/23/2021 12:17

Name

Mario Goessl

Full Address

16511 Black Oaks Circle
WayzataMN55391
Hennepin

Phone

Email

City Council, EDA or LBAE

City Council

Meeting date

4/26/2021

Agenda item

13.B. Resolution vacating a portion of a drainage and utility easement at 05-117-22-12-0033

Comment

The vacation of any easement is subject to approval by the HOA of Black Oaks (see bylaws). The home owners have not voted on this and have only been notified about this last week. I kindly request to postpone the vote on this
