

**City Council Update January 25, 2021**  
**Retaining Wall and Fill Encroachment in Trott Brook Conservation and Trail Easement**  
**7349 168<sup>th</sup> Cir NW – JoDell and John Seaman**

At the City Council's request, this memo is intended to provide an update on activities since the City Council Approval of a Conditional Use Permit and note remaining steps yet to be completed.

As the City Council may recall, the City Council approved a Conditional Use Permit for fill within a Floodplain, contingent upon securing final approvals from the Minnesota DNR and Federal Emergency Management Agency (FEMA). Since that time, Staff has been working to finalize a floodplain report as an In Kind Contribution to this project. Since this task is being completed with In House Staff, overall timeframe is a bit longer than if we would have contracted this to a private engineer and would have incurred additional cost. Activities include, but are not limited to the following.

- Finishing Final/Formal Floodplain Modelling Report
- Preparing Application for Certificate of No Rise for Floodplain

Additionally, as the Council may recall, the City must address an encroachment into a Conservation and Trail Easement acquired by the City circa 2005/06 prior to the development of the Brookfield Neighborhood. This easement was acquired through funding from the State of Minnesota. It is our understanding that we must pay back a pro-rata share for the area of encroachment which will now be vacated. Staff is completing the actions that will be necessary to submit the request to the State of Minnesota to complete this request.

- Staff is ordering an appraisal to determine current value of the encroachment/vacation (had conversations with an appraiser on Friday, 1/22)
- Staff has completed a preliminary survey of the area
- Staff will be drafting an Amended Legal Agreement to formally vacate the area of encroachment
- Staff has been in contact with LCCMR Staff to begin official process for approval (waiting for a formal response)

As a sidebar, but related note, our initial survey indicates a potential encroachment onto neighboring properties (minor) in addition to encroachment into the City's easement and floodplain. To relieve any future potential liability to the City in approving this project, the City may want to consider consent by the neighboring properties.

Related, at the January 5, 2021 City Council Meeting, the Property Owners expressed concern about a bill they received from the City. Staff is in the process of correcting the coding of Staff time. It was not intended to bill the Applicant, rather track Staff's time working on the project. Staff has found a better way to track our time without inadvertently triggering a bill to the Applicant. Attached is the cost share framework that Staff previously shared with the Property Owners (updated to provide some clarifications). When the process is fully complete, Staff will be forwarding a request to reconcile final billing. There may be some final, additional costs to the Property Owner to process the request(s), but Staff and Property Owner have agreed to take small, manageable steps and re-evaluate along the way. Given the amount of time invested into this individual Application, Staff does believe it is fair to bill a portion of Staff Time consistent with other Conditional Use Permit Applications. If City Council desires to review a history of the project review, Staff is happy to do so.

Finally, once this specific case is complete, Staff does plan on discussing a broader solution to these backyard concerns along Trott Brook in the Brookfield Neighborhood and host a Neighborhood Meeting to discuss background an options. Completing this current Application will give Staff a much better handle on process and obligations to speak with the neighborhood.