



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: IIB1

Title:

Walkway Path through Lots 5,6,13 and 14 of the Fox Glade Subdivision

Presenter:

Peter Suhr

Meeting: City Council

Date: January 17, 2017

Proposed Cost: \$10,000

Budgeted Amount: \$0.0

Not Budgeted:

Executive Summary (if not budgeted please explain):

After several consecutive discussions at committee level, on November 28, 2016, the Government Services Committee made a favorable recommendation to vacate the City of St. Charles interest in the walkway easement through Lots 5, 6, 13 and 14 of the Fox Glade Subdivision and to close and remove both sidewalks at a cost not to exceed \$10,000.

However, staff was directed to provide the following information prior to proceeding to City Council:

- Provide a legal opinion of how a prescriptive easement may or may not affect the decision of the City to vacate interest in the walkway or easement.
- Provide input from every homeowner on Fox Glade Ct. in regard to closing the walkway.

Please find an attached letter dated January 4, 2017 from John McGuirk providing the requested opinion about prescriptive easements. Also, attached is Mr. McGurk’s recommended Resolution Authorizing the Release of the Interest of the City of St. Charles in the Walkway Easement in Fox Glade P.U.D. Subdivision, Unit 1, which would be the document of record to close the walkway, if so desired.

Please also find attached an updated petition to vacate the Fox Glade Ct. walkway easement as provided by Mr. Philip VanAcker who resides at 1227 Fox Glade Ct. There are a total of seventeen (17) homes with a Fox Glade Ct. address. Of the seventeen, fourteen (14) residents signed a petition in support of closing the walkway. Two (2) residents identified that they would like to remain “neutral” and did not sign the petition. One (1) resident could not be contacted and therefore also did not sign the petition. In addition, the two (2) residents who have an Ash Street address and are also adjacent the westernmost sidewalk also signed the petition in favor of closing. Please see the attached map for further clarification.

Attachments (please list):

Letter from Mr. McGuirk dated January 4, 2017 * Resolution Authorizing the Release of Interest of a Walkway Easement In Fox Glade P.U.D. Subdivision, Unit * Petition to Vacate Fox Glade Court Walkway Easement * Petition Reference Map

Recommendation/Suggested Action (briefly explain):

None

City of St. Charles Illinois
RESOLUTION NO. 2017-_____

**A Resolution Authorizing the Release of the Interest of the
City of St. Charles in the Walkway Easement
In Fox Glade P.U.D. Subdivision, Unit 1**

WHEREAS, the City of St. Charles approved a subdivision known as Fox Glade P.U.D. Subdivision, Unit 1 on August 4, 1969; and

WHEREAS, the Fox Glade P.U.D. Subdivision, Unit 1 was recorded at the Office of the Kane County Recorder on September 25, 1969 as Document No. 1149771; and

WHEREAS, a walkway easement was created in the Fox Glade P.U.D. Subdivision, Unit 1 across portions of Lot 5, Lot 6, Lot 13 and Lot 14 of that Subdivision; and

WHEREAS, the City of St. Charles constructed and continues to maintain a sidewalk on the walkway easement; and

WHEREAS, the City of St. Charles authorized and recorded four (4) indemnity letters with respect to Lot 5, Lot 6, Lot 13 and Lot 14 of that subdivision on February 13, 2013 as Document Nos. 2013K011816, 2013K011817, 2013K011818, and 2013K011819; and

WHEREAS, the City Council has determined that it is in the best interest of the City to release its interest, if any, in the walkway easement along Lot 5, Lot 6, Lot 13 and Lot 14 in said Subdivision, to remove the sidewalk and grade and seed the affected area and to release the indemnity agreements described herein.

NOW THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of St. Charles, Kane and DuPage Counties, Illinois as follows:

Section 1. That the City of St. Charles does hereby release the interest of the City of St. Charles in the walkway easement, created in the Plat described herein.

