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MEMORANDUM

DATE: June 12, 2015

TO: Jim Streit, Senior Engineer
Sarah Vanags, Planner

FROM: James E. Haney, City Attorney

RE: Terrene - Use of Public Sewer Easement in The Cottage Company Short Plat

You have asked for my opinion as to whether the developer of the Terrene subdivision may use the public utility easements in The Cottage Company Short Plat. For the reasons set forth in this Memorandum, the answer is yes.

As I understand it, the developer of the Terrene subdivision needs to extend public sewer service to the plat and has proposed to do so by using public utility easements in the adjacent development known as The Cottage Company Short Plat. Upon completion, the sewer lines constructed by the developer of Terrene will be conveyed to the City and become part of the City's public sewer infrastructure. The owners of at least some of the lots in The Cottage Company Short Plat have argued that the developer of Terrene should not be allowed to use these public easements to benefit its private development. The question is whether the City can allow the developer of Terrene to do so.

The beginning point for any analysis of this issue is the language of the easement or easements on The Cottage Company Short Plat. The Cottage Company Short Plat was approved by the City of Redmond in 2003 and was recorded under King County Recording No. 20030828900001. The following language appears on Sheet 1 of the recorded short plat:

CITY OF REDMOND UTILITY EASEMENT PROVISIONS:

THE OWNERS OF LAND HEREBY SUBDIVIDED DO HEREBY GRANT AND CONVEY TO THE CITY OF REDMOND, ITS SUCCESSORS AND ASSIGNS (THE GRANTEE) A PERPETUAL EASEMENT FOR UTILITIES INCLUDING WATER, SANITARY SEWER, AND STORM DRAINAGE, POWER, TELECOMMUNICATIONS, CABLE TV, NATURAL GAS AND OTHER SUCH UTILITIES AS MAY BE DEVELOPED, TOGETHER WITH

THE RIGHT OF INGRESS AND EGRESS THERETO ACROSS ADJACENT LANDS OF GRANTOR FOR THESE PURPOSES. THIS EASEMENT AND CONDITIONS SHALL BE A COVENANT RUNNING WITH THE LAND AND SHALL BE BINDING UPON THE OWNERS, SUCCESSORS, HEIRS, AND ASSIGNS OF THE LAND HEREBY SUBDIVIDED. THE CITY OF REDMOND, ITS SUCCESSORS AND ASSIGNS SHALL HAVE THE RIGHT WITHOUT PRIOR INSTITUTION OF ANY SUIT OR PROCEEDINGS OF LAW SUCH TIME AS MAY BE NECESSARY, TO ENTER UPON SAID EASEMENT FOR THE PURPOSE OF INSTALLING, REPLACING, OPERATING, MAINTAINING, REPAIRING, ALTERING, OR RECONSTRUCTING SAID UTILITIES OR MAKING ANY CONNECTIONS THERETO WITHOUT INCURRING ANY LEGAL OBLIGATION OR LIABILITY THEREFOR; PROVIDED THAT SUCH SHALL BE ACCOMPLISHED IN A MANNER THAT IF EXISTING PRIVATE IMPROVEMENTS ARE DISTURBED OR DESTROYED THEY WILL BE REPAIRED OR REPLACED TO A CONDITION SIMILAR AS THEY WERE IMMEDIATELY BEFORE THE PROPERTY WAS ENTERED UPON BY THE GRANTEE. THE GRANTOR SHALL RETAIN THE RIGHT TO USE THE SURFACE OF THE EASEMENT IF SUCH USE DOES NOT INTERFERE WITH THE INSTALLATION OR USE OF SAID UTILITIES. HOWEVER, THE GRANTOR SHALL NOT ERECT OR MAINTAIN BUILDINGS OR STRUCTURES, INCLUDING BUT NOT LIMITED TO DECKS, CARPORTS, HOT TUBS, PATIOS, AND RETAINING WALLS WITHIN THE EASEMENT. ALSO, THE GRANTOR SHALL NOT PLANT TREES, SHRUBS, OR VEGETATION HAVING ROOT PATTERNS WHICH MAY CAUSE DAMAGE TO OR INTERFERE WITH SAID UTILITIES. ALSO, THE GRANTOR SHALL NOT DEVELOP OR BEAUTIFY THE EASEMENT AREA(S) IN SUCH A WAY TO CAUSE EXCESSIVE COST TO THE GRANTEE PURSUANT TO ITS RESTORATION DUTIES HEREIN. THE EASEMENT AREA(S) HEREBY GRANTED IS/ARE LEGALLY DESCRIBED AS FOLLOWS:

