



CITY OF NORTH OAKS

Regular City Council Meeting
Thursday, August 13, 2020
7 PM, Via Teleconference or Other Electronic Means Only
MEETING AGENDA

Remote Access - City Council members will participate by telephone or other electronic means pursuant to Minn. Stat. §13D.021. Any person wishing to monitor the meeting electronically from a remote location may do so by calling the following Zoom meeting videoconference number: 1-312-626-6799, Meeting ID: 868 8624 7422 or by joining the meeting via the following link: <https://us02web.zoom.us/j/86886247422>. Individuals wishing to monitor the meeting remotely may do so in real time by watching the livestream of the meeting on North Oaks Channel 16 and on the City's website. Due to the existing COVID-19 Health Pandemic, no more than five (5) members of the public may be in Council Chambers (Community Room, 100 Village Center Drive, MN) during the meeting. Once room capacity is met, anyone wishing to attend the meeting above the five (5) members of the public who may be present in the room during the meeting will be required to monitor the meeting remotely.

1. Call to Order

2. Oath of Office - Sara Shah

3. Roll Call

4. Pledge of Allegiance

5. Approval of Agenda

6. Citizen Comments - Individuals may address the City Council about any item not included on the agenda. Speakers are requested to come to the podium, state name and address for the clerk's record, and limit their remarks to three minutes. During the pandemic, when meetings are held virtually, speakers will be able to call in to the meetings to make remarks, or request that submitted comments are read by a member of Council or the City Staff. Generally, the Council will not take official action on items discussed during the citizen comment period, but Council members may refer the matter to City Staff for a future report or direct that the matter be scheduled on an upcoming agenda.

7. Consent Agenda - These are items that are considered routine and can be acted upon with one vote.

- a. Licenses for Approval: Angell Air, Inc.; Sedgwick Heating
Checks for Approval: 13634–13667
- b. Approval of Auditor Contract
[North Oaks 3 Year Engagement Letter 2020-2022.pdf](#)
- c. Approval of Previous Month's Minutes—Special Meeting of the City Council on July 16, 2020 at 5:30 p.m.
[City Council Minutes 07.16.2020 Sp 530 pm.docx](#)
- d. Approval of Previous Month's Minutes—Special Meeting of the City Council on July 16, 2020 at 6 p.m.
[City Council Minutes 07.16.2020 Sp 6 pm.docx](#)
- e. Approval of Minutes from Special City Council Appointment Interviews - July 27, 2020
[City Council Minutes 07.27.2020 Sp Interview.docx](#)
- f. Approval of Minutes from Special City Council Meeting - NOC Complaint July 27, 2020
[City Council Minutes 07.27.2020 Sp NOC Complaint.docx](#)
- g. Resolution 1392 approving variance for 2 Island Road septic system
[FINAL Resolution Approving 2 Island Rd Septic Variance.pdf](#)
- h. Resolution 1393 approving variance for 4 Buffalo Road septic system
[FINAL Resolution Approving 4 Buffalo Rd Septic Variance.pdf](#)
- i. Resolution 1394 approving variance for 31 S. Long Lake Trail septic system
[FINAL Resolution Approving 31 S. Long lake Trail Septic Variance.pdf](#)

8. Petitions, Requests & Communications - *Deputy Mike Burrell Report*
CTV Year end Report - Dana Healy

- St. John's Coronavirus Relief Funding Request of North Oaks
[St. Johns COVID 19 Funding letter to North Oaks 7-20-20.pdf](#)
[St. John's Coronavirus Relief Funding request of North Oaks.Cost Data.pdf](#)

9. Unfinished Business

- 9a. Review, discussion, and potential action on complaint from North Oaks Company regarding expert recommendation presented to City Council at June 11, 2020 Council meeting related to development plan approval for North Oaks Developments, including the Nord parcel, and related council communications and interactions regarding the same.
[Memo with Attachments.pdf](#)
- 9b. Update on LJFD Agreement with Shoreview and Arden Hills
[20200805 Draft Cities Agreement for New Station JJ Edits.doc](#)

10. New Business

- 10a. Discussion on CARES funding

10b. Discussion on Planning Commission vacancy, calling for applications, process for filling vacancy

11. Council Member Reports

12. City Administrator Reports

a. Discuss Civic Ready Emergency Alert System

[North Oaks SOW - CivicReady.pdf](#)

b. Monthly Forestry Report

[Forestry Report - July in Review.docx](#)

[Forestry - EAB checks 2020 thru July.xlsx](#)

13. City Attorney Reports

14. Miscellaneous

15. Adjournment - *The next meeting of the City Council is Thursday, September 10, 2020.*

Honorable Mayor and Council
City of North Oaks
North Oaks, Minnesota

The following sets forth the engagement of our services for the certified audit of the accounts of the City of North Oaks, Minnesota (the City).

We will audit the financial statements of the City for the years ending December 31, 2020, 2021 and 2022 in accordance with auditing standards generally accepted in the United States of America.

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud. Because of the concept of reasonable assurance and because we will not perform a detailed examination of all transactions, there is a risk that a material misstatement may exist and not be detected by us. In addition, an audit is not designed to detect errors, fraud, or other illegal acts that are immaterial to the financial statements. However, we will inform you of any material errors and any fraud that comes to our attention. We will also inform you of any other illegal acts that come to our attention, unless clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to matters that might arise during any later periods of which we are not engaged as auditors.

We will perform the auditing services discussed above for the calendar years 2020, 2021, 2022.

<u>Year</u>	<u>City Audit</u>	<u>OSA Reporting Form</u>
2020	\$ 16,400	Included
2021	16,800	Included
2022	17,300	Included

The above fees are based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

- Our fee does not include additional audit services related to requirements of a single audit if one would be required. Nor does it include fees for additional time require for implementation of additional governmental accounting standards. Those fees would be discussed and agreed to prior to performing the services.
- Our fee includes the city audit, the management required communication letter, the Auditors Report on Minnesota Legal Compliance, the auditor presentation to the Council, and general consulting related to the audit.

We appreciate the opportunity to continue service with the City and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign and return a copy to our office. If you have any questions, please contact Andy Berg at 952-715-3003.

Sincerely,

ABDO, EICK & MEYERS, LLP
Certified Public Accountants & Consultants



Andrew K. Berg, CPA
Governmental Services Partner

RESPONSE:

This letter correctly sets forth the understanding of the City of North Oaks, Minnesota.

Signature: _____
Mayor

Date: _____

Signature _____
City Administrator

Date: _____

**North Oaks City Council
Special Meeting Minutes
North Oaks City Council Chambers
July 16, 2020**

CALL TO ORDER

Mayor Nelson called the Special Meeting to order on July 16, 2020 at 5:30 p.m.

ROLL CALL

City Councilmembers were present in the City Council Chambers or participated **by telephone or other electronic means** pursuant to Minn. Stat. § 13D.021. Residents can view the meeting on the cable access channel and through the website portal just like other public meetings.

Present: Mayor Gregg Nelson, Councilmembers Rick Kingston, Marty Long, Kara Ries

Staff Present: Administrator Kevin Kress and Attorney Bridget Nason

Others Present: Videographer Maureen Anderson
A quorum was declared present.

PLEDGE OF ALLEGIANCE

Mayor Nelson read the Pledge of Allegiance.

APPROVAL OF AGENDA

MOTION by Long, seconded by Kingston to approve the agenda. Motion carried unanimously by roll call.

NEW BUSINESS

a. Consideration of Resolution #1389 Accepting Resignation and Declaring a vacancy

Administrator Kress stated if everyone has seen the resolution, he recommended the approval of Resolution #1389 accepting the resignation of Councilmember Katy Ross and Declaring a vacancy.

MOTION by Long, seconded by Kingston to approve Resolution #1389. Motion carried unanimously by roll call.

b. Discussion and action regarding vacancy, establishing application process and deadline for applications, and calling for a special meeting for applicant interviews and council action to fill the vacancy.

Attorney Nason stated the Council has now accepted the resignation and declared a vacancy. Under state statute the Council is required to fill that vacant position. The Council needs to establish 1) The type of application process it would like to pursue to fill the position, and 2) Set up a date and time to interview candidates and vote on filling that vacant position. Ms. Nason noted that based on the timing of the resignation, because there are more than two years left on

former Councilmember Ross's term, the remainder of that two-year term will be on the ballot this November 3, 2020. She said there will essentially be a special election held at the same time as the regular November election to fill the remainder of that vacant term. Ms. Nason stated that the person appointed to fill the position will serve until the successor to that position is qualified. For example, if "Candidate A" is appointed to fill the vacancy, they will serve until whoever wins that election for that seat is qualified for office, which would be in November. As far as the process, she said Administrator Kress has looked into it and has some comments on questions and format. Ms. Nason said she would advise the Council that when they get to the interview and application process, individuals can apply for that vacant Council position and that the Council has typically conducted in-person interviews with applicants for the position, after which there is typically Council discussion, and motions can be made to fill that vacancy. If there is a tie, the motion fails. If, after all the motions are made, there isn't a motion to fill the vacancy, ultimately the Mayor has the right of appointment if the Council cannot reach a majority vote to appoint someone to fill that spot.

