

**RESOLUTION 12-03**  
**2165 Mailand Road Parkland Diversion**

WHEREAS, the Saint Paul Parks and Recreation Commission (“Commission”) is an appointed body established to advise the Mayor and City Council on long-range and city-wide matters related to Parks and Recreation; and

WHEREAS, Section 13.01.1 of the City Charter requires that the Commission review all requests to divert or dispose of park property and to present a recommendation to the City Council; and

WHEREAS, the City of Saint Paul owns park land located at 2192 Londin Lane (“Park Property”) that abuts Mailand Road on its southernmost boundary. The Park Property is maintained by the Department of Parks and Recreation (“Department”) as the Highwood Hills Recreation Center, as shown on Attachment A; and

WHEREAS, Tong Pao Yang and Fu Lee, owners of 2165 Mailand Road, which adjoins the Park Property on its southwestern borders, recently purchased the property, which does not have a driveway, but uses an existing gravel road which parallels the entire 315 feet of their eastern property boundary, from the Mailand Road right-of-way to the northeast corner of their lot; and

WHEREAS, Yang and Lee have proposed the purchase of a non-exclusive driveway access easement which would follow the existing gravel road and this would be a disposal of an interest in parkland and therefore subject to the charter requirements; and

WHEREAS, it would be an extreme financial hardship to install a driveway on the owners’ parcel, due to existing constraints such as trees, steep topography, and potential wetlands; and

WHEREAS, the City only uses said easement area occasionally for maintenance purposes, because the fields are not programmed and are only used by the neighborhood for informal games; and

WHEREAS, the Department has determined that the granting of a non-exclusive driveway access easement for this purpose will not negatively impact the Park Property and recommends Commission support for the request;



NOW, THEREFORE BE IT RESOLVED, that the Saint Paul Parks and Recreation Commission concurs with the request to dispose of an interest in the said Park Property located adjacent to the eastern boundary of 2165 Mailand Road through a non-exclusive easement to Tong Pao Yang and Fu Lee, and in accordance with City Charter Section 13.01.1 recommends approval by the Saint Paul City Council.

---

Adopted by the Saint Paul Parks and Recreation Commission on April 11, 2012:

Approved:

Yeas	<u>7</u>
Nays	<u>0</u>
Absent:	<u>2</u>

Resolution 12-03

Attested to by:



Staff to the Parks and Recreation Commission



CAPRA Accreditation

An Affirmative Action Equal  
Opportunity Employer



National Gold Medal Award

Project Basics	
<p><b>Project Name</b>  <b>Owner(s)</b>  <b>Address</b>  <b>Contact Information</b></p>	<p><b>1265 Malland Non—exclusive Easement in Highwood Hills Park, 2192 Londin Lane</b>                  Tong Pao Yang and Fu Lee (Owners)                  1265 Malland Road                  Saint Paul                  Represented by: Chad Lemmons, Atty.651-224-3781</p>
<p><b>Action being requested</b>  <i>purchase, donation, encroachment, parkland dedication, diversion, street vacation, swap, other land transaction related</i></p>	<p>Parkland Diversion, i.e., approval to grant a <u>non-exclusive easement</u> for use of a driveway in Highwood Hills Park.</p> <p>Steep topography, trees and potential wetlands make installation of a driveway on the Owners parcel an extreme financial and technical hardship, therefore the Owners are requesting use of an existing gravel drive on parkland that goes to their house. Driveway access is needed before the Department of Safety Inspections (DSI) will grant a permit to bring the house up to occupancy code. Longterm access will be necessary as well. This does not change existing park conditions and no new built structure will result</p>
<p><b>Why is the action being requested?</b></p>	<p>Owners can't afford to develop a driveway on their land due to topography, potential wetlands, trees and cost (and may in fact be impossible due to current policies). They need access to get a permit to address code violations.</p>
<p><b>Is the action proposed permanent or temporary?</b></p>	<p>Permanent, for access only, and not to change any existing parks uses. If the owners agree to the easement and to pay upfront fee and easement costs, the Parks Director could grant them a temporary right-of-entry permit to begin construction sooner.</p>
<p><b>Property type</b>  <i>neighborhood park, regional park, downtown park, plaza, trail, recreation center, private ownership/public usage, passive open space, bluff preservation</i></p>	<p>Neighborhood park and adjacent recreation center on school property.</p>
<p><b>Land area</b>  <i>square feet &amp; acres</i></p>	<p>The park is 8.87 acres or 386,377.2 square feet. The estimated easement land area is around 4,500 square feet, or about 1/10 th of an acre, just the actual driveway. The easement area comprises about 1.2% of the entire park area.</p>
<p><b>Land value &amp; basis</b>  <i>assessed value, appraisals, comps</i></p>	<p>An appraisal will be done as part of the process, if the owners agree to our terms to purchase the easement and pay for the appraisal and administration costs. The assessed value of the park averages \$3.00 / square foot. Assuming 4,500 square feet X \$3/SF, this comes to \$13,500 for the easement area.</p>