Section 2. That the City of St. Charles shall take any and all action necessary to vacate said walkway easement and to prepare and record any and all documents that may be necessary for that purpose.

Section 3. That the City of St. Charles shall remove the sidewalk from the easement and will grade and seed the affected area and will release the indemnity agreements created in the documents referenced herein.

Section 4. That the City Clerk is directed to record a duly certified copy of this Resolution in the Office of Recorder of Deeds of Kane County, Illinois.

Section 5. This Resolution shall be in full force and effect from and after its passage and approval pursuant to law.

PRESENTED to the City Council of the City of St. Charles, Illinois this ____ day of _____, 2017.

PASSED by the City Council of the City of St. Charles, Illinois, this ____ day of _____, 2017.

APPROVED BY THE Mayor of the City of St. Charles, Illinois this ____ day of _____, 2017.

MAYOR

CITY CLERK

COUNCIL VOTE:

Ayes: _____
Nays: _____
Absent: _____

LAW OFFICES

HOSCHEIT, MCGUIRK, MCCrackEN & CUSCADEN, P.C.

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Draft of January 4, 2017

January 4, 2017

Mr. Mark Koenen
City Administrator
City of St. Charles
2 East Main Street
St. Charles, IL 60174

RE: Walkway Easement – Fox Glade Subdivision

Dear Mark:

As the City Council has been made aware, there is a request by several owners of Fox Glade Subdivision, Unit 1, that a Walkway Easement which encumbers Lots 5, 6, 13 and 14 of Block 2 of Fox Glade Subdivision No. 1 be vacated by action of the City.

While I and City staff have addressed various issues arising out of this request, it is worthwhile to again provide a brief history of the “Walkway Easement”. The Plat of Subdivision for Fox Glade Subdivision, Unit 1 was approved in 1969 and recorded as Document No. 1149771 on September 25, 1969. In that Plat, a “Walkway Easement” of ten (10) feet is depicted in certain side yards of the above mentioned lots resulting in a twenty (20) foot walkway. Importantly, the Plat does not indicate for whose benefit the Walkway Easement was created. There is no additional language on the Plat itself that indicates to whom the easement is granted nor does it give any detail as to the owners’ responsibilities or the responsibilities of the easement grantee. It is also important to note that there is nothing on the Plat to indicate that the Walkway Easement in this subdivision was dedicated to the City. Examples have been brought before the Government Services Committee of other subdivisions in the City where the Walkway Easements were clearly dedicated.

An additional Grant of Easement was recorded as Document No. 1181795 on January 21, 1971 which creates “an additional walkway easement” to the owners of adjacent property to Lot 5 or Block 2 “to utilize the south 3.5 feet of the north 13.5 feet of the subject property as an additional walkway for purposes of transiting the subject property on foot”. The reference in that document states that this easement grant is to the “owners of property adjacent to the subject property”. This would seem to indicate that the intent of the walkway easement was to create easement rights in individual owners and was not a grant to the City.

Although the Walkway Easements were not granted to the City, the City assumed the responsibility of installing and maintaining sidewalks across the easement area sometime in the 1970’s. In January of 2013, the City Council approved Indemnity Agreements with respect to these four (4) lots primarily because the affected homeowners had concerns about their liability for public use of the walkways.

HMM&C

During the course of the discussions involving the request to eliminate this Walkway Easement, I and the City staff have endeavored to make it clear that the City can only release whatever interest it may have in the Walkway Easement. Furthermore, the City could remove the sidewalk and release the recorded documents which required the City to indemnify the lot owners from the liability. The City cannot, in my opinion, remove the Walkway Easement from the Plat of Subdivision or otherwise release whatever easement rights may have been provided to owners of adjacent property or the public as a whole.

Various residents have come before the City primarily from the Oaks Subdivision encouraging the City to take no action as their property is adjacent and they apparently believe that they have some easement rights.

