

PARK LAKE TOWNHOUSES

During the June 9, 2014 Council meeting, concerns and questions arose regarding the City's willingness to continue performing maintenance of the water main facilities within the Park Lake Townhouse development. This report is in response to those issues.

ISSUE:

The City has historically performed repair activities on the privately owned water lines within the Park Lake Townhouse development, despite having no written agreement to do so. In early 2014, it was determined that this practice is not consistent with other developments, and an effort was made to contact the property managers for the developments advising them of the City's intent to discontinue such repair services. This change in policy has raised concerns from within the homeowner's associations of the affected properties.

HISTORY:

The Park Lake Townhouse developments are a phased series of townhouses that began in the early 1970s. The plat for the Phase I development included an easement over the entire Phase I portion for utilities that provided permission for the City to perform maintenance on those utilities. However, the plat does not appear to obligate the City to perform such maintenance. The ensuing plats for the remaining phases did not include any easement provisions. Nonetheless, the City performed repair activities as needed throughout all of the phases without record of written agreement to do so. The City has estimated that costs for water line repairs within the private development have exceeded \$173,000 for the time period from 1996 to the present. No records are available prior to 1996. Despite the history of providing repair services to the private water lines, the City's water division realized in late 2013 that such service was not consistent with other developments throughout the City. On January 6, 2014, an e-mail was sent to the management companies for the various phases of the Park Lake Town Houses, notifying them of the intent to discontinue such service. These e-mails were directed to:

Park Lake Townhomes I:	Tower Property Management
Park Lake Townhomes II, Inc.:	Sentry Management
Park Lake Woods:	Property First, Inc. (e-mail sent January 24, 2014)
Park Lake Grove Condo Association:	Arthur David Properties
Park Lake Villas:	Greystone Management

Water Division personnel attempted to contact each of the management entities by telephone during the week following delivery of the notice to try to set appointments at each of the respective phases to provide copies of any drawings the possesses to show approximate locations of water lines and valves, and to delineate the location where public right-of-way ends and private property begins. Two of the property management companies returned phone calls. Water Division staff met with Sentry Management, and the property management company for Park Lake Groves cancelled.

On May 27, 2014, the City received an "Initial Demand" letter from Wean & Malchow, PA, representing Park Lake Villas, requesting the City to reinstate repair and maintenance of the utilities. Subsequently,

the Park Lake Woods Condo Assoc., Park Lake Grove Condo Assoc., and Park Lake Townhouse Phase II provided notice to enjoin the action taken via the demand letter.

During the June 9, 2014 Council Meeting, Ms. Barbara Nelen, President of the Park Lake Villas Homeowner's Association, requested reconsideration of the policy and expressed concerns regarding the process.

STATUS OF OTHER DEVELOPMENTS:

Of particular concern is whether the Park Lake developments are unique in having private lines maintained by the City, or if this has been a common practice. Research indicates there are only two other similar developments: Lake Faith Condominiums and Lake Colony Estates. Both developments have water and sewer facilities within their private property boundaries, and the City has historically provided repair services on those facilities. However, The Lake Colony Estates has reimbursed the City for each of the repair events. The Lake Faith Condominiums will likely be addressed in the near future, after a more thorough examination of any development agreements between the City and the development. To date, it is believed that a similar situation exists with Lake Faith as has been in existence with Park Lake.

ALTERNATIVES:

It appears that there are several alternatives for the City to move forward:

- 1) Alternate 1: The City could continue to provide repair services as has been done in the past.
- 2) Alternate 2: The City could continue to proceed with divesting itself of any and all maintenance/repair responsibilities on water and sewer facilities that are not within the public right-of-way.
- 3) Alternate 3: The City could continue to provide maintenance/repair services, but with new agreements and easements to provide legal access and liability releases. It would be appropriate for the City to charge for maintenance/repair services as is done with Lake Colony Estates.

ANALYSIS:

Alternate 1 does not appear suitable for the City to continue to provide maintenance/repair services on private lines, despite having done so in the past. Providing such services is not consistent with other developments. For example, the City does not provide such services for The Enclave, Visconti, Gem Lake or the Quayside, just to name a few. Furthermore, with no platted easements, the City is taking on significant liability to enter onto private property to maintain a facility that is not legally a public facility. Alternate 2, while believed to be legally correct and appropriate, is to say the least, unpopular with the Park Lake developments, and may be subject to litigation. However, such action relieves the City from significant potential liability, and would be consistent with the level of services provided elsewhere throughout the City.

Alternate 3 is basically a compromise between the first two alternates. The City should obtain easements and liability releases for the water and sewer facilities, and negotiate an agreement wherein the City would be reimbursed for such maintenance/repair actions. This would enable the City to

continue to provide the services, yet still be consistent with the level of services provided elsewhere in the City.

RECOMMENDATION:

City staff recommends the pursuit of Alternate 3, where the City will continue to maintain and repair the water and sewer lines, even though they are on private property. But that should only happen if suitable easements and agreements are negotiated to provide legal access and liability protection for the City. Furthermore, in the interest of fairness with respect to other similar developments, a means for reimbursement of costs should be included in a negotiated agreement.