

A Special Meeting of the Sylvan Lake City Council was held on Tuesday, January 22, 2008; opening at 7:01 p.m. Mayor Hungerman presided.

Present: Hungerman, Lorenz, Maurina, Wiegand

Absent: Shepp

Also Present: City Manager Martin, Clerk Clippert and City Attorney Bibeau

### Approval of Agenda

Moved by Lorenz, seconded Maurina, to approve the agenda as presented.

Yes: All

No: None

MOTION CARRIED

### Discussion of Lakeview Consent Agreement/Lawsuit

**L2-001-08**

Wiegand announced he just reviewed the slide presentation an hour ago and he disagrees with many things in it. The presentation was not voted on by city council. He is disturbed by it. He feels council should be harmonious with the residents.

Martin presented the power point presentation. He shared the goal is not to say who is right, just to provide information. He provided a review of history, why the consent judgment came about, along with a better understanding of 1977 consent judgment.

In 1967 Ordinance 78 was adopted to regulate docks. Quit Claim Deeds were sold in the 1960s and 1970's by Sam Warwick. These deeds did not comply to the Plat Act. In 1974 the city filed a lawsuit against Sam Warwick, the Quit Claim Deed owners and the Lakeview homeowners, to clarify ownership. After discussing the outcome possibilities, both parties decided to compromise and settle the case and enter into a Consent Judgment (CJ). This avoided having one party lose all rights to the lakefront property that was under dispute. The CJ gave the city permanent easement for the roadway and to maintain the property and shoreline.

The area described in the CJ was divided into 28 dock spaces of equal size. There were 19 spaces for Lakeview homeowners and 9 non-Lakeview dock spaces. All have to comply with the dock rules and ordinance. In the mid 1990's a house that had been built on a vacant piece of property was sold. The property owner thought they should get a dock space with their property similar to the others on Lakeview. At the time, the City disagreed. Later, the city reviewed it's position and agreed that it was the spirit of the CJ that Lakeview property owners have a dock space with their property. The City made the change in the dock policy that allowed the new house to maintain a dock space similar to the others on Lakeview.

It was also stipulated in the CJ that there would only be one boat with more than 10 hp at each dock. There were to be no picnic tables, benches, parking or fire pits on Lakeview between the street and shoreline. In 1979 Judge Roberts established that the Lakeview homeowners have the right to pass on their riparian rights, dock space, when the property is sold.

Because of the increase usage of docks and administration of them, in 1987 city council adopted a \$10 fee to help offset a small portion of the cost for administration and enforcement of the ordinance. In 1988 Lakeview residents formed a committee to discuss with the city how to repair the seawall. Money for the repair was to be assessed to the Lakeview homeowners to share in the cost. Later the Lakeview residents decided they didn't want to be assessed for the repair to the seawall and they would take care of it themselves at a later date.

It was obvious that the fee did not cover very much of the cost of administrating and enforcing the ordinance. In 2005 fees were increased to \$365 (\$260 for the dock space without the additional tags and fees). In 2007 council amended the ordinance stating fees are charged for the maintenance of parks, administration and regulation of rules. Martin provided costs to maintain parks & recreation, which is part of administration and enforcement. Typically in a year the expense is \$130,000 and income from a 190 dock holders and sharers is about \$65,000.

Within the last year, City Council had legal council review the consent agreement. It was revealed and advised to enforce the consent agreement clause where it states the restriction of no more than one boat with a motor in excess of 10 hp per dock space, or to amend the consent judgment. Council felt the need to enforce all aspects of the consent judgment and sent a letter to all Lakeview dock holders.

Martin shared council views, stating City Council agrees with the consent judgment, and feels fees set are reasonable. Council agrees with enforcing or amending the agreement for one boat with a motor in excess of 10 hp. They agree with maintaining the shoreline, and the seawall for the eight non-Lakeview dock spaces. They feel Lakeview dock owners are responsible for their seawall. Martin pointed out some advantages of having the Lakeview property classified as park property. It allows the speed limit to be put at 15 mph and allows having the gates in the summer.

This concluded the presentation from the City.

Gaylen Curtis represented the Lakeview owners and provided her viewpoint in looking at the litigation. She stated the city sued the Lakeview owners because of the Warwick deeds. At some point the city amended the lawsuit saying if they don't own the land then they should have a permanent easement. Through the consent judgment the city got the permanent easement and the rest of the judgment states what the rights and responsibilities are. When the city settled with the residents, the city felt it was only with those named in the litigation. The Judge ordered that the docks go with the land. The dock was given to the vacant lot owner. They are now asking the Judge to clarify the fees and responsibility of the seawall. They want to abide with the

agreement, but they feel a Judge needs to say what it is. Curtis' personal feeling is no fees should be imposed. The limitation with one boat; this issue is not before the court. She feels the city will make this an issue. Lakeview homeowners don't want disharmony. They will live with whatever the Judge states. They would love to resolve this.