<b>Land characteristics/special features</b> <i>proximity to significant natural feature, trail connections, water resources, natural areas, buildings, fields, play equipment, courts, other significant uses on/near property</i>	The land for the proposed easement is a gravel drive, on existing parks open space, and is used to access fields. The area of the park adjacent to the drive is not formally programmed, but is parks open space.
<b>Adjacent land uses</b> <i>commercial, industrial, residential, etc.</i>	Low to high density residential, school district, Ramsey County government
<b>Applicable laws, codes, policies, guidelines</b> <i>City, state, county, watershed districts, etc.</i>	City Charter Section 13.01.1; Parkland Diversion Process Guidelines; Ramsey Washington Metro Watershed District policies against removing or building in wetlands, and to replace at 2:1 ratio if impacted, DSI requirements of driveway access prior to issuance of building permit.
<b>Other department, agency involvement</b>	City Attorney, Financial Services/Real Estate
<b>Processes</b> <i>parkland dedication, parkland diversion, community engagement</i>	Parkland diversion
<b>Legal issues (if any)</b> <i>judgments, liens, deed restrictions, grant agreements</i>	None known

<b>Public Purpose</b>	
<b>How does the proposed action impact the affected park property and Saint Paul's park system?</b>	There is little or no impact as this easement is non-exclusive, therefore, Parks has use of the easement area and gravel driveway as needed. Park uses will not be changes, nor will structures be added to the easement area.
<b>How does the proposed action fit with adopted plans/policies?</b> <i>Comprehensive Plan, Parks and Recreation System Plan, Regional Parks Policy and System Plan, SCORP, Legacy Plan, watershed districts</i>	This action will not result in change of use of existing parkland, Since it is currently a gravel driveway being used by Parks to access the fields.
<b>Does the proposed action impact any other City initiatives/actions?</b> <i>redevelopment, plan implementation</i>	No.
<b>How has the community been engaged?</b> <i>communications, public notices, meetings, District Councils, special interest groups,</i>	Feedback that we are aware of from others in the immediate community suggests support for a solution provided that the basic process of parkland diversion is not compromised.

<i>elected and appointed officials, web posting, outstanding issues, support</i>	
<b>Are there any precedents for the proposed action, and does the proposed action set any precedents for future decisions?</b>	The Park Commission approved a diversion for Holly Totlot last year due to extreme hardship – no access to side of towhome and gas meter, this easement is in line with that decision to consider diversion for cases of hardship, such as access in this case. It is technically unfeasible and financially difficult for the owners to install another drive on their property due to trees, topography, and potential wetlands.
<b>What are the budgetary impacts of the proposed action?</b>	The funds from the easement sale will go to the Parkland Replacement Fund to comply with City ordinance that mandates replacement of parkland that is diverted or disposed of.
<b>Are there any other issues or concerns?</b>	The owners were not informed of the access issue when they bought the home, and only became aware of it when they applied for a permit to bring the house up to code.
<b>STAFF RECOMMENDATION</b> <i>Include key points of recommendations</i>	Grant a 4,500 square foot (approximate), permanent, non-exclusive driveway access easement that is paid off over a 5 year period to the owners of 2165 Mailand Road along the east side of their property, and a short term right-of-entry temporary easement for code compliance construction purposes, if they agree in advance to pay for an appraisal, survey, and OFS Real Estate Department administration fees.
<b>Attachments</b> <i>timeline, plans, designs, correspondence, purchase agreements, maps, appraisals, sketches, photos, codes, laws, policies</i>	St. Paul City Charter, Section 13.01.1; Parkland diversion policy; Outline of City's position on easement proposal, process and terms; Ramsey Co. GIS map of parcel & area with easement area sketched in; photos of parcel & gravel drive easement area.

