

ENROLLED ORDINANCE 169-79

APPROVE EASEMENT TO ST ANTHONY CONGREGATION FOR TWO
DRIVEWAYS AND SANITARY SEWER LATERAL ACROSS
WAUKESHA COUNTY LAKE COUNTRY TRAIL

WHEREAS, in July of 1996 Waukesha County purchased 0.271 acres of land from St Anthony's Congregation for the purpose of constructing and maintaining the Lake Country Trail, and

WHEREAS, at the time of purchase two driveways from Oakton Road to separate parking areas belonging to St Anthony Congregation existed as well as a sanitary sewer lateral, and

WHEREAS, St Anthony Congregation has contacted Waukesha County to reconstruct driveways, and

WHEREAS, it was determined that no easement previously existed for the driveways, or the sanitary sewer lateral, and

WHEREAS, it is necessary to provide an easement to St Anthony Congregation for the purpose of the two driveways and the sanitary sewer easement over Waukesha County property, and

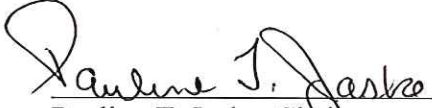
WHEREAS, as this easement corrects the previous purchase agreement it is desirable to waive the normal easement fee of \$120.00.


THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that an easement between St Anthony's Congregation and Waukesha County which permits the placement and maintenance of two driveways and the operation and maintenance of a sanitary sewer lateral on the Waukesha County Lake Country Trail property, is on file with the Department of Parks and Land Use, and is hereby approved.

BE IT FURTHER ORDAINED that the Parks and Land Use Director may execute said easement on behalf of Waukesha County.

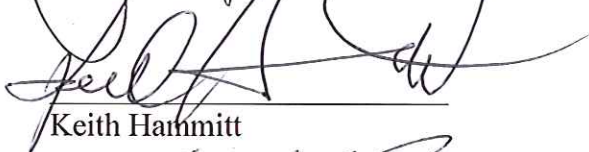
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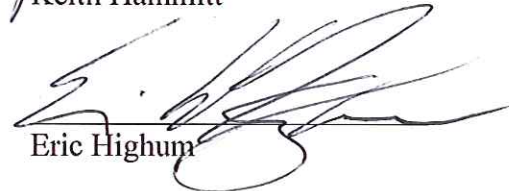
Presented by:
Land Use, Parks, and Environment Committee


Pauline T. Jaske, Chair

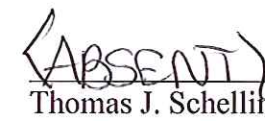

Jim Batzko


Jennifer Grant



Keith Hammitt


Eric Highum

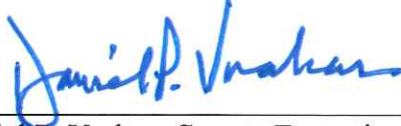

William Mitchell


Thomas J. Schellinger

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 12/16/14, 
Kathleen Novack, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: X
Vetoed: _____
Date: 12-22-14, 
Daniel P. Vrakas, County Executive

Document No.

**JOINT DRIVEWAY AND SANITARY
SEWER EASEMENT AGREEMENT**

Return to:
Waukesha Co. Dept. of Parks and
Land Use
Attn: Duane Grimm
515 W. Moreland Blvd, Rm. AC230
Waukesha, WI 53188

DELT 0813998002

Parcel Numbers

THIS JOINT DRIVEWAY AND SANITARY SEWER EASEMENT AGREEMENT (the *Agreement*) is between ST. ANTHONY CONGREGATION (*Parcel A Owner*) and WAUKESHA COUNTY (*Parcel B Owner*).

RECITALS:

A. Parcel A Owner is the owner of certain real property located in Waukesha County, Wisconsin, as described on the attached Exhibit A and referred to on the exhibit and in this Agreement as *Parcel A*.

B. Parcel B Owner is the owner of certain real property located in Waukesha County, Wisconsin, as described on the attached Exhibit B and referred to on the exhibit and in this Agreement as *Parcel B*.

C. Parcel A Owner and Parcel B Owner wish that driveways (the *Driveways*) be constructed on those portions of Parcel B more particularly described on the attached Exhibit C and referred to on the exhibit and in this Agreement as the *Driveway Easement Property*.