#### Meeting Open to the Public for Brief Comment

Mary Sax reviewed what she recalled from 1977. The Lakeview homeowners were afraid the City was going to make Lakeview a park like Ferndale and provide parking, have slides, a merry-go-round, and night lighting. Sax stated she was on the settlement committee and the quid pro quo was they agreed to the City having easement and the City maintaining the seawall.

Nichol Menuck asked for clarification of the deeds and who owned the property first. Martin explained there was no property description, it was platted as public property, road right of way. Warwick just wrote up the documents.

Al Payson made a comparison with Ferndale, stating they have the same easement yet the dock spaces on Ferndale are 20' in wide and 36' on Lakeview. Ferndale homeowners can't sell their docks with the property, but Lakeview can. He feels the City made a compromise in 1977 with the Lakeview residents. He stated Ferndale homeowners pay the dock fee and he feels Lakeview should also be the same fee. He pointed out the \$260 fee doesn't include weed control.

Gaylen Curtis stated they are limited by the judgment and she feels they should not argue what is fair.

Lorenz contributed the city has made three offers and each of them were turned down. He asked the Lakeview homeowners to bring something to City Council so they don't have to litigate this. Bob Monument replied the Lakeview homeowners have made three offers. Bibeau stated they have not.

Jill Naeger asked what the cost would be to replace seawall for one dock space. Martin stated the city currently has seawall which is steel and concrete and he estimated \$40-\$50 per foot for concrete and \$150 per foot for steel.

Rick Vanker stated his property description shows his property going across the road and out into the lake. It is platted. It says the City has easement for the road. Martin responded he may have a quit claim deed that states that, but it was not platted that way.

Bud Krause stated he judges people by their actions not their words. He feels in sending out the letter of enforcement of the one boat with 10 hp is not an action to settle. He feels he can't trust what City Council saying. Lorenz informed him City Council would like settle.

Hungerman stated his opinion and shared that Lakeview residents filed this lawsuit and they are saying the city isn't abiding by the consent judgment. The city has had attorneys look at the

judgment and they pointed out the clause of one boat with 10hp and stated it needed to be followed or the judgment should be amended. Lorenz added the city would have liked to settle the lawsuit before the letter went out. Maurina agreed the city wants to settle this.

Jennifer Hill asked if the city is looking for input at this meeting or a settlement.

Paul Bibeau, City Attorney, stated two offers have been made by the Lakeview homeowners. One for \$10 fees and the other is a long revised consent judgment document. City Council feels they have made a very reasonable offer and that was the \$260 fee.

Carol Vanker expressed this is the first time she has heard that Lakeview homeowners are responsible for the seawall. She questioned if the property isn't theirs then why should they be responsible for the seawall. Lorenz stated it is a very constrictive issue.

Curtis feels the city is not taking a clear position. They don't want to say they own it because then they would have to maintain the seawall.

Phil Thomas, President of the Sylvan-Otter Association, questioned if this lawsuit wasn't settled, if it would affect the ruling of the application for docks spaces which is before the DEQ. Martin doesn't feel it should.

Martin asked Curtis to call him.

Discussion of AT&T Franchise Agreement

**C3-002-08**

Martin explained this document was delivered last Friday. Dave Albery has a copy. Martin explained the City has 15 days to respond. He stated it is being reviewed by Bibeau and Albery.

Loren Maurina provided the set date to respond is a drop dead date. He urged the City to meet again to finalize the agreement. He stated there are blanks which need to be filled in with percentage amounts. The three other communities, West Bloomfield, Orchard Lake and Keego Harbor have already signed the agreement and got 5% for the franchise fee and 2.8% for the PEG fees.

Discussion of Generator for Lift Station

**SW-001-08**

Martin provided he would like to get a generator for the lift station on Garland/Telegraph. There

have been a number of power outages during rain storms. By the time a generator is brought in, it is almost flooding in the area. He is recommending a natural gas generator. He stated behind the building there is already a gravel pad for it. He doesn't want to have to rely on S&B Plumbing to rent theirs every time there is a power outage. They have been very good getting there as quickly as possible, but it would be good to have a permanent one there. He is estimating the cost at \$60,000. He is getting prices and is talking to contractors and DTE. The lift station at Beverly and Warwick will also need one.

Discussion of City Hall Renovations

**M-001-08**

Martin has been working with the G-H Group to look at less expensive ways to maximize space and provide protection at City Hall. He would like to see the Police Department in the basement and a conference/meeting room upstairs. Preliminary figures are around \$80,000. This is just for discussion and the G-H Group will come to a meeting to discuss with City Council.

ADJOURNMENT

Moved by Lorenz, seconded Maurina, to adjourn the regular City Council Meeting.

Yes: All

No: None

**MOTION CARRIED**

The meeting was adjourned at 8:28 p.m.

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Dennise Clippert, City Clerk