

FOULSTON

ATTORNEYS AT LAW

Jay F. Fowler

jfowler@foulston.com
Phone: 316.291.9541

1551 N. WATERFRONT PARKWAY, SUITE 100
WICHITA, KS 67206-4466

February 9, 2023

Jason Barnes, Mayor
Council Members
City of Marysville
209 N. 8th St.
Marysville, KS 66508

Re: Country Club Lake – Marysville
Attorney-Client Privileged Communication

Dear Mayor Barnes and Council Members:

This letter summarizes the key factors to consider related to Country Club Lake access. I understand the Council is considering potential legal action to resolve questions related to access.

The lake has been utilized by the public since 1936 – more than 80 years. Prior owners of the adjacent land have acknowledged access in connection with fishing agreements. But historical documentation is ambiguous. While there is reference in the plat to an easement and there is a deed reference to unrecorded access agreement, those involved in building the lake may have been more interested in “building” the lake than the documentation of ownership and access.

The title issues related to the landowner parcels have existed since the lake was built. By legal description each parcel has .51 acres of land under water and .09 acres in the strip that borders the water and is identified as the easement property. That said, the 80 plus years of public use of the lake have essentially foreclosed any claim by the landowners that they “own” or have a right of control over a portion of the lake.

The controversy related to restricting public access to the border of the lake that abuts the landowner’s property is recent – arising after the Prells bought the property in 2020. Before this issue was raised by the Prells, it was accepted that there was a right of access. We have identified by aerial photos the fact that there was an access road on land subject to the easement property from at least 1956 to sometime after 1991, when it appears KDOT closed the access from the highway.

Use and access to the lake is also subject to a contract between the City and the Kansas Department of Wildlife and Parks. The most recent version of that contract was approved by the Council on January 23, 2023. That contract requires “that the public shall have unrestricted access to said waters for the purpose of fishing” and that the contract can be terminated if there is “restriction of public access to said land” during the contract period. It also represents that the City “holds the right to grant access” to the land “for the purpose of allowing public fishing.” A prior version of the agreement also contained “public access” language, but with less specificity. The

LexMundi
Member

GGI
INDEPENDENT MEMBER

penalty for non-conformance with the KDWP contract is termination of the contract and forfeiture, on a pro-rated basis, of any compensation received under the contract.

Vernon Jarboe represents the Prells and we have advised him of the historical basis for the easement right, including the expectation that an easement can be supported by the existing documentation, by historical use and by the legal doctrines of easement by implication or prescription. We have also invited discussion between his clients and the City over possible resolution of these issues that would recognize the right of access while allowing accommodations to address their concerns. No progress has been made toward that objective.

It is not necessary to come to a final agreement with the landowners over the extent of the easement rights or whether they exist. While it may be desirable to work out an understanding of what rights exist and how those questions can be resolved – which was the dialog we invited – the City has available to it the ability to resolve the lake access issues permanently.

The court can address what legal rights currently exist in the context of a quiet title action. The court can make a finding that is binding on the parties and on the land as to whether easement rights exist. But the key point to make with regard to resolution of these concerns is the power of the city to condemn the property – the city has the right to obtain title – either fee title or an easement – by a condemnation process. That process will finally resolve any title or access issues.

Sincerely,

FOULSTON SIEFKIN LLP



Jay F. Fowler

JFF/mg

CC: John McNish, City Attorney
Austin St. John, City Administrator