Mayor Nelson said they've declared a vacancy and the first issue is to publish notice of the vacancy for a period of time. He said if the timing of the registration had occurred earlier, they'd have more time, but because it is so close to the election registration period, he wants to have someone appointed so people know and can determine their interest in running for City Council office. Mayor Nelson noted he'd like to get this done before the end of the month when the registration for office occurs and opened it up for discussion.

Administrator Kress shared his screen as he'd built a draft Vacancy Application and said this is what he would use for filling the Council vacancy. He noted it asks for a deadline, which could be as soon as the following week to two weeks, and said that is at the discretion of the Council. He shared that the draft talks about when the interviews will be hosted, and that is the same night the Council could consider taking action if they so choose, giving that person the Oath of Office. Mr. Kress said the rest of the questions are to get to know the person, in addition to their resume and other materials asked for.

Mayor Nelson said to keep the application process moving, he'd like to have a one-week deadline for application submission. Councilmember Kingston agreed that is a reasonable approach, and said if they could give a week and the candidates were available for a Special Meeting, the Council should be able to do this expeditiously.

Councilmember Long asked if one week is enough time to advertise. Administrator Kress said he could have the Vacancy Application up and running tomorrow as long as the Council picks the dates.

Mayor Nelson noted today is July 16, 2020 so the application process would run through July 24, 2020. He proposed the date of July 27, 2020 as the Special Meeting and asked Administrator Kress or Attorney Nason if interviews are required, as if people are out of town, it could be difficult within the time frame. Attorney Nason said she is not aware of a particular statutory

requirement for interviews. She said there does need to be a public meeting at which the candidate is selected. In Ms. Nason's experience in the past with role vacancies, there has always been an interview process so the Council has the opportunity to ask questions and have one-on-one interaction with the candidate.

Mayor Nelson agreed with Ms. Nason and said he was concerned that some people may not be available on July 27, 2020 but could still be considered and it might be to their advantage to be interviewed. He noted if they were out of town, the Council wouldn't have to wait to interview them. Ms. Nason said that is correct.

Councilmember Ries asked if the Special Meeting would be held electronically. Administrator Kress said they could do it the way they're doing it tonight, with some people in the Council Chambers and some electronically as the Chambers don't have the space they need. Mayor Nelson noted that he would prefer not televise the interviews and asked if it has to be public. Administrator Kress said to do it that way is tricky because there would need to be a subcommittee to review the applications and recommend to the Council. Mayor Nelson noted that would take too much time, so they would do interviews and deliberation in a Special Meeting. Councilmember Kingston said they should be able to do that, as that is what they did with the selection of their attorneys. He said he can't imagine they will have thirty applicants as they did with the City Administrator position and he thinks it's a manageable plan.

Attorney Nason said she didn't know if she was needed at the meeting, but noted a conflict in her schedule on the evening of July 27, 2020. Mayor Nelson said he prefers to have counsel available for all meetings in case there is a stalemate that cannot be resolved. He then proposed an earlier time for the Special Meeting.

Administrator Kress said he will create the majority of the questions and will not release those until the night of the special meeting. He said he is happy to take suggestions of questions for the applicants from the Council.

MOTION by Long, seconded by Kingston, to establish a notice for a one-week application period and a Special Meeting for interviews, deliberation and a vote to make a selection on July 27, 2020 at 4:30 p.m. Motion carried unanimously by roll call.

ADJORNMENT

MOTION by Ries, seconded by Kingston, to adjourn the Council meeting at 5:59 p.m. Motion carried unanimously by roll call.

Kevin Kress, City Administrator

Gregg Nelson, Mayor

Date approved _____

**North Oaks City Council
Special Meeting Minutes
North Oaks City Council Chambers
July 16, 2020**

CALL TO ORDER

Mayor Nelson called the Special Meeting to order on July 16, 2020 at 6:05 p.m.

ROLL CALL

City Councilmembers were present in the City Council Chambers or participated **by telephone or other electronic means** pursuant to Minn. Stat. § 13D.021. Residents can view the meeting on the cable access channel and through the website portal just like other public meetings.

Present: Mayor Gregg Nelson, Councilmembers Rick Kingston, Marty Long, Kara Ries

Staff Present: Administrator Kevin Kress, Attorney Bridget Nason, City Engineer Larina DeWalt, City Planner Bob Kirmis

Others Present: Videographer Maureen Anderson, President of North Oaks Company Mark Hogue, Vice President, Development of North Oaks Company Gary Eagles
A quorum was declared present.

PLEDGE OF ALLEGIANCE

Mayor Nelson read the Pledge of Allegiance.

APPROVAL OF AGENDA

MOTION by Long, seconded by Kingston to approve the agenda. Motion carried unanimously by roll call.

NEW BUSINESS

- a. Discussion and possible action on request from North Oaks Company (NOC) for approval for grading, installation of drainage facilities and/or water and sanitary sewer lines, and street construction (infrastructure installation) in Nord and Anderson Woods Development Sites.**

Administrator Kress gave a brief description and said there was a request from the North Oaks Company (NOC) which is detailed in the included memo for grading, utility and storm-water work. He then invited City Engineer DeWalt to share.

City Engineer DeWalt said that at the regular Council meeting on July 9, 2020, the City received a request from the North Oaks Company for preliminary site preparation activities prior to the final plan approval for both Nord and Anderson Woods sites. As discussed in that meeting, per Article 5 of the East Oaks Preliminary Development Application (PDA), Council has the authority by separate action to grant applicant permission to conduct these requested activities prior to final plan approval. Ms. DeWalt said at the direction of Council the previous week, Staff

took the time to review the request, considering that authority granted under the PDA, as well as precedent set with historical developments within North Oaks per the applicant and also standard industry best practices. She said based on Staff review, the recommendation is for Council to grant approval of a subset of the requested work with some conditions, as noted in Ms. DeWalt's memo dated July 16, 2020. She noted that Staff finds it reasonable to request and for Council to allow those site preparation activities such as preliminary grading, erosion control and temporary storm water management on site for both Nord and Anderson Woods, per the preliminary plans, which were conditionally approved at the June 11, 2020 Council meeting. Ms. DeWalt said regarding any request for any additional work such as street construction, installation of utilities or permanent drainage facilities, Staff feels that approval is premature and would prefer that commencement of any work waits until after final plan submission, review and approval. She said however, if Council would like to exercise its right to grant that discretionary approval of the additional preliminary work request, Staff has outlined a recommended number of conditions that should be met.

Mayor Nelson clarified for those who are listening that the PDA provides for all of the activities being requested upon approval by City Council. He asked if Staff indicated they are fine with the grading and preliminary storm water management, but they would like to see the final plan submitted and approved before utility construction and permanent storm water management is affected. Engineer DeWalt said that is correct.

Mayor Nelson also wanted to clarify that anything the Company does pending final approval is done at their risk and not at the City's risk. Engineer DeWalt said that is correct, and said these plans are conditionally approved for the preliminary plans and the City fully expects that final construction documents will be submitted, thoroughly reviewed and approved (potentially with conditions), so it is at the applicant's risk to start work prior to the final plan approval.

Mayor Nelson asked about the timeline for the submission of the final plan approval request. Mr. Mark Houge stated the Company is working diligently to complete all of the component parts and need to coordinate their schedule in coordination with the White Bear Township water and sewer connection which comes under Centerville Road. He said they have their input now and are completing the final plans and he expects they'd be requesting final plan approval within the next 60 days.

Mayor Nelson asked Mr. Houge his thoughts regarding the Staff perspective that partial approval is appropriate at this time, without specific approval of utilities, and final storm water management. Mr. Houge said it may create some challenges in coordinating the work, but he understands that there are still details coming that the Company needs to provide to Staff. He said he is comfortable that if there was an understanding that as soon as the Company has those details in hand and sufficient time for Staff to review them, they could come back to the Council and get approvals in a timely way. He stated there is a bit of a work coordination question because they don't want to go into areas twice if that can be avoided, and said another reason they like to do the grading and drainage work before final plan approval allows the Company to

work with the City's Forester to coordinate things and make minor adjustments with the approval of City Engineer DeWalt to preserve trees wherever possible.

Mayor Nelson invited Mr. Gary Eagles to share. Mr. Eagles stated that this has been the typical process for the NOC in the thirty years he has worked at the company. He noted it can be difficult to get a good grasp on what you're dealing with when building lots in treed areas, so typically they like to go in the area and get a good handle on trees, the grades and soil conditions. He noted that typically Final Plans are pretty quickly prepared after that point.

Mayor Nelson said if the NOC needs it and the final plan wasn't ready, the Council could hold a Special Meeting to approve further work such as utilities.

Mr. Eagles stated the question for the NOC is with White Bear Township's access for sewer and water. He said they've historically had no problems with the sewer but the water has become a bit of an issue for them. He stated White Bear Township has agreed to provide water, but it's the method at which they will cross the road for White Bear Township to approve.