**Checklist for all land transactions/decisions**

- ✓ The land transaction/decision is consistent with the Parks and Recreation System Plan, Comprehensive Plan, and other relevant planning documents
- ✓ The land transaction/decision would have a neutral or positive impact on meeting existing/future demand for parkland.
- If the decision has a budgetary impact, funding is available to cover the cost of the action and any ongoing maintenance needs
- The action would enhance the parks and recreation system
- ✓ There is community and/or institutional support for the decision
- ✓ There is a clear understanding of how the decision impacts the future of the parks and recreation system
- ✓ The action is consistent with the applicable decision principles outlined in the Parks and Recreation Vision Plan:
  - Furthering Parks' role as the champion of health and wellness
  - Is a catalyst for private-sector investment
  - Exemplifying environmental leadership
  - Addressing lifecycle and operational costs
  - Helping connect people, parks, trails, and open spaces
  - Supporting a City-wide system of parks and recreational facilities



**Sec. 13.01.1. - Disposal or diversion of park property.**

Lands which may have been heretofore acquired by any means or which may hereafter be acquired by any means for park purposes shall not be diverted to other uses or disposed of by the city except in the following manner. "Park purposes" shall include, but not be limited to mean, playground, trail, parkways, open space and any other recreational purpose.

- (A) The Saint Paul Parks Commission, or if no parks commission exists, then another committee established pursuant to [section 3.01.8](#) of this Charter, shall be asked to review the proposed diversion or disposal and submit its recommendation to the city council.
- (B) After receiving the recommendation of the commission or committee, a public hearing shall be conducted by the city council for the purpose of considering the proposal and the recommendation. Notice of the hearing shall be published at least ten (10) working days prior to the hearing, and all interested persons shall be given an opportunity to present their views.
- (C) The council may, by resolution adopted by at least two-thirds of the total council, authorize the diversion or disposal in the event it is determined to be in the best interests of the public to do so. The council shall require that additional park lands be acquired to replace those lands diverted or disposed. Consideration shall be given to replacing park land within the same district planning council area and to replacing lands with similar lands to maintain the balance within the park system.
- (D) The council shall obtain from a qualified independent appraiser an appraisal of the market value of the park lands to be diverted or disposed and in the event the city receives less than the appraised market value the council shall allocate funds from the capital budget to equal that deficiency.
- (E) The net proceeds or funds received or allocated, and interest earned thereon, from the diversion or disposal of park lands shall be maintained in a separate fund and shall be used only for the purpose of acquiring additional park lands.
- (F) All land acquired by the city by deed, dedication or otherwise, containing a restriction on the title which limits the city's use of the property for park purposes only, may not be disposed of by the city in the manner provided in this section.

*(Ord. No. 17825, § 1, 5-2-91; C.F. No. 94-1339, § 1, 10-12-94)*



**GUIDELINES**  
**FOR THE DIVERSION OR DISPOSAL OF**  
**PARK LAND IN THE CITY OF SAINT PAUL**

**January, 2006**

City park land is a highly valued public asset. To protect from the loss of park land, the City established a mechanism for replacing this land when it is sold or otherwise used for non-park purposes. Chapter 13.1.01 of the Saint Paul City Charter provides for the diversion or disposal of city park land by resolution of the City Council. Following are guidelines for initiating such diversion or disposal.