1. A STRIP OF LAND 10 FEET WIDE. THIS EASEMENT IS GRAPHICALLY DEPICTED HEREIN ON SHEET 2 OF 8 DETAILS "A" & "B", AND SHEET 3 OF 8, IDENTIFIED AS CITY OF REDMOND UTILITY EASEMENT.
2. STRIPS OF LAND 2.5 FEET WIDE ALONG EACH SIDE OF INTERIOR LOT LINES AND 5 FEET WIDE ALONG EXTERIOR LOT LINES IDENTIFIED AS "CITY OF REDMOND UTILITY EASEMENT" AND DEPICTED ON SHEETS 5 AND 6 OF 8.
3. THOSE EASEMENT LOCATIONS GRAPHICALLY DEPICTED AND IDENTIFIED AS CITY OF REDMOND UTILITY EASEMENT HEREIN ON SHEETS 3 AND 4 OF 8.

A property owner may dedicate, grant, or convey an easement by setting forth the conveyance on a plat map. RCW 58.08.015. Here, the owners of the land contained within The Cottage Company Short Plat clearly intended to and did grant a utility easement to the City of Redmond over the areas described above. The easement is broad in that it contemplates the installation of all manner of utilities, from the traditional water, sewer, and storm drainage utilities owned and operated by the City to the power, telecommunications, cable TV, natural gas and “other such utilities” owned and operated by others. There is also no indication on the face of the plat that the easement is limited in any way to serving any particular lot or area of the City and thus it must be presumed that it was intended to allow for sanitary sewer service to any lot or area that the City might choose to provide service to.

In this case, the developer of Terrene intends to install sewer lines that will be conveyed to, owned and operated by the City of Redmond. Those living within The Cottage Company Short Plat have objected to this installation arguing, as I understand it, that the City should not allow the Terrene developer to use the easement because the use is for the benefit of a private development. This argument, while understandable as the perspective of property owners through whose property the easement runs, is not well taken under Washington law. “Sanitary sewers and sewage treatment facilities are, by their very nature, both public necessities and conveniences.” *Town of Steilacoom v. Thompson*, 69 Wn. 2d 705, 709, 419 P.2d 989 (1966). A public sanitary sewer improvement does not lose its public character simply because some (or one) property owners may be greatly benefited by the improvement while others are only slightly or negligibly so. *Id. See, also, In re Bellevue*, 62 Wn.2d 458, 383 P.2d 266 (1963). The fact that the City of Redmond will own, operate, and maintain the sewer improvements after the developer installs them makes them public improvements, and the fact that they will be constructed by and will greatly benefit the Terrene development does not alter this public nature. The City may therefore allow the developer to use the public easement for the construction if the City believes that this is the appropriate course for the sewer lines to take.

I understand that the owners of lots in The Cottage Company Short Plat are concerned that the proposed sewer lines will go through the yards of individual lots and will cause the removal of significant, long-standing landscaping. The easement anticipates this. The easement language provides for restoration of the landscaped areas after the utilities are installed, provided that the restoration cannot involve the installation of “trees, shrubs, or vegetation having root patterns which may cause damage to or interfere with such utilities.”

For the reasons set forth above, my conclusion is that the developer of Terrene may use the public sewer easements in The Cottage Company Short Plat to install the public sewers necessary to serve Terrene as long as the City determines that this is an appropriate route for the sewers. I am happy to answer any further questions you may have.