Councilmember Ries noted that at the last regular Council meeting, City Engineer DeWalt mentioned there were conditions to the preliminary plan approval and asked Ms. DeWalt if she's had a chance to go out and verify that those conditions have been met. Ms. DeWalt said she'd reviewed the conditions that were tied to the preliminary plan approval and the conditions that she feels are applicable to the request are included in the memo she provided. She stated that she feels the balance of the conditions in the preliminary plan approval are tied more to the final construction documents than the preliminary grading request. Ms. DeWalt said she has included the conditions she feels are applicable that have not been met that need to be tied to the approval within the memo.

Councilmember Ries asked Ms. DeWalt if the conditions to the recommended approval have been met or have not been met. Ms. DeWalt said Staff recommends that a subset of what the applicant has requested be granted. She noted that the memo details preliminary grading and erosion control work be granted, but not the storm water facility construction or potential street construction. Ms. DeWalt said the conditions she feels are priority to that grading work are listed in the memo and those are the conditions that should be adhered to during construction or happen prior to construction, and noted that any required permits would need to be granted prior to the NOC starting work.

Councilmember Ries asked who oversees that and makes sure the conditions are being met. Ms. DeWalt said that is also part of the discussion and that she recommends there be periodic site inspection by City Staff. She said historically the City inspected for erosion control and over time, as she understands it, it was asked that the Consultant Engineer not be the inspector as long as there is a Certified Inspector tied to the project. She stated that as long as the City is involved with understanding the process, procedures and updates to those inspections, she is comfortable with that.

Councilmember Ries noted that Mr. Houge stated that it's nice to go in and do it all at once. She asked if the Council is taking part of the plan approval and doing it piece-by-piece, if there was a problem with utilities or utilities were changed, would the company need to come in and re-do some of the grading at some point; and if the Council gave partial approval, would there be a risk that the NOC would bear if plans changed. Ms. DeWalt said to a certain extent, but she believes the preliminary grading would be the work of bringing the site within tolerance of the approximate elevations, doing some preliminary clearing work, making sure the NOC has room to bring the equipment in and doing the erosion control work. She said she thinks it's a very minimal risk.

Mayor Nelson noted they have the option of approving as recommended by Staff for preliminary grading and storm water control, or the PDA permits the Council to simply approve the request as submitted by the Company to do the preliminary grading, storm water control, and utilities and final storm water management.

Administrator Kress noted there are two separate resolutions, Resolution #1390 and Resolution #1391.

Councilmember Ries asked Ms. DeWalt if the Anderson Woods plan site submitted in the preliminary plans is the complete site or if there is a portion of the site on the western side that is left out of the approved plans. Ms. DeWalt said the approved site plan for Anderson Woods is the complete site, there is no part of the site that is not shown. She said there may have been some confusion regarding the orientation and scale difference between site plan, grading plan and existing condition plans, which is typical for people not used to reading site plans.

Attorney Nason said the Council may recall that back in 2019, they did approve the plans for what is commonly referred to as Wilkinson Villas 1A, so the entire Anderson Woods site itself as shown in the PDA is comprised in both the Wilkinson Villas 1A development site which includes an area of common space/open area and the areas now that have been approved for Preliminary Plan Approval. She said there is perhaps some misunderstanding regarding those two pieces, as well. Councilmember Ries noted that her question had been answered by Ms. DeWalt.

Mayor Nelson thanked Administrator Kress for drafting the resolutions, as all of these things are quite lengthy and said he appreciates his work. Mr. Kress noted the memo and resolutions were a joint effort between all the Staff and consultants.

Administrator Kress asked Mr. Houge if he saw any issues in the memos and resolutions. Mr. Houge said no, they are comfortable with the resolutions as written.

MOTION by Kingston, seconded by Long, to approve Resolution #1390, approving grading of East Oaks Nord Development Site pursuant to approved Preliminary Plans and Resolution #1391, approving grading of East Oaks Anderson Woods Development Site F,

pursuant to approved Preliminary Plans. Motion carried by roll call as Members Kingston, Long and Nelson voted for; Member Ries voted against.

ADJORNMENT

MOTION by Kingston, seconded by Ries, to adjourn the Council meeting at 6:25 p.m. Motion carried unanimously by roll call.

Kevin Kress, City Administrator

Gregg Nelson, Mayor

Date approved _____

**North Oaks City Council
Special Meeting Minutes
North Oaks City Council Chambers
July 27, 2020**

CALL TO ORDER

Mayor Nelson called the Special Meeting to order on July 27, 2020 at 4:30 p.m.

ROLL CALL

City Councilmembers were present in the City Council Chambers or participated **by telephone or other electronic means** pursuant to Minn. Stat. § 13D.021. Residents can view the meeting on the cable access channel and through the website portal just like other public meetings.

Present: Mayor Gregg Nelson, Councilmembers Rick Kingston, Marty Long, Kara Ries

Staff Present: Administrator Kevin Kress and Attorney Bridget Nason, Administrative Assistant Gretchen Needham

Others Present: Videographer Maureen Anderson, Officer Mike Burrell, Rich Dujmovic, Nick Sandell, Sara Shah

A quorum was declared present.

PLEDGE OF ALLEGIANCE

Mayor Nelson and those present in the Council Chambers recited the Pledge of Allegiance.

APPROVAL OF AGENDA

MOTION by Kingston, seconded by Long to approve the agenda. Motion carried unanimously by roll call.

NEW BUSINESS

a. Review of applications and interviews for vacant City Council seat. Discussion and possible action on appointment to fill vacancy on City Council.

Administrator Kress introduced the first applicant as Mr. Rich Dujmovic, and Mr. Kress noted he has a series of five questions he will present to the applicants and they can address the City Council. These questions were sent in advance to the Council.

Mayor Nelson thanked Mr. Dujmovic for applying for the City Council seat following the resignation of Councilmember Katy Ross. The first question asked was, “Why are you interested in becoming a member of the North Oaks City Council and what issues are you most interested in promoting?”

Mr. Dujmovic thanked City Staff and City Council for the opportunity and thanked Member Ross for her service to the community and for everything she has done for North Oaks, he thinks

she is truly a believer in the City and is a great example of what a City Council person can be. He said as to the reason he is running for the position, what interests him, and where he'd like to contribute, he thinks what is most important is to continue the legacy of the person the voters elected in 2018. When he thinks about Katy Ross and her service in the community, he saw a citizen who was deeply committed to accessibility, openness to hearing from others, and respect. He thinks those are things he would try to embody if he were given the opportunity to serve in her seat, and he would take very seriously those responsibilities in representing the overall community. He stated he thinks they can get to some mutual agreements that are beneficial to all parties and they can work well amongst all of the entities that make up the North Oaks ecosystem, including the North Oaks Company (NOC), the City Council, North Oaks Home Owners' Association (NOHOA), and the citizens and work together towards mutually beneficial compromises and agreements. Mr. Dujmovic said he's spent a lot of time speaking with citizens over the past year and a half and he has learned the varying perspectives people have and he would look forward to representing them. Regarding the specific ways he would like to contribute, he noted he has paid a lot of attention to matters in the City, he has attended all the City meetings for the Planning Commission or the City Council that could be attended in person and when he wasn't able to do so, he watched them. From a financial perspective, he applauds the City for being in the position that it is, with very low tax rate, especially for a Class 4 City. He sees the City in a very decent position in terms of reserves, he noted if there is anything they may want to work on, it's the infrastructure budget given that they're entering a season of development and there are some opportunities as they're a little below the financial targets there and he thinks they can perhaps get a little more healthy. He noted the target is around \$450,000 for that particular budget and they've been in a bit of a gentle decline. He stated financially, they are in a great position. He said he'd love to serve in a capacity where he could help in that perspective planning for the future. Mr. Dujmovic also said he thinks he could help on Vadnais Lake Area Water Management Organization (VLAWMO), by being a police liaison and from a recycling perspective, as he comes from a family who started recycling when he was a child and he could help in that capacity as well. He expressed that he would help wherever the City needs help and noted he may not necessarily have all the competency to do that, but he would learn and serve wherever called to.

Mayor Nelson asked "What strengths and abilities would you bring to the City Council?"

Mr. Dujmovic said in his day-to-day operations he works with a wide variety of cross-functional individuals. These people represent research and development, project management, marketing, clinical affairs, finance, etcetera. He said he was just on the phone twenty minutes earlier on one of those meetings and he takes all of those diverse perspectives, and there are a wide range of things people are thinking about when they're working in an environment with all those different specialties, and he looks for a compromise. He tries to find things that will work for the benefit of their patients and the benefit of their physician customers, and that can also work for the business. He has a lot of experience working with internal cross-functional parties. He also has a lot of opportunity to work globally with international people from across 77 countries to get approvals in a regulated environment that has many different rules varying from geography to

geography. Thus, coming up with solutions that can work globally is something he has great experience with. He noted that working cross-functionally, working with many different experiences, working in a regulated environment, learning new rules and applying them are all things he has experience with and would look forward to applying to help the City.

