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MEMO

TO: Nine Mile Creek Watershed District Board of Managers
FROM: Randy Anhorn
DATE: August 30, 2019
RE: Edina Streambank Project Maintenance Easements

Background

While the work associated with the Edina Streambank stabilization and restoration project was predominantly on public land, there were few project areas that required work on private property. The project areas that were on private property were to repair and stabilize stream bank erosion that threatened to continue to degrade the integrity of the banks and encroach onto adjacent property(ies). In each case, NMCWD entered an agreement with the private property owner that provided temporary for access and construction, and a commitment by the property owner to convey an easement for the maintenance to NMCWD once the project was complete.

As the project has wrapped up, staff has follow up to secure maintenance easements on nine parcels from eight different property owners (one property owner included two parcels).

While the District has acquired and recorded maintenance easements on five parcels, staff is having difficulty finalizing the easements for the remaining four parcels. The challenge, in each case, is working with the bank holding a mortgage on the parcel; standard language in mortgage agreements requires the bank to consent to any easement to be recorded on a deed. While the property owners have been working with us and are willing to execute the maintenance easements, we hare having a very difficult time working with the banks to secure consent to the easement. In all cases the bank divisions we are working with are located out of state.

To say that the process of trying to contact the right person, have someone call you back, determine the documentation each lender requires for their review, and compile that information has been frustrating for both staff and the property owner is an understatement. In fact, in some cases, we have found discrepancies in the public records on who actually holds the mortgage. It is getting to the point that staff is questioning the cost-effectiveness of getting the record maintenance easements.

NMCWD may wish to consider the alternative of simply securing a private maintenance agreement with particular property owners when the administrator determines that obtaining the recorded easement is not cost-effective. The maintenance easement would not run with the property – i.e., be enforceable on its face against a subsequent purchaser – but we would include language requiring the current property owner to advise NMCWD in the event of a pending sale and provide NMCWD with contact information for the incoming purchase, such as would allow staff to discuss maintenance with the new owners. Staff does not see this as a big problem.

Action

The managers should consider authorizing the administrator to elect, in his discretion, to seek a long-term private maintenance agreement with the property owners instead of having a recorded maintenance easement on the property deed.