D. Parcel A Owner further needs an easement over, across and under those portions of Parcel B more particularly described on the attached Exhibit C and referred to on the exhibit and in this Agreement as the *Sanitary Sewer Easement Property* for the purpose of maintaining a private sanitary sewer access from Parcel A to the public sewer conveyance system located in Oakton Road.

E. Parcel B Owner is willing to create an easement over the Driveway Easement Property to enable Parcel A Owner to use the Driveways, as well as an easement over, across and under the Sanitary Sewer Easement Property to allow the Parcel A Owner to maintain a connection to the public sewer conveyance system, under the terms of this Agreement.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Grant.** Parcel B Owner grants a nonexclusive easement and right-of-way to Parcel A Owner and Parcel A Owner's successors and assigns as the owner of Parcel A to use the Driveways and the Driveway Easement Property as joint driveways for ingress and egress to Oakton Road from Parcel A. Parcel B Owner further grants to Parcel A Owner and Parcel A Owner's successors and assigns as the owner of Parcel A a nonexclusive easement and right-of-way to construct, reconstruct, and maintain within the Sanitary Sewer Easement Property a private sanitary sewer line accessing the public sewer conveyance system under Oakton Road.

2. **Permitted Users.** The driveway easement granted in Section 1, above, may be used by the Parcel A Owner and its tenants, employees, customers, and invitees in common with Parcel B Owner and its tenants, employees, customers, and invitees.

3. **Initial Construction Costs.** Parcel A Owner may construct the Driveways at its sole expense. Parcel A Owner shall obtain any and all permits necessary for the construction of the Driveways. Parcel A Owner shall construct the Driveways in accordance with all applicable Federal, State and Local Codes. In addition, any parts of the Driveways that intersect with the Lake Country Trail located on Parcel B shall be constructed in accordance with specifications approved by Parcel B Owner.

4. **Maintenance and Costs of Driveways.** Parcel A Owner shall bear all expense of maintaining, repairing, and removing snow and debris from the Driveways. If Parcel A Owner fails to maintain or repair the Driveways, Parcel B Owner may, but shall not be required to, perform the maintenance or repair, and upon demand, Parcel B Owner shall have an immediate right to reimbursement from Parcel A Owner, together with interest at the rate of 5% per year on the unpaid amount and all reasonable attorney fees and other collection costs incurred by Parcel B Owner. Repairs and maintenance shall be performed at such times and in such a manner as are mutually agreeable to the parties. If repairs or maintenance necessitate the closure of the Lake Country Trail, Parcel A Owner shall notify Parcel B Owner not less than 48 hours prior to the closure. Any closure of the Lake Country Trail must have a detour route approved by Parcel B Owner established prior to closing. The detoured Lake Country Trail must be properly marked to clearly identify the detour route to trail users.

5. **Maintenance and Costs of Sanitary Sewer.** Parcel A Owner shall bear all expenses of maintaining, repairing, replacing and removing the sanitary sewer. Parcel A Owner shall restore the surface disturbed by any construction or maintenance within the Sanitary Sewer Easement Property to the condition existing prior to the disturbance. Restoration to the Lake Country Trail located on Parcel B shall be in accordance with specification approved by Parcel B. Owner. If Parcel A Owner fails to restore the Sanitary Sewer Easement Property, Parcel B Owner may, but shall not be required to, perform the restoration, and upon demand, Parcel B Owner shall have an immediate right to reimbursement from Parcel A Owner, together with interest at the rate of 5% per year on the unpaid amount and all reasonable attorney fees and other collection costs incurred by Parcel B Owner. If repairs or maintenance to the sanitary sewer or restoration activities necessitate the closure of the Lake Country Trail, Parcel A Owner shall notify Parcel B Owner not less than 48 hours prior to the closure. Any closure of the Lake Country Trail must have a detour route approved by Parcel B Owner established prior to closing. The detoured Lake Country Trail must be properly marked to clearly identify the detour route to trail users.

