



LAKE COUNTY FOREST PRESERVES
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Preservation, Restoration, Education and Recreation

DATE: December 4, 2017

MEMO TO: Craig Taylor, Chair
Operations Committee

Carol Calabresa, Chair
Planning Committee

FROM: Randall L. Seebach
Director of Planning and Land Preservation

REQUEST: Provide policy direction regarding the Village of Volo's notification that it intends to install lighting improvements along a portion of the Millennium Trail at Singing Hills Forest Preserve.

STRATEGIC DIRECTION SUPPORTED: Leadership

FINANCIAL DATA: There is no financial impact at this time.

BACKGROUND: In February 2005, the Lake County Forest Preserve District (District) entered into an Intergovernmental Agreement (IGA) with the Village of Volo (Village) and the Lakes Region Sanitary District (Sanitary District) regarding the exchange of easement rights for a proposed sanitary sewer, water main and trail. The terms of the IGA included:

- 1) The District conveying to the Village a 1/2-mile long 40 foot wide perpetual non-exclusive easement (Utility Easement) for the installation, maintenance and operation of a water main on a portion of Marl Flat Forest Preserve.
- 2) The District conveying to the Sanitary District a perpetual non-exclusive easement over, across and through the Utility Easement for the sole purpose of installing, maintaining and operating a sanitary sewer main.
- 3) The Village conveying a perpetual non-exclusive easement to the District for the purpose of constructing, maintaining and operating a public trail corridor as part of the District's Millennium Trail (Trail Easement).
- 4) The Village providing the engineering, permitting and construction of a 1.5-mile section of the Millennium Trail in accordance with District's general plans and specifications.

There have been two amendments to the IGA, both providing time extensions to the Village for completion of the trail construction. The trail has since been completed and opened for public use.

The District recently received notification from the Village of its plans to provide beautification improvements along Fish Lake Road. The project includes improvements within the Fish Lake Road right-of-way, but, as currently proposed, also includes improvements within a 1/4-mile portion of the trail that is within the District's Trail Easement. Those improvements include the installation of 13 light poles and underground electrical cable within the Trail Easement. The light poles will be 12 feet high and made of wood.

The Trail Easement is non-exclusive and, in the granting document, the Village expressly reserved certain rights, including the right to install underground, crossing utilities. However, the Village did not expressly reserve the right to install above-ground, parallel lights or other utilities.

Both the Operations and Planning Committees reviewed a Policy Direction during their November meeting and recommended that the issue be tabled until staff collected additional information from the District's risk pool (PDRMA) regarding whether the addition of lighting along the trail will expose the District to greater tort liability risk by encouraging public use of the trail beyond the posted hours of intended use. Staff has since received a letter from PDRMA's legal counsel stating that the District is likely not exposed to greater risk if it posts additional signage along that section of trail identifying the intended hours of use. Regarding the potential injuries to trail users from conditions of the trail, PDRMA's legal counsel emphasizes that under the Tort Immunity Act, the District has a duty to maintain public property *only* for those persons who are both intended and permitted users of the property. By posting signage (both along the trail and on the District's website) that specifically limits the hours of intended use from 6:30am to sunset, the District is effectively identifying the hours of intended use and does not have any legal duty to maintain the property for anyone attempting to use the property outside of the identified hours of operation, even if lighting is present. The installation of lighting does not alter the posted hours of intended use.

Based on the response from PDRMA and input from the November committee meetings, staff is seeking concurrence from the committees to allow the installation of the lighting under the following conditions: a) the Village sends a formal letter to the District requesting such approval and stating that the purpose of the lighting is for beautification only and not because the trail is intended to be used at night; b) the lighting must be installed with a timer that automatically turns off the lights at a time agreed to by the District and Village; c) the Village will reimburse the District for all costs associated with posting additional signage; d) the Village will be responsible for all maintenance, repairs and replacements associated with the above- and below-ground portions of the lighting; and e) the above conditions are included in an amendment to the easement agreement between the District and the Village that granted the Trail Easement.

REVIEW BY OTHERS: Executive Director, Chief Operations Officer, Director of Finance, Corporate Counsel