Mayor Nelson asked “What do you think is the best thing the City Council did in the last year and also what do you think is the worst thing that the City Council did in the last year?”

Mr. Dujmovic said he thinks the City Council did some amazing work to adapt to a very, very challenging situation with COVID-19. The operations of the City are very important, citizens are looking for answers, and citizens had a lot of different types of questions. He said the City Council made themselves accessible to citizens, via meetings like the one today, which was called relatively quickly and there is access for people to watch. He thinks they’ve strengthened their muscles with respect to the relationship with the cable company and making these types of meetings accessible to those who cannot attend them live. He said the involvement of the City and the ability to reach out and engage people has been excellent despite COVID-19 and people have been able to contribute via meetings like the current one. Mr. Dujmovic said the most difficult thing for him to swallow as a resident of the City is also in that category in that some of the challenges or hindrances that were put into collecting citizen feedback. He said the most important thing that any government can do, as they just said in the Pledge of Allegiance when they spoke about the republic that is the United States, it’s a representative form of government and having accessibility to the citizens and giving citizens the ability to voice things that are of concern to them is really important. On balance with the accessibility via the cable and remote calls via Zoom is making it as easy as possible for citizens to contribute to their government and to have a say in the things that are before their government. He noted at the end of the day, North Oaks is an extraordinarily unique community, they all moved to the City for a reason and share many common values, although they may have differences in how they approach that, but they want to gather as much input from citizens as they possibly can and make decisions on behalf of the entire community.

Mayor Nelson asked “What would be your priorities for the City if you were appointed?”

Mr. Dujmovic said he’d piggy-back on what he just said, which is accessibility and openness to citizen perspective. He thinks it’s very important to collect as much citizen perspective as possible. When he thinks of North Oaks, what impressed him most was being able to meet hundreds of different people across the community and how bright they are in a diversity of areas. He noted the citizens bring experience in so many unique areas of expertise and he thinks reaching out and leveraging that full expertise, which he thinks is the strength of the community, as well as their love for the community as they all chose North Oaks. He said when you see the NOHOA surveys and videos that current City Councilmembers put up when they discussed why they elected to serve on the Council, everyone mentioned the same things: the importance of the natural environment, privacy, security and the sense of community and how much they love the

uniqueness of the community. He said as a priority, that is why he would reach out to those individuals and it's important to him to represent the City and the perspectives of its citizens.

Mayor Nelson asked "What do you think the role of the City Council should be in addressing these priorities? What do you think your role should be?"

Mr. Dujmovic said the City Council should educate the community on the issues that are before them, in the form of both written and verbal communication, to ensure that the citizens have an understanding of what decisions the Council has to make and to give them a sense of urgency for those decisions. For example, why does this decision need to be made now, what are the options the Council has considered, what has been ruled out, what are things that have been left as options for the community? He said it's important to sort through those, educate the citizens and seek the community perspective so the Council can learn from that perspective and weave that into the options. He said the City Council is very good at framing the topics for the community and they have an opportunity to push for mutually beneficial solutions and to advocate things that are, again, for the mutual benefits of everyone in the ecosystem. He sees that as their ultimate responsibility.

Mayor Nelson thanked him and asked Mr. Dujmovic if he had any questions or anything else he'd like to add. Mr. Dujmovic said he doesn't have any questions, he's been watching the Council for quite some time and thanked the Councilmembers for their service and the opportunity to speak in front of this body. He noted one Letter of Recommendation from someone he respects, Councilmember Katy Ross. He read from the letter dated July 26, 2020, in which former Councilmember Ross said, "Dear Councilmembers, I am writing to you to recommend appointing Rich Dujmovic to replace me on the City Council effective immediately. Rich has been a resident of North Oaks for several years and has committed a tremendous amount of his time to learning about the community where he lives. He's shown a great interest and commitment to North Oaks and our residents by tirelessly attending meetings and working to clearly understand the issues our community faces. He has an amazing ability to absorb a lot of information over a short period of time and to see the relevance to our community. To serve as a City Councilmember requires someone who is a good leader, a good listener, someone who commits to working many hours in order to represent his/her community, and someone who can disagree respectfully when necessary. I believe that Rich has all those characteristics and then some. I've watched Rich over the years raise issue and concerns, clearly articulating his thoughts. He's always had the community's best interest at heart and has worked tirelessly to listen to others and to speak up. Rich's regulatory work at Boston Scientific has prepared him for working with ordinances, he dives right in and doesn't give up until he completely understands how something will impact our community, and he can clearly communicate that impact. But he doesn't always stop there. Oftentimes, he has an alternative approach and he's not afraid to think outside the box. Lastly, the community knows Rich and respects him, people listen to him, they know that he cares about North Oaks and the community where they live. I think that Rich would be a great addition to the City Council, there isn't anyone better." Mr. Dujmovic thanked the Council again.

Mayor Nelson introduced the next candidate Mr. Nick Sandell and asked, “Why are you interested in becoming a member of the North Oaks City Council and what issues are you most interested in promoting?”

Mr. Sandell thanked the Council for the opportunity to come before them and apply for this position. He noted he and his wife Jenny feel that a sense of community is a core value in a healthy lifestyle. They both also believe that is not something that is a right, but that is something that needs to be earned, and he said everywhere they’ve been they’ve felt that is something they need to get involved with. Since they’ve been in the community for the last two years, he noted he’s had the opportunity to join the City Planning Commission and he felt that was a great way for him to utilize his skills to be able to contribute to the ongoing sustainability and growth of the City. He said he looks at the City Council as a further opportunity for him to have a more holistic view and holistic impact on the direction the City takes. He stated based on his time on the Planning Commission, he would continue to be interested in the development and growth of the City, both as it relates to the East Oaks Development and its continued success, as well as any additional redevelopment the City goes through as it continues to look at how the City takes current assets and make sure it continues to be relevant and continues to be a signature City within the state. In addition to the growth, he’d like to continue to focus on public safety and engagement with community policing and public safety partners. He said he thinks that is a key element in the City and that’s something the Council has an opportunity to be involved with. He noted that isn’t something that needs to be completely driven, that’s something that needs the engagement of the entire community and he’d be very willing to be a participant in that.

Mayor Nelson asked “What strengths and abilities would you bring to the City Council?”

Mr. Sandell said his strengths come in a couple different capacities. From the experience of serving in public, he’s had the opportunity to serve on the Planning Commission, so he has a strong understanding of City operations, how to engage with the community, to listen to residents, to take their feedback and apply it to a governing body. He said he’s been able to demonstrate that in the City of North Oaks and in the previous city they lived in as he served in Planning Commission role in the City of Little Canada for a couple of years with the last year serving as the Vice-Chairman. He noted that was an invaluable experience as he was able to actively engage with the community and be part of the leadership team that was focused on its success. He said professionally, he has been fortunate to serve in a leadership capacity for nearly fifteen years in a variety of different roles where he’s led large teams and focused on individual support and growth, and also on the long-term strategic vision of the overall organization. He’s also had the opportunity to work in more specialized units where the focus was on relationships with external clients and negotiating key services and key relationships, really trying to find win-win solutions. He said he thinks he’s had a public experience that would be invaluable to service here in the community and from the private specter he believes his experience directly translates to that.

Mayor Nelson asked “What do you think is the best thing the City Council did in the last year and also what do you think is the worst thing that the City Council did in the last year?”

Mr. Sandell said it is relevant to his experience on the Planning Commission and one of the strongest things the Council did this year was the work on the East Oaks development. He thinks there are a couple different reasons that support that including the absolute important nature that has on the future growth, development and vision for the community. He said North Oaks has key assets that it wants to prioritize and make sure they do it from a balanced perspective and he thinks the Council did a really nice job in establishing credibility in all of the key elements that went into the East Oaks development and that negotiation. Mr. Sandell thinks the Council was receptive to counter-positions that the community and other constituents had, addressed those positions, and were very deliberate in how they were able to move forward with their actions. He thinks that was a real success. In regards to a challenge, he noted he'd still like to see the City engage with the NOHOA group in a better way and find ways to collaborate more for the benefits of the City overall. He noted that North Oaks is an extremely unique City and it has a very extreme governing body, especially coming from an individual who worked with a city that did not have the same structures as North Oaks. He said it was very interesting for him to absorb the situation and dynamic between the Home Owners' Association, the City and the balance of powers. Mr. Sandell thinks while that serves a very deliberate purpose for the City, he also thinks there is potential for some redundancies and the ability to have some misinformation and miscommunication. He said he'd love to see those two bodies be able to collaborate more in a very efficient and productive manner.

Mayor Nelson asked “What would be your priorities for the City if you were appointed?”