6. Indemnity. Parcel A Owner shall indemnify, defend and hold harmless Parcel B Owner and all of its departments, agencies, boards, officers, employees and agents from all liability, suits, actions, claims, costs, damages, and expenses of every kind and description, including court costs and legal fees, for claims of any character, including liability and expenses in connection with the loss of life, personal injury, or damage to property, brought because of any injuries or damages received or sustained by any person, persons, or property on account of or arising out of the use of Parcel B by Parcel A Owner or its agents, contractors, subcontractors, invitees, or employees.

7. Insurance. Parcel A Owner shall maintain in effect at all times during the term of this Agreement a policy of commercial general liability insurance naming Parcel B Owner and all of its departments, agencies, boards, officers, employees and agent as the insured, to insure against injury to property, person, or loss of life arising out of Parcel A Owner's use, occupancy, or maintenance of the Driveway Easement Property, Sanitary Sewer Easement Property or the Driveways with limits of coverage that are at levels customarily maintained by businesses in the community in which the Driveway Easement Property and Sanitary Sewer Easement Property are located. For each year in which this easement is in effect, Parcel A Owner shall provide Parcel B Owner with a copy of the insurance policy endorsement or certificate of insurance showing that Parcel B Owner and the other parties have been added as additional insureds. The policy shall contain a supplemental endorsement covering contractual liability voluntarily assumed by the insured under this Agreement. Insurance required of Parcel A Owner under this Agreement shall be written by companies duly qualified to do business in the State of Wisconsin and shall be satisfactory in all respects to Parcel B Owner. Parcel A Owner shall deliver to Parcel B Owner copies of the policies or certificates evidencing the existence and amounts of the insurance with loss payable clauses satisfactory to Parcel B Owner. No such policy shall be cancelable or subject to reduction of coverage or modification except after 30 days' prior written notice to Parcel B Owner. At least 30 days before the expiration of Parcel A Owner's policies, Parcel A Owner shall furnish Parcel B Owner with renewals or binders of the policies, or Parcel B Owner may, but shall not be required to, order such insurance and charge the cost to Parcel A Owner. Parcel A Owner shall not do or permit anything to be done that will invalidate the insurance policies furnished by Parcel A Owner. Parcel B Owner may from time to time require that the policy limits of any or all such insurance be increased to reflect the effects of inflation and changes in normal commercial insurance practice. Failure to maintain and provide proof of required insurance shall constitute unauthorized interference within the meaning of Section 8 below and shall constitute grounds for termination in accordance with the terms of that Section.

8. Equal Rights of Use/Noninterference with Trail/Consistent Uses Allowed. Parcel A Owner and Parcel B Owner shall have equal rights of ingress and egress over the Driveways and shall take no action to prevent the other party's enjoyment of such rights. Notwithstanding the foregoing, the use of the Driveway Easement Property and Sanitary Sewer Easement Property by Parcel A Owner, its agents, contractors, subcontractors, invitees, or employees shall not interfere with the public's right to access and use the Lake Country Trail located within Parcel B. Any unauthorized interference by Parcel A Owner or its agents, contractors, subcontractors, invitees, or employees with the public's free use of the Lake Country Trail which continues for a period of 24 hours after written notice to Parcel A Owner from Parcel B Owner shall authorize the unilateral termination of this Agreement by Parcel B Owner through the recording with the Waukesha County Register of Deeds of a written termination of easement document that need only be executed by Parcel B Owner and which references termination pursuant to this Section 8 and attaches a copy of the written notice required hereby. Parcel B Owner reserves the right to use the Driveway Easement Property and Sanitary Sewer Easement Property for purposes that will not interfere with Parcel A Owner's full enjoyment of the easement rights granted in this Agreement. For the avoidance of any doubt, the public's right to access and use the Lake Country Trail, and Parcel B Owner's use, repair, replacement or maintenance of the Lake Country Trail located within Parcel B are expressly reserved and shall not constitute interference with any easement rights granted herein.

9. **Covenants Run with Land.** All of the terms and conditions in this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by Parcel A Owner and Parcel B Owner and their respective successors and assigns. The easements granted under Section 1 of this Agreement are easements appurtenant to Parcel A and may not be transferred separately from, or severed from, title to Parcel A. Furthermore, the benefits of the easements granted under this Agreement shall not be extended to any properties other than Parcel A without the consent of Parcel B Owner. The specific parties named as Parcel A Owner and Parcel B Owner in this Agreement, and each of their respective successors and assigns as fee simple owners of Parcel A and Parcel B, respectively, or any portion of Parcel A or Parcel B, shall cease to have further liability under this Agreement with respect to facts or circumstances first arising after the party has transferred its fee simple interest in Parcel A or Parcel B, respectively, except, however, for obligations that accrued during the party's period of ownership of title.

