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MEMORANDUM

To: Ben Martig, City Administrator **VIA EMAIL ONLY**

From: Christopher M. Hood, City Attorney

Date: June 25, 2019

Re: Southbridge 1st Addition, Outlot A - Status

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City staff have requested that I provide a memorandum regarding the current status of Outlot A, Southbridge 1st Addition. A question has been raised whether Outlot A of Southbridge 1st Addition (the "property" or "Outlot A") is dedicated to the City of Northfield ("City") as park land. In drafting this memo, I have relied upon the City staff review and analysis of related documents. Such City staff review is contained in the City staff document summary attached hereto as Exhibit A. I have independently not reviewed most of the underlying documents referenced in the City staff summary at this point and have not been requested to do so, except I have reviewed the final plat and development agreement for Southbridge 1st Addition.

In reviewing the attached City staff summary, I agree with the City staff conclusion that Outlot A of Southbridge 1st Addition is not currently and has not been previously dedicated to the City for park purposes.

The reasons for this conclusion follow:

1. The City does not own the property nor control it other than for an undefined drainage and utility easement contained in the approved final plat.

2. The property has been zoned to allow private development since 2003 following annexation thereof.

3. The property has been privately owned the entire time dating back to 2003. At no time has the property been under City ownership.

4. The private property owner has been paying the property taxes on Outlot A and the current owner is up to date in payment of the same.

5. For the City to own Outlot A and have it be thereby dedicated for park purposes, the City would need a recorded deed evidencing that the City has fee title to the property. I am not aware of any such recorded deed conveying Outlot A to the City.

6. The City received park dedication fees and land for the Southbridge plat and the park dedicated land did not include Outlot A as park land in either the City Council approved development agreement or final plat. It appears that other outlots were instead later conveyed to the City by deed in 2004 and that Outlot A was not conveyed to the City at that time or at any time since, and there are no documents that have been provided to me providing any evidence to the contrary.

7. There was no stated requirement in the Council approved final plat or development agreement to convey Outlot A to the City for park purposes.

8. The City Council approved final plat and development agreement, as recorded in the County Recorder's Office, govern the relationship and are binding.

9. The amount of land and fees dedicated in the Council approved and executed development agreement appear to have met all stated requirements, without inclusion of Outlot A.

10. The property does not appear to have been included in the park dedicated land, and that lack of inclusion appears to have been intentional according to the City staff summary. The development agreement required 6.05 acres of park land to be dedicated.

11. The property has been zoned for future development under private ownership since 2012 when it was re-zoned N2. Prior to that dating to 2003, it was also zoned R3 for private development. The applicable zoning permits development of the property.

12. The only restriction on Outlot A other than the limitations contained in the applicable zoning is a blanket, undefined future drainage and utility easement over the entirety of Outlot A.

13. The existence of an undefined drainage and utility easement does not evidence park dedication. It evidences only an easement for drainage and utilities purposes for the City to place sewer, stormsewer and water pipes at some location on the property.

14. An easement only grants a right of use for the stated purpose for which the easement was granted and exists; in this case, the use is for utilities, not park purposes. An easement grants no other property interest and all other property interests remain with the private property owner.

15. The City staff summary of the underlying documents does not provide a regulatory basis upon which the City could assert park rights to or otherwise prohibit development of Outlot A if Outlot A is proposed to be developed in accordance with its underlying zoning and otherwise meets the City's Code requirements for such development.

16. If the City staff summary correctly states what is in the documentation, then Outlot A can be developed consistent with its zoning, and Outlot A has not been dedicated to the City

for park purposes. My review of the development agreement and plat are consistent with the City staff review and findings.

17. As for the vacation of an undefined, future drainage and utility easement on Outlot A and the replacement of the same with specific defined easements, this is a separate issue that does not involve whether the property was dedicated to the City for park purposes. The vacation of the easement and replacement of the same should be decided as any other vacations would by applying the legal standard that the vacation is in the interest of the public.

18. Finally, a blanket, undefined easement over an entire lot may not be enforceable and raises other potential legal issues. As a result, I recommend properly identifying the easement location and defining it in a new easement agreement on the property executed by the property owner and adopted commensurate with the vacation ordinance. It is my opinion that vacating the current undefined easement and correcting the same with new defined easements is in the public interest given the potential legal issues.

I hope that the foregoing is helpful for your consideration of this matter. If you have any questions, please contact me at your convenience at (651) 225-8840. Thank you.