Mr. Sandell said he thinks it comes in three-phases. One is that the growth, development and finalization of the East Oaks plan must be considered one of the key priorities for the City, especially for the Council and their responsibilities for the City. He stated that North Oaks is at a really important spot in its history as it has a very mature community and this really being one of the last areas of its ultimate development, and he thinks it's extremely important that it's done with thorough and thoughtful vision, where they're protective and balanced of what everyone values as a community. Also, they're also looking long-term for the ongoing sustainability so that North Oaks isn't just an amazing City that always has been, but that North Oaks continues to be this amazing City that people view and celebrate. Mr. Sandell also wants to focus on the public safety component, noting they're at a very unprecedented time within the state and in the nation's history and across the world. He thinks it's incredibly important that they stay very engaged with the public safety members and that they stay engaged with the community and the role the community can have with that team. He noted he comes from a fairly unique perspective as he comes from a very law enforcement-focused family or public safety-focused family, as his brother and sister-in-law are active police officers, his father is a retired Chief of Police in the City of Richfield, he has numerous aunts and uncles who are both active and retired police officers, and cousins who serve in the fire units. He said he thinks that perspective has given him insight to the heroes that they really are and given Mr. Sandell a unique vision as to

how the community can engage with them for both transparency and accountability. He would really like to focus on the engagement with partners in the public safety area and engagement with the community to know they can play a significant role in that.

“What do you think the role of the City Council should be in addressing these priorities? What do you think your role should be?”

Mr. Sandell replied that as it relates to a couple priorities he listed, his role can be to leverage the experience he’s had working on the Planning Commission in North Oaks and Little Canada. While he understands that North Oaks doesn’t always like to compare itself to other cities, he thinks having the insight and vision into the operations of another city and how it addresses its long-term plan and strategy for growth and preservation of assets, he believes that is valuable as they go into the continued negotiations and to also see things through. He said he’d be able to draw off experience he’s already had. In relation to public safety, the history he has working with those bodies, engaging with those individuals and being very active in the community himself, he thinks that’s going to be incredibly important. One thing he wanted to note, going back to ongoing development and growth, he has the unique perspective of being a resident in the East Oaks development, which has not been represented on the City Council. He thinks he has a unique perspective on the real vision that individuals within that development have, and he will be able to speak for them and represent them well having that direct experience. He also noted that as a City Council, they are not just listening to existing residents, but also recognizing future residents and being able to appreciate their thoughts as they enter in to the community.

Mayor Nelson thanked Mr. Sandell and asked if he had any questions or comments to add.

Mr. Sandell said to piggy-back on his final remarks, he has the opportunity and the lens of someone who lives in the East Oaks development, although he doesn’t have the experience that many residents have in the City as he’s only been a member of the City for a few years. He noted he is part of a family that was very deliberate in moving to North Oaks and coming into a community that has many of the values his family shares. He said they were so happy with the welcome they received in the community and he wants to be able to pay that forward, especially as they look at the ongoing changes, maturity and growth the City will experience over the next few years.

Mayor Nelson introduced Ms. Sara Shah and thanked for her application. He asked Ms. Shah, “Why are you interested in becoming a member of the North Oaks City Council and what issues are you most interested in promoting?”

Ms. Shah said she’d like to believe a familiar face at City Hall, as a few years ago a similar situation happened with a vacancy and Ms. Shah was interested then, because she felt the need to help the community instead of sitting on the sidelines. Two years later, she is still interested to again step forward and help the community as they continue the governing process with the City Council. In addition to the Council, two years ago she pivoted to the Planning Commission and

she has continued to be a civil servant for the City and community and she believes they must put the time and energy in to improve the City and community, make it a prosperous place to live, not just in two years, but in thirty years. As far as issues she is interested in promoting, there are several and she noted she would highlight a few. Ms. Shah said when she was first appointed two years ago, she was highly interested in communicating with residents. She implemented the outbound City Email Blast which has now had over 500 people opt-in. She noted it's not just communicating to the residents, but also with the residents. She feels there is a great opportunity to get a bit more engaged in listening to the residents, people are quite busy these days and she feels they need to find a more creative way to reach out to them and listen to their feedback. Other issues she would like to promote are the delicate balance between privacy and security. She said the City is in charge of security and the welfare and safety of the people, but it must be balanced with the Home Owners' Association privacy account. Ms. Shah noted she'd like to work and collaborate with NOHOA and to peel back the onion a bit more and understand if there is a way to improve that. She said for several years they've been fairly complacent on it but it's a growing need as the demand for residents of having delivery services through the gates opened a whole new challenge for the City and it's an opportunity to dive in and look at what they can do.

Mayor Nelson asked "What strengths and abilities would you bring to the City Council?"

Ms. Shah answered that what differentiates her is her demonstrated experience as a prior City Councilmember. In addition to the Planning Commission, she thinks she has a valuable knowledge and understanding of how their governing body works and the processes at City Hall. She believes she could dive in very quickly, just as she did two years ago and provide that civil service to residents. In addition to her civil service, Ms. Shah pointed out that she has lots of experience in dealing with diverse audiences and working through differing opinions as a Big 5 consultant, to her corporate experience as a senior project manager, reaching across various stakeholders, different business groups to prioritize and unify a vision and strategy so they could work to one common goal. Finally, she noted her experience as a small business owner and said it's very critical as a business owner to wear all hats and she believes she can apply that to the City Council. She noted you never know what's going to come in front of you, whether large or small issues, but she has no issue getting her hands wet, whether it's the finest detail of helping out in the community, strategizing, or making tough decisions on behalf of the community.

Mayor Nelson asked "What do you think is the best thing the City Council did in the last year and also what do you think is the worst thing that the City Council did in the last year?"

Ms. Shah said she would like to highlight the many staff changes in the last year and a half and she witnessed that closely being on the Planning Commission. She commended the City Council for the swift changes at the City Administrator level and in the decision process behind that. She also commended the City Council on the new City Attorneys. She said once again, that was a need that had been evident for several years and she was pleased by how collectively the Council worked together to outline the process, the decision and implementation so quickly so they could

have a seamless turnover for the City. She said one thing the Council could have done better, from the outside she thinks some people feel that the Council is a bit dysfunctional and the communication could always be better. Again, she thinks they're doing improvements with the Code of Conduct that has been implemented, but getting more on a level that the public can understand and that the Council is having a functional conversation on behalf of the residents is an opportunity.

Mayor Nelson asked "What would be your priorities for the City if you were appointed?"

Ms. Shah said she's already highlighted a few, but that she'd like to be more engaged in working with NOHOA, as they are the sister governing body. In the case of North Oaks being a private community, they need to collaborate with NOHOA on a number of issues and with the times right now, people are questioning what the City is doing for their safety. She noted she'd like to dig into that a bit more and understand, with NOHOA's collaboration, what can be done, what are the options and become more engaged with the residents by asking what it is that makes the residents feel unsafe. She said it's important to really understand and pinpoint the problems, as they can't just throw ideas or resolutions out there without really listening to the residents and understanding those sore spots of concern and vulnerability. She said that is one of her number one opportunity she'd like to dig into if given the chance to serve on the Council.

Mayor Nelson asked "What do you think the role of the City Council should be in addressing these priorities? What do you think your role should be?"

Ms. Shah said at a 10,000-foot overview, the City is here to provide safety, security and the welfare of the people, so precisely police is right underneath that. She said she thinks the role of the City Council is to have oversight on how they use the police force and how they provide security to the citizens. She stated she would become highly engaged with their partners at the Ramsey County Sheriff's Department and look for ways to talk to residents about possible ideas and address their concerns and where they're seeing issues. She said that is where they would have to reach out to NOHOA and collaborate to try some possible pilot programs and test out some scenarios, as they all understand that data provides them with more ways to understand problems and solutions. Ms. Shah noted she was giving broad strokes, but she would like to work with NOHOA on some possible ideas.

Mayor Nelson asked Ms. Shah if she had any questions or anything she'd like to add. Ms. Shah said she knows the other candidates, she highly respects them and she thinks the Council has a very difficult decision. She noted that she fully supports whoever the Council chooses as she would like to see their City move forward. She thanked the Council for the process they put together.

After the three interviews, Administrator Kress said Mayor Nelson could ask the Council what their impressions were and at the end of the night, they could make a recommendation. Mr.

Kress said they had talked about doing an Oath of Office or appointment at the City's next regular meeting in August.

Councilmember Kingston said he is very grateful to have such qualified candidates come before the Council, which as Ms. Shah said, makes the decision that much more difficult. As he looks at it, moving forward he'd like to see someone be inclusive and reach outside of the City to reach out to citizens, be available and bring a perspective that people can understand. He also thinks it's helpful that a couple of the candidates live on the periphery and sometimes those people who live in some of the outside communities of North Oaks don't necessarily feel that they get the same level of representation as those who live in the inner part. He said they have a slate of fine candidates and that any one of them could fit the bill, they just need to figure out which one comes to the forefront.

Mayor Nelson noted that the materials and resumes submitted describe very qualified candidates. He also said the reference to incorporating into the Council individuals from the peripheral communities is a good idea.