10. **Non-Use.** Non-use or limited use of the easement rights granted in this Agreement shall not prevent Parcel A Owner from later use of the easement rights to the fullest extent authorized in this Agreement.

11. **Governing Law.** This Agreement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.

12. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties and, except as set forth in Sections 7 and 8 above, may not be terminated or changed except by a written document executed and acknowledged by all parties to this Agreement and duly recorded in the office of the Register of Deeds of Waukesha County, Wisconsin.

13. **Notices.** All notices to either party to this Agreement shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the other party at that party's last known address. If the other party's address is not known to the party desiring to send a notice, the party sending the notice may use the address to which the other party's property tax bills are sent. Either party may change its address for notice by providing written notice to the other party.

14. **Invalidity.** If any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

15. **Waiver.** No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.

16. **Enforcement.** Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Agreement, either to restrain or prevent the violation or to obtain any other relief.

17. **No Public Dedication.** Nothing in this Agreement shall be deemed to be a gift or dedication of any portion of the easements granted under this Agreement to the general public or for any public purpose whatsoever. Parcel A Owner and Parcel B Owner agree to cooperate with each other and to take such measures as may be necessary to prevent the dedication to the public of the Driveways, whether by express grant, implication, or prescription, including, without limitation, the posting of "Private Drive" or "No

Trespassing” signs. Such measures shall not, however, unreasonably interfere with the easement rights granted under this Agreement.

Dated: _____

ST. ANTHONY CONGREGATION (Parcel A Owner)

By:

Name:

Title:

Dated: _____

WAUKESHA COUNTY (Parcel B Owner)

By:

Name: Dale R. Shaver

Title: Director, Department of Parks and Land Use

ACKNOWLEDGMENT

STATE OF WISCONSIN
COUNTY OF WAUKESHA

Personally came before me this ____ day of _____, 2014 the above named _____, to me known to be the person who executed the foregoing instrument and acknowledged the same.

(Name of notary public)
Notary Public, State of Wisconsin
My commission expires: _____

ACKNOWLEDGMENT

STATE OF WISCONSIN
COUNTY OF WAUKESHA

Personally came before me this ____ day of _____, 2014 the above named Dale R. Shaver, Director of the Waukesha County Department of Parks and Land Use, to me known to be the person who executed the foregoing instrument and acknowledged the same.

(Name of notary public)
Notary Public, State of Wisconsin
My commission expires: _____

This document was drafted by Waukesha County Principal Assistant Corporation Counsel Erik G. Weidig

EXHIBIT A

(Legal description of Parcel A)

Parcel 2 of Certified Survey Map 10853 being a remapping of Certified Survey Map No. 7487, together with those lands located in that part of the NE ¼ of the NE ¼ of Section 24, Town 7 North, Range 18 East in the Town of Delafield, Waukesha County, Wisconsin.

EXHIBIT B

(Legal description of Parcel B)

All that part of the Northeast ¼ of Section 24, Town 7 North, Range 18 East, Town of Delafield, County of Waukesha, State of Wisconsin, bounded and described as follows:

Commencing at the Northeast corner of said Section 24; thence South 00° 06' 26" East, along the East line of said section, 1323.36 feet to the center line of Oakton Road; thence North 89° 07' 37" West, along said center line 200.00 feet to the point of beginning; thence continuing North 89° 07' 37" West along said center line 585.02 feet to the West line of the owners land; thence North 00° 06' 26" West, 53.00 feet; thence South 89° 07' 37" East, 585.93 feet; thence South 00° 52' 23" West, 53.00 feet to the point of beginning.