**I. WHO MAY REQUEST THE DIVERSION OR DISPOSAL OF CITY PARK LAND?**

Owners of property abutting city park land, or other interested parties wishing to acquire or use city park land, including parkway right-of-way, for non-park purposes may petition the City for a diversion or disposal.

**II. WHAT IS THE COST TO THE PETITIONER?**

- A. Appraisal – \$900 minimum if acquired by the City. (See Item III.E. for clarification)
- B. Land Value – fair market value as determined by an independent real estate appraisal

Payment for the appraised market value of the park land may be in cash, or by conveyance to the City of additional land determined by the Real Estate office to be of equivalent value to the existing park land being disposed of or diverted. The land provided by the petitioner also must be acceptable to Parks and Recreation.

- C. Administrative fee

Base Fee:	\$250
Percentage Fee:	10% of appraised value of park land diverted

Petitioners shall pay the greater of the Base Fee or Percentage Fee up to a maximum of \$1,000.

### **III. WHAT DOES THE DIVERSION/DISPOSAL PROCESS ENTAIL?**

- A. An initial inquiry is made to the Public Works Real Estate office to determine if diversion or disposal would apply. If a diversion applies, Real Estate asks Parks and Recreation to determine if the park land is appropriate and acceptable for diversion or disposal. If not appropriate, Real Estate informs the inquiring party and the matter ends.
- B. If Parks and Recreation determines the park land is appropriate for diversion or disposal, Real Estate sends the inquiring party the diversion process guidelines and petition form. The petition form is completed by the inquiring party (the petitioner) and submitted to the Real Estate office.
- C. Real Estate reviews the petition; prepares an estimate of the cost of the park land replacement process, including appraisal fee, value of land to be diverted or disposed of, and administrative fee; and communicates this information to the petitioner. If the petitioner wishes to proceed with the diversion process, Real Estate forwards the petition to Parks and Recreation for review. Staff from the Public Works permitting section and the License, Inspections and Environmental Protection (LIEP) office may also review the petition.
- D. If city staff determine that the petition may proceed, Parks and Recreation presents a resolution recommending approval of the diversion to the Parks and Recreation Commission, a citizen advisory body. The Commission's recommendation is then forwarded to the City Council.
- E. Real Estate obtains an independent appraisal of the value of park land to be diverted or disposed of, and communicates the value to the petitioner. The petitioner may also obtain an appraisal of the park land from a licensed real estate appraiser who meets the City's appraisal requirements. (Contact Real Estate for this information.)
- F. If the petitioner agrees to all terms and conditions of the diversion, including the value of the park land, a date for a public hearing before the City Council is scheduled and notification (at least two weeks prior to the hearing) is published in the Legal Ledger. The petitioner and other interested parties, including owners of properties that may be affected by the diversion or disposal, are notified and given an opportunity to voice their approval or objection at the hearing.
- G. The City Council conducts the public hearing at which it either: 1) approves the diversion or disposal as recommended; 2) approves the diversion or disposal with amendments (e.g., added conditions); 3) denies the diversion or disposal; or 4) lays the proposal over for a later hearing.
- H. If the resolution is approved by the City Council:



- 1) Real Estate sends the petitioner(s) an acceptance form, including the approved resolution and any terms and conditions that must be satisfied prior to finalizing the diversion or disposal of park land. Terms and conditions typically include payment of all costs and submission of any required documents (e.g., easements, deeds, licenses, agreements).
- 2) The petitioner signifies acceptance of the terms and conditions of the resolution by signing the acceptance form and returning it to the Real Estate office. The acceptance form must be received within 60 days following approval of the diversion resolution by the City Council.
- 3) When all terms and conditions have been met, Real Estate executes the applicable licenses, easements or deeds to the petitioner. Real Estate also accepts any documents conveyed by the petitioner to the City. The City then files all easements and deeds with the Ramsey County Registrar of Deeds.
- 4) Failure by the petitioner(s) to return the acceptance form within the 60-day time limit, pay the applicable fees and comply with all terms and conditions set forth in the resolution, may result in the resolution being declared null and void by the City Council via a subsequent resolution.