Attorney Nason noted that the Candidate Filing period starts the following day and she was unsure of the end date. Since there is a two-year term, she wanted to point that out with respect to the timing of the decision-making process.

Councilmember Kingston said he'd like to take a sense of the Council, figure out if they can identify a candidate and move forward. He said his recommendation was that they recommend Ms. Sara Shah for a couple of reasons. He noted because she lives on the exterior, it helps bridge the gap that they currently don't have in the Council at the moment. He said some of her comments that resonated were about the inclusiveness in working with NOHOA on some of the priorities that were mentioned. Member Kingston said Ms. Shah has the experience, not only jumping in a few years back in previously serving on the Council to get an understanding of how they work, and also doing a fine job on the Planning Commission. He said even though he is recommending Ms. Shah, the other candidates are certainly top quality, as well.

Councilmember Long said he likes that Ms. Shah is a young mother, and that is the future with the children in the City and that is important.

Mayor Nelson said there is a history on the City Council as well as the Planning Commission of trying to have broad representation within the seats and he thinks Ms. Shah represents some of those concerns very well. He also noted that in few days there will be the opportunity to apply for City Council seats that will be vacant and there are several, so irrespective of who they select to fill former Councilmember Ross's remaining term, there are also other opportunities.

Councilmember Ries noted that all three of the candidates are very, very qualified and they are fortunate to have such highly qualified applicants. She said it is important to have representation all over, but they don't have representation on the East side, and that is a very important area that

is coming up in development. She thinks that Mr. Sandell had some very good points, also, of being thorough and protective of the community and those really hit home for her in addressing long-term success of the community. She noted he’s not only served on North Oaks Planning Commission but other cities as well. She said Mr. Dujmovic has an amazing background, an amazing resume and is very articulate and thorough; he would also make an excellent representative. She noted again, she thinks it’s important to put consideration into having someone who represents the East side at one of the City levels.

Mr. Kress asked Attorney Nason if they make the motion, could they still appoint the person at the next Council meeting, as there wasn’t discussion on whether that would be done tonight or at the next meeting. Ms. Nason said that is up to the Council, either to administer the Oath of Office tonight to the successful applicant, or it could be deferred until the next election. She said the only timing piece is whoever is appointed to fill this vacancy, their term will terminate as soon as their successor is qualified to take office. Because of the duration of the term, on the ballot it will be a two-year term for this particular office, and the others will be four-year terms, which doesn’t necessarily matter, but may make some difference to the individual who is running.

Mayor Nelson noted this is a short-term appointment that will only exist until the election in November.

Ms. Nason noted if the appointee takes the Oath of Office now, they are a sitting Councilmember with all the rights and responsibilities that associates. If they do not take the Oath of Office until the August meeting, they are not able to exercise any of those powers until they are administered the Oath of Office.

The Council agreed to have the swearing in ceremony and Oath of Office at the next City Council meeting on August 13, 2020.

MOTION by Kingston, seconded by Long to appoint Ms. Sara Shah to fulfill the remaining term of former Councilmember Katy Ross. Motion carried by roll call as Members Kingston, Long and Nelson voted for; Member Ries voted against.

ADJORNMENT

MOTION by Kingston, seconded by Long, to adjourn the Council meeting at 5:27 p.m. Motion carried unanimously by roll call.

Kevin Kress, City Administrator

Gregg Nelson, Mayor

Date approved_____

**North Oaks City Council
Special Meeting Minutes
North Oaks City Council Chambers
July 27, 2020**

CALL TO ORDER

Mayor Nelson called the Special Meeting to order on July 27, 2020 at 5:35 p.m.

ROLL CALL

City Councilmembers were present in the City Council Chambers or participated **by telephone or other electronic means** pursuant to Minn. Stat. § 13D.021. Residents can view the meeting on the cable access channel and through the website portal just like other public meetings.

Present: Mayor Gregg Nelson, Councilmembers Rick Kingston, Marty Long, Kara Ries

Staff Present: Administrator Kevin Kress, Attorney Bridget Nason, Administrative Assistant Gretchen Needham

Others Present: Videographer Maureen Anderson, Officer Mike Burrell
A quorum was declared present.

PLEDGE OF ALLEGIANCE

Mayor Nelson and those present in the Council Chambers recited the Pledge of Allegiance.

APPROVAL OF AGENDA

MOTION by Kingston, seconded by Long to approve the agenda. Motion carried unanimously by roll call.

NEW BUSINESS

- a. **Review, discussion, and potential action on complaint from North Oaks Company regarding the expert recommendation presented to the City Council at the June 11, 2020 Council meeting related to development plan approval for North Oaks Developments including the Nord parcel, and related Council communications and interactions regarding the same.**

Mayor Nelson introduced the new business item, stating at the June 11, 2020 Council meeting, the Council reviewed the unanimous recommendation of the Planning Commission, the independent planning body that evaluates proposed development plans. The Commission vetted and had multiple meetings including a public hearing, obtained information on review from Staff and the developer and had unanimously approved the preliminary plan. The preliminary plan was sent to the Council at the June 11, 2020 meeting with a 120-day period in which the plan must be approved or denied, if neither happens then the plan is approved as a matter of law. A few hours prior to the meeting, Councilmember Ries introduced a letter from a professor at the University

of Minnesota, sent that to the City Administrator, and Mr. Kress distributed it to Councilmembers and that became a subject at the June 11, 2020 City Council meeting.

Administrator Kress said they received two different letters from the North Oaks Company (NOC) about the incident between Councilmember Ries and Dr. Joe Magner from the University of Minnesota. From there, Mr. Kress asked Attorney Nason to give feedback on the two letters to the Council.

Attorney Nason noted the first letter from the North Oaks Company (NOC) dated July 8, 2020 referenced the June 10, 2020 letter from Dr. Joe Magner. The letter noted a subsequent meeting that included Dr. Magner and Councilmember Ries, followed by concerns raised by the NOC regarding the timing of the introduction of the letter from Dr. Magner with respect to the planning applications. The NOC letter also reiterated that individuals need to obtain permission from the Company to enter onto property owned by the NOC unless on a dedicated trail easement. The second letter from the NOC dated July 24, 2020 reiterated some of the same concerns and outlined concerns regarding the correspondence presented to the Council regarding Dr. Magner's letter and his evaluation of the Nord development site in the East Oaks area. The NOC raised concerns regarding potential due process and trespass issues and are requesting that the City Council address the matter.

Administrator Kress shared his screen to show the letters from the NOC, starting with the July 8, 2020 letter. Mayor Nelson said at the June 11, 2020 Council meeting, Councilmember Ries presented the letter from Dr. Magner on University of Minnesota letterhead indicating that he had walked on the developer's property and his summary was included in that letter. At the Council meeting, Ms. Ries noted that she had contacted Mr. Magner at the University of Minnesota. At the June 11, 2020 Council meeting, Mayor Nelson asked Mr. Kress if there had been any contact between Staff and Dr. Magner or Councilmember Ries prior to the meeting and the introduction of the letter just before the City Council meeting.

Mayor Nelson asked if they could play the portion of the June 11, 2020 meeting where Councilmember Ries introduced the subject and the part where Councilmember Kingston asked questions regarding the source of the information.

Administrator Kress asked to play the recording of the June 11, 2020 meeting at minute 45:24, which is the start of the conversation. He noted the questions from Councilmember Kingston start around minute 101:30 and 104:15. After trying to bring up the recording, the Council was unable to get the sound to play properly and instead moved on to discussion.

Mayor Nelson said they're not here to discuss the relative merits of Dr. Magner's report, but instead to talk about the questions raised by the Company relative to misrepresentations, he noted he doesn't even think the trespass issue is particularly difficult, as they heard from Councilmember Ries that she walked the property with Dr. Magner; therefore, he doesn't think that's a controverted issue but he would like to see what Councilmember Ries actually said that

has caused the controversy. He said essentially the NOC's complaints regarded the June 11, 2020 meeting when Councilmember Ries represented the report from Dr. Magner as being that of the University of Minnesota and that the University had sent someone out to inspect the Nord parcel. Mayor Nelson stated at the June 11, 2020 meeting, Councilmember Kingston questioned the relationship between Dr. Magner and one of Councilmember Ries's supporters, a Magner living in North Oaks, and Councilmember Ries had indicated she had no idea. Mayor Nelson said the developer invited Dr. Magner to their offices to discuss his concerns, and Ms. Ries attended with Dr. Magner as an uninvited guest.