An issue that was raised at the Government Service Committee Meeting was, as I understand it, the potential claim that a prescriptive easement exists because of the long continued use of the walkway. The concept of an easement by prescription is similar to adverse possession with respect to real property. In general, if an area has been used for a period of twenty (20) years continuously and subject to other elements, it can give rise to a prescriptive easement. My view is that such a claim is certainly possible based upon the facts and circumstances of this case and the period for which it has existed. Since the grant of additional easement described above appears to provide an easement right that inures to the general public or at least the owners of adjacent properties, the existence of the Walkway Easement on the Plat as well as the potential prescriptive easement are arguments that could be brought by other owners. However, that is not an issue that the City can sort out. If the owners feel that they have such rights, they can take the appropriate legal action to obtain a judicial determination of their rights.

Hopefully, the above is helpful. I want to emphasize that the City can only release whatever rights that it may have in the property which primarily seem to have arisen by virtue of the actions that were taken over a number of years. The City cannot vacate the Walkway Easement in total. Certainly a legal action can be brought by those maintaining that they have an easement right in the property. We have revised the proposed Resolution to make that clear.

If you have any additional questions or comments, or would like to discuss these issues prior to the next meeting, please let me know.

Very truly yours,
Hoscheit, McGuirk, McCracken & Cuscaden, P.C.

