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To: Leelanau County Board of Commissioners
From: Deborah Allen, County Administrator
Date: April 11, 2023
Subject: Myles Kimmerly Park/Maple Valley Nursing Home Easement Expiration

Background:

The County Board of Commissioners had previously owned the land and structures where the Maple Valley Nursing Home is located, on Burdickville Rd., adjacent to the Myles Kimmerly Park. The County sold the land to the current owner of the nursing home; however, two septic tanks and associated fields are located across Burdickville Rd. to the south of the Home, and are underground within the park. Legal counsel had drafted an "agreement to grant license" (attached) of park land, which went into effect April 29, 2008, and will expire this month.

One of the key components in revitalizing and updating Myles Kimmerly Park is to establish a paved loop trail within that section of the park, which is bisected by Burdickville Rd. The proposed siting of this trail crosses directly over the top of the Nursing Home's septic tanks and fields. Additionally, the nursing home owners have been aware of the impending expiration for a few years, and have notified the County they are working towards a solution within their property boundaries.

Following is the legal opinion from Counsel Tim Perrone of Cohl, Stoker & Toskey on this issue:

"I have reviewed the documents you provided. The MVNH holds an irrevocable License to use the County Park property for its sewage treatment system for 15 years, through April 29, 2023. After that date, the License is revocable by the County at will, upon 30 days' notice. Thus, the License does not expire, but continues until the County decides to revoke it.

As the arrangement is not a Lease, there is no need to formally extend it. Rather, the County may simply withhold revocation for as long as it desires, e.g., in order to accommodate the needs of MVNH to transition to an on-site sewage system on its own property. The County could give notice of revocation on a date certain in the future, e.g., four months out or longer, or simply continue to monitor the situation as to MVNH's progress and then act accordingly. The MVNH may be given time for the complete transition to a new system and for the abandonment of the current system, i.e., removal and restoration of the site.

If the County desires a monetary incentive to hasten the transition, then the License would have to be amended with the MVNH's approval, or otherwise revoked, with a new arrangement entered into. It was unclear what the County's timeline was with regard to the construction of the paved pathway. As the pathway is intended to traverse the easement area, the sewage system should first be fully abandoned and the site restored.

I recommend that the County and the MVNH coordinate their schedules as to the abandonment of the sewage system and the construction of the pathway, and determine a reasonable date for formal revocation of the License."