Administrator Kress said he sent a correspondence on July 9, 2020 after his discussion with Dr. Magner where Mr. Kress asked a series of questions. The first question asked was when and how were Mr. Magner contacted by Councilmember Ries. Mr. Magner responded he didn't recall and would have to look back. The second question was if Mr. Magner had a discussion with Councilmember Ries about Gary Magner, as a question was raised during the Council meeting whether Dr. Magner is related to him. Dr. Magner replied yes, they did discuss the matter and discussed if there was a conflict of interest. Administrator Kress then asked Dr. Magner what his relationship to Gary Magner is, and Dr. Magner replied that Gary is his cousin, they don't speak often and had not discussed any development sites. Mr. Kress asked if Dr. Magner reviewed any other development sites, Dr. Magner answered no, but he discussed Nord and Anderson Woods during his meeting with the NOC. Mr. Kress asked if he'd been in any contact with any other members of the Council, Commission or public, and Dr. Magner answered no. Mr. Kress asked for Dr. Magner's perspective regarding surface water management and presenting to the Council and Commission, and Dr. Magner replied he is willing to provide a presentation if desired and he recommended the NOC conduct testing of water tables over a one year span. This was discussed with NOC during their meeting and Mr. Don Pereira has additional discussion materials with Dr. Magner.

Mayor Nelson said he thinks the material issues raised by the NOC were 1) that Dr. Magner and Councilmember Ries represented this letter purportedly obtained over the course of 24 hours as an indication of what the University of Minnesota's position was on the matter and 2) that Councilmember Ries, according to Dr. Magner, knew of a potential conflict of interest, knew of the relationship between the Magners and intentionally did not disclose that to the Council, even upon direct questioning. Mayor Nelson noted this is very serious behavior and said frankly, he shouldn't have to be here for this kind of issue, he shouldn't be listening to it and it's ridiculous that people are hiding and game-playing.

Mayor Nelson asked Mr. Kress to explain what the ordinary process would be if a City Councilmember had a concern and wanted to bring in an additional expert on a development.

Councilmember Ries asked the Council for the opportunity to respond to the accusations against her that were provided in the letter. Mayor Nelson said yes, they would do that if there is a motion to take action, then Councilmember Ries would have the opportunity to talk as much as she wants. Councilmember Ries said she thinks in order to make a motion, it would be

reasonable to allow her to respond at this point because there are only accusations from the company and she has not been afforded the opportunity to respond. Mayor Nelson reiterated that if there was a motion made, she would have the opportunity to respond.

Administrator Kress said he thinks they should also look at the second letter with specific areas of concern and that might be helpful to address the Mayor's question of best practices. He noted these best practices are to bring things to the City Council's attention first at a meeting to gauge the Council, then typically a motion and second to bring in an expert of that level. Mr. Kress shared his screen to show the second letter dated July 24, 2020 and explained that the letter goes into a lot of different detail. He noted that everyone has read the letter and referenced the first concern at the bottom of the first page regarding Councilmember Ries contacting the U of M and the University sending someone out to the proposed Nord parcel; the second issue raised regarded when Councilmember Ries was questioned regarding the relationship between Dr. Magner and Gary Magner; the third point was based on the conversation that Councilmember Ries was aware of the family relationship. Mr. Kress said he thinks the biggest concern the NOC had was that it wasn't disclosed at the last Council meeting. Mr. Kress said from there the Council should have a discussion and he agrees that Councilmember Ries should have the opportunity to speak on her behalf.

Mayor Nelson said he agreed as well and thinks it's a good idea. He also noted that not only was the relationship not disclosed, it was intentionally not disclosed and Councilmember Ries made an affirmative misrepresentation regarding her knowledge of the situation. Mayor Nelson said he didn't know if there would be a motion and welcomed Councilmember Ries to speak.

Councilmember Ries thanked the Council for the opportunity to respond. She said the timing of the question about when she met Dr. Magner is interesting and when you look at the timeline of facts that occurred, the Council had a series of meetings where it was 48 hours from the Planning Commission meeting to the City Council meeting. She said she had questions about physical evidence in the area, wetland questions that only a hydrologist or someone with that knowledge would understand, so she contacted an expert in the field. She came across and fully disclosed this during the City Council meeting on June 11, 2020 and she also disclosed this to the NOC in the meeting that followed. She said there were 48 hours from Planning Commission approval of preliminary plans to City Council review. Councilmember Ries said she always visits sites when they have plans, and noted the PDA grants her the right to go visit sites as part of her duty and obligation as a Councilmember to get educated on the area. She said she needed information to understand what was happening with the water at the site, so she looked up University of Minnesota specialists in hydrology through a Google search and found the directory and found Dr. Magner, who has specific experience and noted his public bio says he has a PhD in Hydrology Watershed Management, a degree in Soil and Water Science and has been a registered professional hydrologist since 1988. He is a licensed geologist in soil since 1998, and his areas of interest are watershed assessment, management and policy. Councilmember Ries noted she did not contact the University of Minnesota, she contacted Dr. Magner directly. As to whether she knew of his relationship with a resident of North Oaks at that time, she did not. She

stated that came up in later discussions that Mr. Mark Houge asked Dr. Magner in a meeting after the June 11, 2020 Council meeting, where Mr. Houge asked “Do you have a relationship with Gary Magner?” She said that information is completely irrelevant to the number of degrees Dr. Magner holds and his specific areas of interest. Additionally, Dr. Magner does other work with Vadnais Lake Area Water Management Organization (VLAWMO) in North Oaks and that has never been an issue. She stated it’s only brought up against Councilmember Ries herself. She said another important point to bring up is that Mr. Houge has gone on private tours with Councilmember Kingston and Mayor Nelson. Councilmember Ries said neither she nor Councilmember Ross were invited on any tours of the area. She said in suggesting that an agreement can be had with the City that would limit their rights as Councilmembers and officials to only go and review property after proper permission is granted somewhat takes away from the due process of the application process. Specifically, the property owner would be able to control who sees the property, the day and time they see the property and control the application process. Ms. Ries said the application process cannot be controlled by the applicant. She said the PDA clearly allows City officials to tour the property and inspect the area, and the MN Statute has language around this, as well. To suggest that Councilmember Ries cannot go on the property when it’s her right and her duty as an elected official and she was there doing her due diligence to collect information and become educated on physical standing water and on water management of an area. She noted she also has the right to walk on North Oaks Home Owners’ Association (NOHOA) roads and that she and Dr. Magner stood on North Deep Lake Road and they could see the water standing and trees underwater. Those were some of the identifiers she saw that indicated to her that there were issues. She said now she has two letters against her where she was simply fulfilling her duty as a City Councilmember to become educated on an area and she finds it very interesting and odd, especially when she was not invited to tour the area by the NOC and others were.

Mayor Nelson asked Councilmember Ries if she is alleging that all of her representations to the City Council on June 11, 2020 were accurate.

Councilmember Ries replied to Mayor Nelson that she had the floor and called a Point of Order, and said she may also need to call a Point of Personal Privilege because of the interruptions she repeatedly faces during City Council meetings which are very abrupt and disruptive of the process. Continuing on after calling a Point of Order, she noted that agreements with the City Council also obstruct any right of certain members of the Council to view the property and it’s also an abuse of process.

Mayor Nelson asked what the agreement is she is talking about so he understands.

Councilmember Ries said Mr. Houge had mentioned in his letter that there is some agreement that she is not aware of with the City that only they can grant permission. She said that would be a type of predetermining a decision and would also prejudice the proceeding. To be able to invite only two members to personally tour with the NOC, have discussions about the property and not have all members present, substantially prejudices the proceedings and in a way

predetermines what happens. She said there have also been reports that Mayor Nelson played golf with Mr. Houge, which would also be an example where the Mayor Nelson would get an audience with him where other City Council members are not afforded that opportunity.

Mayor Nelson warned Councilmember Ries when she says things like that, noting it was brought up by one of her people about two years ago and in fact, that person was directed to ask that question and she acknowledged afterwards that Mayor Nelson has never played golf with Mr. Houge and she knew that. Mayor Nelson noted he still has never played golf with Mr. Houge. He wants to make sure Councilmember Ries understands what is going on here, this is a question of whether she misrepresented material facts to her City Councilmembers, it is not about the merits of Mr. Magner.

Councilmember Ries again called for another Point of Order. She said in full and transparent disclosure, they need to be working for the community and reviewing the plans, they need to disclose when they meet with the NOC, and discussions they are having with the NOC. She said following this suit and in full disclosure to the community, they have a right to know that she did nothing wrong. She said during the meeting where Dr. Magner was personally invited to the NOC, it was because the Company was excited to show him some of the projects they were working on. She noted during the discussion, the NOC said they are also setting up research in North Oaks and are excited to work with him. Councilmember Ries said she finds it very curious that there was a complaint letter filed when they were excited to work with Dr. Magner after they realized his background and all the projects he'd been working on. Dr. Magner was invited to that meeting, she believes it was on June 30, 2020, and he invited Councilmember Ries to come along. She noted it was very odd that she wasn't informed of the meeting by the NOC but they had reached out to Dr. Magner directly and invited him to do a presentation. She said Dr. Magner did attend the meeting, it wasn't that long, and during the discussion Mr. Houge rudely said that Councilmember Ries was not invited, and Dr. Magner specifically said that he invited her and he wanted her to stay. She noted that no further objection was made in the meeting and the discussion immediately continued specific to Nord, and then Dr. Magner talked about the area. She thinks it's very interesting that the information Dr. Magner specializes in and provides, general information about water management in an area and some of the things he's working on is very critical in understanding what development should be and what responsible development looks like. She stated this would mean in 40 years when they're building in North Oaks, they're not seeing trouble, they make sure they have the capital improvements at the get-go and plan accordingly. She said there are two ways you can handle this in response to the water changes: you can plan accordingly or you can react retroactively. Councilmember Ries said part of bringing in Dr. Magner was because she did not go on the tour the NOC provided and she needed to understand some of the information through a hydrologist's standpoint and knowledge. She said perhaps Dr. Magner knew of North Oaks and that is why he returned her communication and was interested, she didn't know. She stated that Dr. Magner was very grateful of Mr. Houge, who brought up and asked if he had a connection with Gary Magner. Councilmember Ries said she finds it very interesting that one name is being selected out of a

petition of 430 people. She said it was Mr. Houge who had the conversation with Dr. Magner as to whether he knew Gary Magner or not.