CMH/kp

EXHIBIT A

City Staff Summary of Documents

OUTLOT A – SOUTHBRIDGE 1ST ADDITION

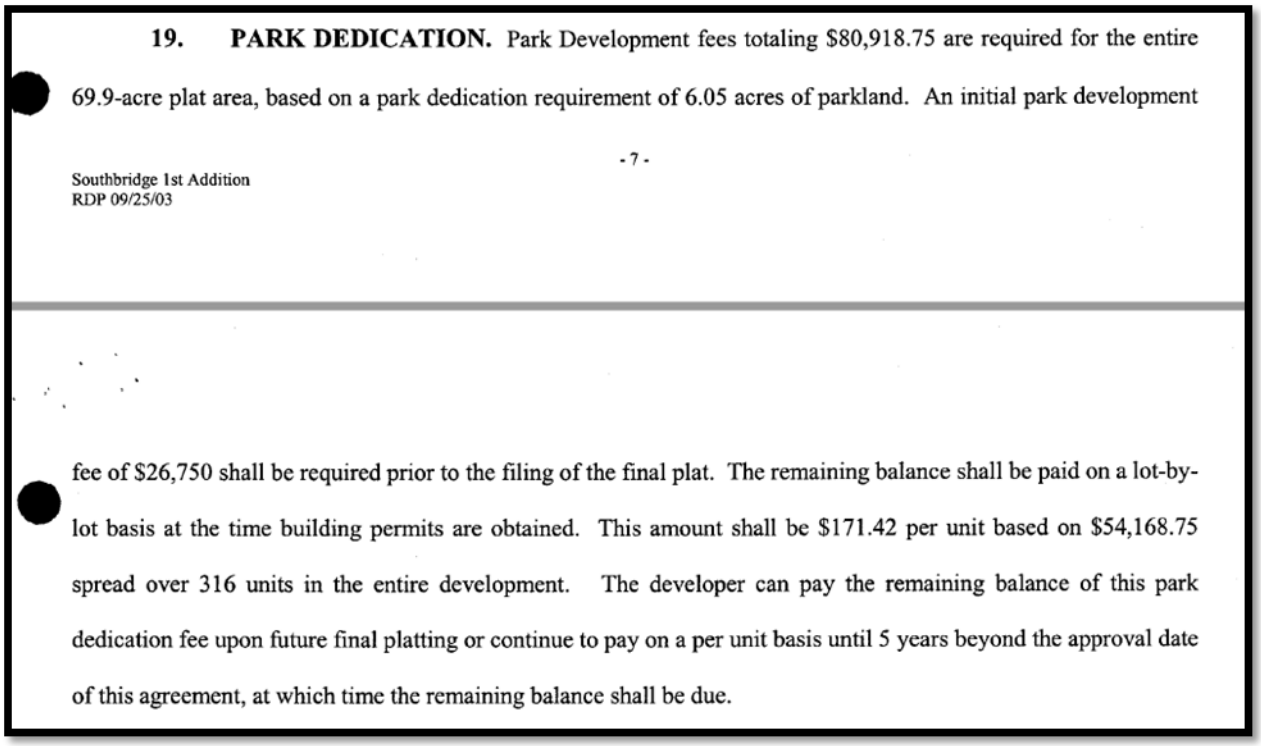
2003

- City Council Res. #2003-218 approved the Preliminary Plat for Southbridge Addition which listed Outlots A,B,C, and D as 12.1 acres of Parkland.

- City Council Res. #2003-262 approved the Final plat and Subdivision Agreement for Southbridge 1st. Addition.

- In 2003, site plans, grading plans, and spec sheets differed in identifying this property as park. Some documents showed it as park, others did not. Labeling was not consistent.

  NOTE: The Developer Agreement from 2003 did not identify the dedication of land for parks. The paragraph below was included in the agreement. It appears the combination of cash and the dedication of Outlots B,C,D and E were later determined to be the preferred means for meeting Park Dedication requirements, as evidenced by subsequent actions.



19. PARK DEDICATION. Park Development fees totaling $80,918.75 are required for the entire 69.9-acre plat area, based on a park dedication requirement of 6.05 acres of parkland. An initial park development

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Southbridge 1st Addition
RDP 09/25/03

fee of $26,750 shall be required prior to the filing of the final plat. The remaining balance shall be paid on a lot-by-lot basis at the time building permits are obtained. This amount shall be $171.42 per unit based on $54,168.75 spread over 316 units in the entire development. The developer can pay the remaining balance of this park dedication fee upon future final platting or continue to pay on a per unit basis until 5 years beyond the approval date of this agreement, at which time the remaining balance shall be due.

2004

- September 27, 2004 letter from Arcon to City. The letter makes clear the City and developer explored alternates to dedicating Outlot A to the City for more parkland, including developing with residential uses.

- December 9, 2004 from Arcon providing the City with deeds for Outlots B,C,D and E stating "*Unless I am mistaken all of the above information should put closure on the park dedication issue at Southbridge*".

- December 13, 2004 City Council accepts formal dedication of Outlots B,C,D and E to the City for park.

2008

- Resolution 2008-025, Council approves a minor subdivision known as Southbridge 2nd Addition. Staff report summary explains the area was previously platted by Arcon Development and the subdivision will allow the HRA to purchase a portion. Report also states the following:
    - *A park dedication fee for this development in the amount of $26,750 was also paid in May 2004, as well as a donation of 10.6 acres of park land, which is greater than the 6.05 acres required by ordinance. All park dedication requirements have been fulfilled.*

2013

- The City Council adopted Resolution 2013-020, releasing Arcon from the Development Contract dated October 6, 2003.

Additional Facts:

- The area platted as Outlot A was considered for parkland or open space in the early days of the development of Southbridge. In 2004, correspondence identifies consideration of alternatives, including residential development.
- The Southbridge development required 6.05 acres of parkland dedication and 10.6 acres were dedicated with Outlots B,C,D, and E.
- The land was not dedicated to the City
- The land was not deeded to a homeowners association
- The property has remained in private ownership
- A private interest proposing to re-subdivide Outlot A via a condo-plat and develop townhomes

- Further, we have found no evidence the land owner agreed to a permanent “no-build” status for the parcel.

Based on researching records, including the most current information available, it appears the weight of the evidence is in favor of resolving the City determined Outlot A would not be parkland.