#### **IV. HOW LONG DOES THE PROCESS TAKE?**

The processing time for a petition will vary depending on complications that may arise, but petitioners should expect approximately 90 days from filing of the petition to the date of the public hearing, with an additional 30 to 90 days for completion of the compliance and recording of documents.

#### **For questions or more information, please contact:**

Department of Public Works  
Technical Services Division – **Real Estate Office**  
1000 City Hall Annex  
25 W. Fourth St.  
Saint Paul, MN 55102  
651-266-8850

Saint Paul Parks and Recreation  
300 City Hall Annex  
25 W. Fourth St.  
Saint Paul, MN 55102  
651-266-6400



**PETITION TO DIVERT OR DISPOSE OF CITY PARK LAND**

---

I (we), the undersigned, do hereby petition the Council of the City of Saint Paul to divert or dispose of its interests in the park land described as follows:

(If available, include a legal description of the park land to be disposed of or diverted, or attach a detailed map to scale)

---

I (we) request this diversion or disposal for the following reason(s).

(Indicate whether you will be building on the site)

---

I (we) have attached 2 copies of the site plans of any development intended for construction on the land to be diverted or disposed of.

**Petitioner(s)**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Cy/St/Zp: \_\_\_\_\_

Cy/St/Zp: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Please return the completed petition to:

Public Works/Technical Services – Real Estate  
1000 City Hall Annex  
25 W. Fourth St.  
Saint Paul, MN 55102      Attention: Park Land Replacement

**2165 Mailand Road**  
**Outline of City's position on easement proposal, process and terms**  
March 28, 2012

**Proposal:**

The City and property owners would agree to execute an easement agreement, subject to appropriate city approvals, that would grant the owners immediate use of the existing driveway on city park property adjacent to 2165 Mailand Rd, with the City's subsequent grant of a permanent easement for the driveway upon the owners' compliance with all terms of the agreement.

**Process:**

1. Owners initiate parkland diversion request
2. City grants temporary use of the driveway via Temporary Right-of-Entry Permit drafted by City and signed by the Parks Director, with condition that Owners agree to acquire a permanent easement via the City's parkland diversion process.
3. City and Owners negotiate easement agreement drafted by City.
4. Parkland diversion requirements Owners agree to:
  - a. City orders survey of easement area at Owners' cost
  - b. City orders appraisal of easement area at Owners' cost
  - c. City's Parks & Recreation Commission reviews diversion request
  - d. City Council approves diversion at public hearing.
5. City and Owners execute easement agreement. Owners pay all up-front costs (survey, appraisal, city admin fee, first easement payment). Temporary ROE Permit automatically terminates.
6. Owners make semi-annual payments to City toward purchase of easement until paid off.