EXHIBIT C

(Legal description of Driveway Easement Property)

Upper Level Entrance Drive

Being a 50 foot wide vehicular and pedestrian easement for ingress and egress over and across county-owned lands, including an existing Public Recreational Trail, purpose to which is to provide access to Oakton Road, a Public Roadway, all being located in the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 24, T.7 N., R.18 E., Township of Delafield, Waukesha County, Wisconsin, being more particularly described as follows:

Commencing at the Northeast corner of Section 24, thence S $00^{\circ}06'26''$ E., on and along the East Line of said Section, 1323.27 feet to the center line of Oakton Road, thence N. $89^{\circ}07'37''$ W. on and along the Center Line of said road as described by Waukesha County Department of Transportation Project No. 93-2765 (15), 200.00 feet; thence N. $00^{\circ}52'23''$ E., 53.00 feet to the North Right-of-Way Line of Oakton Road and South Line of Certified Survey Map No.10853; thence N. $89^{\circ}07'37''$ W., on and along said South Line of Certified Survey Map, 212.00 feet to the Center Line of the following described 50 foot wide easement, said point also being the **Point of Beginning** of the lands herein described;

thence continuing N. $89^{\circ}07'37''$ W. on and along the South Line of Certified Survey Map, 25.00 feet; thence S. $00^{\circ}52'23''$ W., 20.00 feet; thence S. $89^{\circ}07'37''$ E. and parallel to the Center Line of Oakton Road, 50.00 feet; thence N. $00^{\circ}52'23''$ E., 20.00 feet to the South Line of said Certified Survey Map; thence N. $89^{\circ}07'37''$ W. on and along said South Line of Certified Survey Map, 25.00 feet to the **Point of Beginning**.

Lower Level Entrance Drive

Being a 50 foot wide vehicular and pedestrian easement for ingress and egress over and across county-owned lands, including an existing Public Recreational Trail, purpose to which is to provide access to Oakton Road, a Public Roadway, all being located in the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 24, T.7 N., R.18 E., Township of Delafield, Waukesha County, Wisconsin, being more particularly described as follows:

Commencing at the Northeast corner of Section 24, thence S $00^{\circ}06'26''$ E., on and along the East Line of said Section, 1323.27 feet to the center line of Oakton Road, thence N. $89^{\circ}07'37''$ W. on and along the Center Line of said road as described by Waukesha County Department of Transportation Project No. 93-2765 (15), 200.00 feet; thence N. $00^{\circ}52'23''$ E., 53.00 feet to the North Right-of-Way Line of Oakton Road and South Line of Certified Survey Map No.10853; thence N. $89^{\circ}07'37''$ W., on and along said South Line of Certified Survey Map, 380.00 feet to the Center Line of the following described 50 foot wide easement, said point also being the **Point of Beginning** of the lands herein described;

thence continuing N. $89^{\circ}07'37''$ W. on and along the South Line of Certified Survey Map, 25.00 feet; thence S. $00^{\circ}52'23''$ W., 20.00 feet; thence S. $89^{\circ}07'37''$ E. and parallel to the Center Line of Oakton

Road, 50.00 feet; thence N. 00°52'23"E., 20.00 feet to the South Line of said Certified Survey Map ; thence N. 89°07'37"W. on and along said South Line of Certified Survey Map, 25.00 feet to the Point of Beginning.

(Legal description of Sanitary Sewer Easement Property)

Sanitary Sewer Easement

Being a 20 foot wide sanitary sewer easement for Sanitary Sewer purposes over, across and under county-owned lands, including an existing Public Recreational Trail, purpose of which is to provide Private Sanitary Sewer access to the Public Sewer Conveyance System located in Oakton Road, all being in the Northeast ¼ of the Northeast ¼ of Section 24, T.7 N., R.18 E., Township of Delafield, Waukesha County, Wisconsin, Center Line being described as follows:

Commencing at the Northeast corner of Section 24, thence S 00°06'26"E., on and along the East Line of said Section, 1323.27 feet to the center line of Oakton Road; thence N. 89°07'37"W. on and along the Center Line of said road as described by Waukesha County Department of Transportation Project No. 93-2765 (15), 537.00 feet; thence N. 00° 52'23"E., 33.00 feet to the Point of Beginning of the following described Utility Center Line ; thence continuing N. 00° 52'23"E. on and along said Center Line, 20.00 feet to a point on the South Line of Certified Survey Map No. 10853, said point also being the Point of Termination of said Center Line.

Easement width being measured 10 feet normal to and parallel with the above described center line.