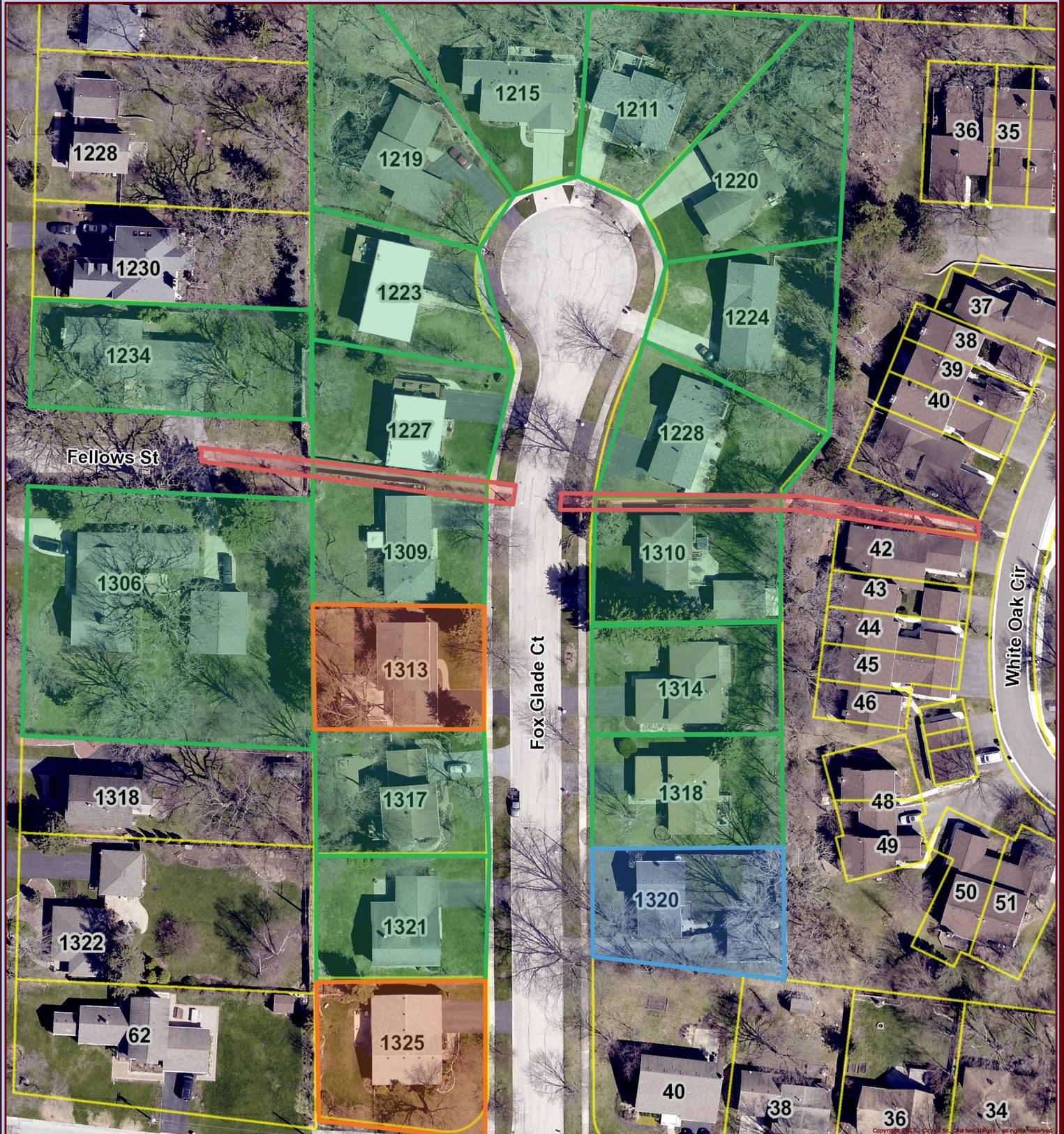
John M. McGuirk

JMM:lmk

Petition to Vacate Fox Glade Court Walkway Easement

Petition summary and background:	The four homeowners (Gary & Sherry Fox, Hilda Holm, Philip VanAcker and Jeff & Chris Carlson-Fox) that live along Fox Glade Court walkway easement are requesting the City of Saint Charles vacate the walkway easement due to reasons of disturbing the peace/nuisance, lack of privacy, security/safety concerns, devaluation of our properties, originally improperly platted and closeness/proximity of our homes to the actual walkway. We feel that there is a very nearby alternate route along Roosevelt Street that is the same distance that pedestrians can use for City neighborhood interconnectivity instead of this walkway that was placed on our private properties.
Action petitioned for:	We, the undersigned, are concerned nearby citizens who urge the City of Saint Charles to act now to close/vacate this Fox Glade Court walkway easement.

Printed Name	Signature	Address	Date
THOMAS J NOFTON		1220 FOXGLADE CT. STC	10.26.16
Michelle Fortenot		1211 Foxglade Ct Ste	10.27.16
Bryan Gyl		1224 Foxglade Ct	10.27.16
RON PAZDZIORA		1219 FOXGLADE CT	27 OCT 16
Philip Kuzniar		1223 Foxglade Ct	10/27/16
Mary Jane Bellezzo		1318 Foxglade Ct	10/27/16
Ken Robertson		1317 Foxglade Ct	10/27/16
Joe Fronze		1234 Ash St.	10/29/16
Glenn Eggert		1215 Fox Glade Ct	10/29/16
CURT MILLER		1306 ASH ST.	10/31/16
Margaret Burke		1314 Foxglade Ct	11/6/16
LAUREN BUTTS		1321 Foxglade Ct	11/8/17
Marie Balla	Wishes to remain neutral.	1313 Fox Glade Ct.	
Sandy Enockson	wishes to remain neutral.	1325 Fox Glade Ct.	
Jackie Schomer	could not contact	1320 Fox glade Ct.	
Gary + Sherry Fox	Residents living along walkway easement. Closure Applicants.	1309 Fox Glade Ct.	9-9-2016
Hilda Holm	↓	1228 Fox Glade Ct.	9-9-2016
Jeff + Chris - Carlson Fox	↓	1310 Fox Glade Ct.	9-9-2016
Philip Van Acker	↓	1227 Fox Glade Ct.	9-9-2016



Data Source:
 City of St. Charles, Illinois
 Kane County, Illinois
 DuPage County, Illinois
 Coordinate System: Illinois State Plane East
 Projection: Transverse Mercator
 North American Datum 1983
 Printed on: January 11, 2017 11:15 AM



0 42 83 Feet

GREEN = OK TO CLOSE
ORANGE = NEUTRAL
BLUE = UNREACHABLE

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