**Key Terms of Easement Agreement:**

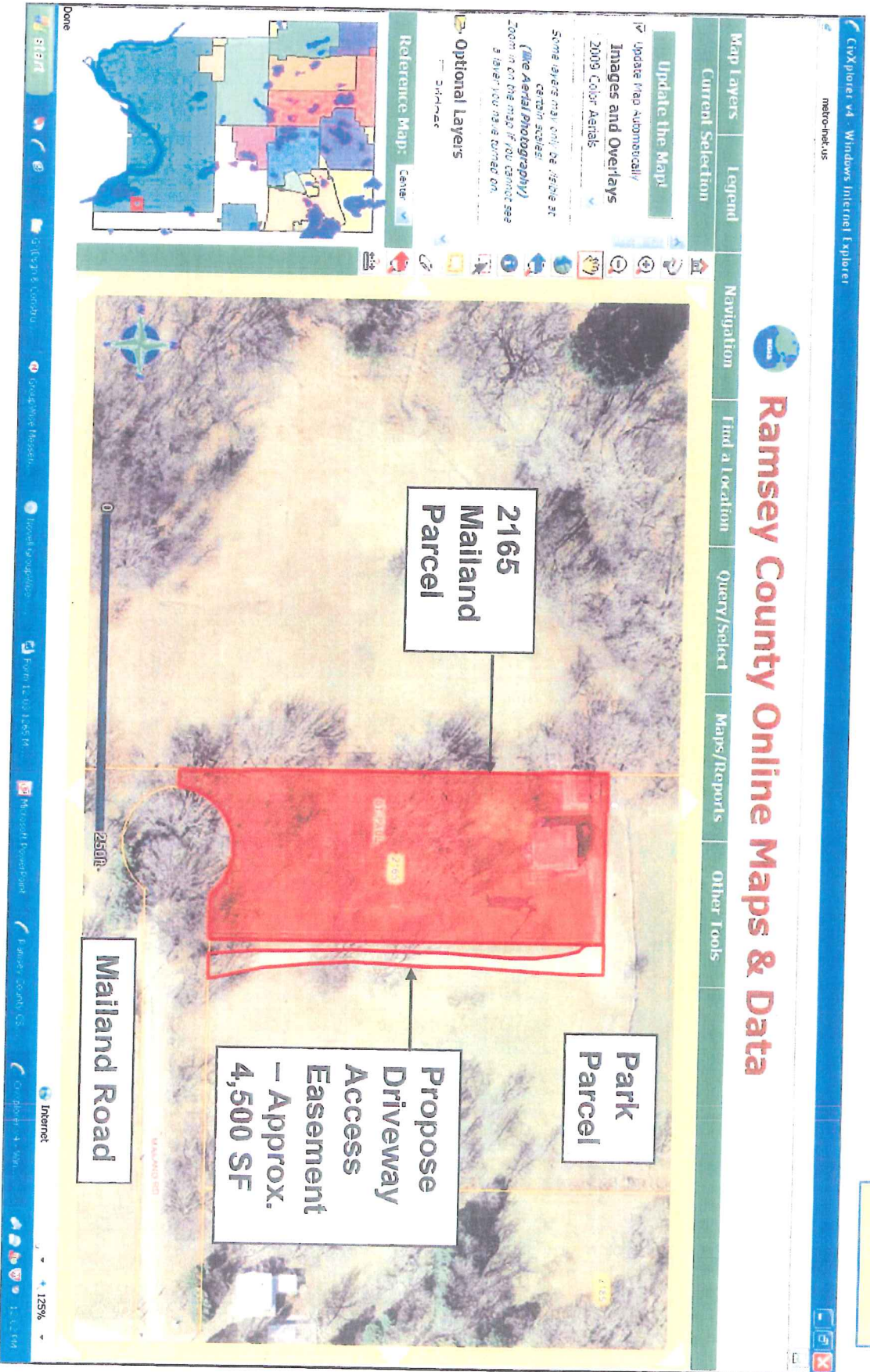
1. Grant of Easement
  - a. Temporary: City grants temporary easement for Owners' use of driveway area.
  - b. Permanent: Upon receipt of full compensation for easement, City grants permanent easement.
2. Easement compensation – Owners make scheduled payments to City (Parks & Rec or Real Estate). Terms: 5 years, no interest, semi-annual payments.



3. Maintenance – Owners responsible to maintain driveway (e.g., plowing, grading as needed). If not maintained, City may maintain and assess property owners for cost.
4. City's use of driveway – City retains use of driveway for periodic access to its property.
5. Termination – If Owners fail to make scheduled payments, City may terminate easement agreement 30 days after providing written notice. If agreement terminated, temporary easement immediately expires and Owners lose all right to enter city property or use driveway easement area.
6. Sale of Owners' Property – If 2165 Mailand sold before City receives full compensation for driveway easement, balance due must be paid at closing. In exchange for payment, City delivers executed easement to Owners. If balance not paid in full, agreement terminated and Owners or future owners lose all driveway easement rights.

# 2165 Mailand Road Parcel & Proposed Driveway Access Non-exclusive Easement Area

Attachment A



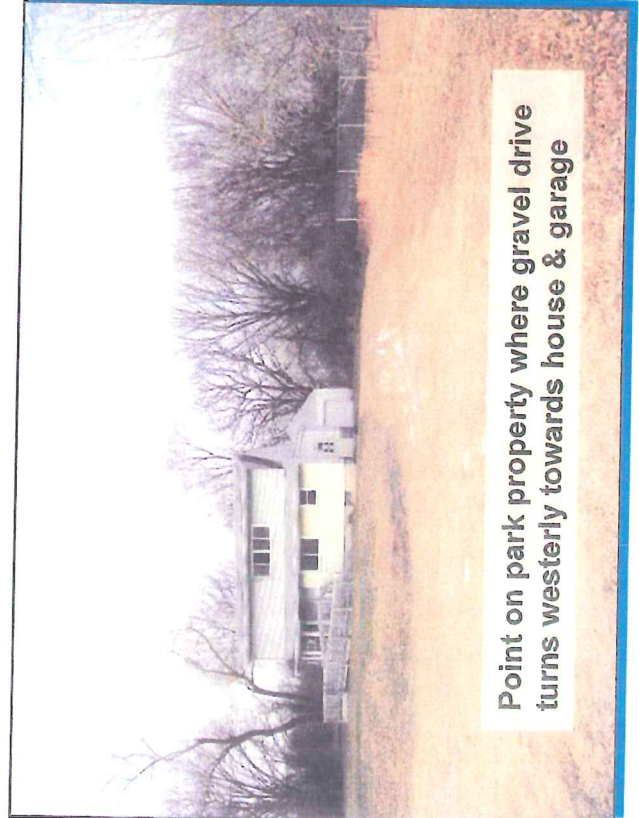




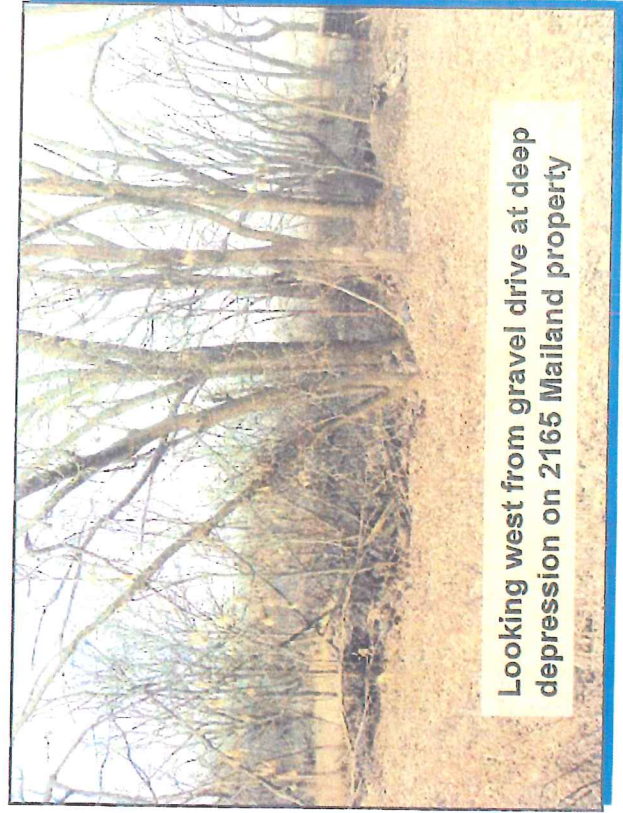
Mailand Rd. at point where gravel drive branches to north, looking west towards cul-de-sac that adjoins south end of 2165 Mailand



Looking north along gravel driveway from Mailand Rd. towards ball fields



Point on park property where gravel drive turns westerly towards house & garage



Looking west from gravel drive at deep depression on 2165 Mailand property