Mayor Nelson said that's another misstatement and he'd like to conclude because she's going far afield, she knows that during the City Council meeting she was asked that question as well. Councilmember Ries said yes, she was.

Mayor Nelson said frankly he doesn't play golf with Mr. Houge, in fact he rarely plays golf. He said he is amazed and disappointed that Councilmember Ries did not ask the NOC for a tour of the development when she has been so vehemently opposed to it. He said she really should have her feet on the ground there before this time. He stated there was no invitation for a tour, that is something a person is supposed to do as part of their City Council job, they're supposed to tour the property with the developer so they are not trespassing. He noted she should have done that long ago and to use that as a tool to make it look like she's been disenfranchised is ridiculous, as all she needed to do was call the NOC and go out there. Mayor Nelson said she can go ahead and continue but said not to make anything else up.

Councilmember Ries said in response, she is not making anything up and reiterated she has full right to enter that property under the PUD and she has the right to do her due diligence.

Mayor Nelson questioned why she didn't visit the property two years ago.

Councilmember Ries continued and said she thinks bringing up other members of the community is irrelevant to the issue and is completely inappropriate. She stated that not one time did Mayor Nelson call her about the letters or inquire with her about it beyond the public meetings. She finds it very interesting that they are now sitting here with proceedings where the NOC filed two letters against her, demanding that the issue be addressed, when there have been other Councilmembers with complaints filed against them and very little was done, it was just a quick agenda item, check the box, move on and nothing was done.

Mayor Nelson said once again for clarity, they are referring to a July 24, 2020 letter.

Councilmember Ries said to call a special meeting to pull her out on the rug on an issue where she's done nothing wrong, she finds it very, very interesting.

Mayor Nelson said three days ago on July 24, 2020, they received a letter from the NOC and he called a special meeting because they are alleging material representations regarding a very serious matter. He said how they do their work on City Council, is in front of the TV, not behind closed doors like she did with Dr. Magner and her friends. He stated that is the difference here, and he is hearing from her statement today that she is misrepresenting things. Mayor Nelson asked if she is alleging that all of her representations to City Council at the June 11, 2020 meeting were accurate and truthful.

Councilmember Ries said she'd have to go back and review everything she said. Mayor Nelson asked if she told the truth the whole time. After a moment, he said that's what he thought and thanked her and asked if anyone else had any comments.

Councilmember Kingston said he thinks it would help if they went back to what was initially said that launched the concern. He said he has the conversation on his computer and shared his screen. The Council then listened to a portion of the City Council meeting from June 11, 2020. Councilmember Kingston said he thinks the essence is that what Councilmember Ries represented is that she contacted the University of Minnesota and they sent someone out and the individual was Dr. Joe Magner. He said one of the concerns raised is that the University didn't send anyone out, that was just misrepresentation. He noted he is concerned about Councilmember Ries is sharing that information with the community that the University of Minnesota is sanctioning a person to come out and represent the University of Minnesota on this particular issue. He said he thinks that's what came through in the first concern raised by the NOC. The second thing that came through had to do with whether or not Councilmember Ries knew that Dr. Magner had a relative named Gary Magner who signed the petition against the development. Councilmember Kingston stated that it seemed odd to have someone drop everything on a Wednesday morning, come out inspect the site and have a letter by Wednesday afternoon, stating that just isn't plausible and he doesn't know how that happens. He said he specifically asked Councilmember Ries if there was a relationship between the Gary Magner that signed the petition and she said she had no idea, and it was subsequently determined after talking with Dr. Magner that actually she did know and the two of them talked about the fact that there was a potential conflict and apparently decided that it wasn't worth bringing up. He noted that is what this whole issue is about.

Councilmember Ries thanked Councilmember Kingston for clarifying that and showing the video of the June 11, 2020 meeting, noting it's much better to address these issues live. She said to clarify on the record, she contacted Dr. Magner; He is employed at the University of Minnesota. She said she thinks they're parsing hairs here in saying she misrepresented something. She said Dr. Magner, in his own signature, signed the letter that he sent to the City, simply about the general issues that he wrote in the letter. She noted again that he signed the letter in his own name. She said they could drag her over the coals and say she misrepresented, but she has always said that she spoke with Dr. Joe Magner at the University of Minnesota. Second, she said it came out later that Dr. Magner had a relative in North Oaks. She again reiterated, maybe that is why he was interested in North Oaks, perhaps he recognized the name North Oaks, she didn't know, but noted again he does other work in North Oaks. She said it's splitting hairs. Councilmember Ries said in all of the discussions when they were talking about the land, Dr. Magner, in his professional opinion of the area, they simply talked about the hydrology and it was a very informative, very well thought-out look in 3D at the area. She said if they think that it was misrepresented they have to look at the timeline of the City Council meeting and that yes, later on it did come out that he was related to someone, and they did discuss it. She said she brought up the fact or concern of conflict of interest, and Dr. Magner said he doesn't have much contact with his cousin and he does this type of work.

Councilmember Ries said she doesn't want to get into the issue, but whether or not there is a conflict of interest, again she thinks it's splitting hairs when she was asking his hydrology opinion about standing water in an area in a 3D drainage view of the area and whether or not he knew someone who lives on the East side that he is related to or not. She stated she feels that she is being raked over the coals and accused of things that she has been truthful about. She has always disclosed that she was working with Dr. Magner, she made an effort to call Administrator Kress and talk to him about it, she made an effort to provide the letter and disclose all this during meetings. She said they're now going back second-by-second during meetings and cross-examining every single word she said and it seems like they're being a little overzealous in the approach. She said Mr. Houge gave private tours to other individuals and out of fairness to the other Councilmembers, that should've been disclosed and they all should have been privy to information. She stated private tours of a couple of Councilmembers should not be held, it should be a group effort, so everyone is privy to the conversations and receive equal amounts of information in reviewing the applications. She said yes, they are all able to go out on their own, use their eyes, look at the sites on their own time, but when you get the audience of Mr. Houge and his perspective, they should all be there to share in that perspective equally.

Councilmember Kingston told Councilmember Ries he thinks she's missing the entire point. It doesn't have anything to do with whether or not there's an actual conflict, it's about disclosure and Administrator Kress talked to Dr. Magner afterwards and he said that Councilmember Ries knew that he was related to an individual that signed the petition against the development and she did not disclose that when she was asked. He said regarding all the other things she is bringing up regarding two Councilmembers going on a tour with a Planning Commission member and another resident in the area, he said she knows that they can't have more than two Councilmembers in one spot. He stated if she wanted to go look at the Nord plot, she was welcome to do that, he didn't know that the NOC ever denied anyone the opportunity to look at it, people just have to check with them as it's their private property. He said maybe he's wrong but he doesn't know of any law that says you can go onto private property, even in the course of City Council activities. He said it's about being entirely truthful in sharing information at the Council level that the Council can depend on. He said she can go back and look at the way she introduced it, where she said the University of Minnesota sent Dr. Magner out to issue this concern and that they needed to stop everything, and he noted that is a problem.

Councilmember Ries said to clarify again, she did reach out to Dr. Magner at the University of Minnesota to answer questions that she had.

Councilmember Kingston said the University did not take Councilmember Ries's call. Councilmember Ries said that is correct, she doesn't even remember if she called him or the initial contact specifics.

Administrator Kress asked to chime in and said a better way to frame the question is how long has Councilmember Ries known Dr. Magner, because that is the one question he was not able to answer and that is the one that raised the most red flags for Mr. Kress and Mr. Houge.

Councilmember Ries said she can look back but it was right about the time of the Planning Commission meeting.

Administrator Kress asked Attorney Nason to clarify something. He said his understanding is that the privileges to go on site are typically for Staff and consultants. When it comes to Planning Commission and City Council, he knows there was information presented as part of the Planning Commission and a very lengthy well put-together PowerPoint presentation, and he would like her to speak on that. He said typically everyone that went on site did ask permission; they asked permission as Staff and consultants when they went on site and he thinks it's important to clarify that.

Attorney Nason replied that she thinks the section of the PDA being referred to is Section 19.10: Access. She said it states that the developer does grant the City, its agents, employees, officers and contractors an irrevocable license to enter on the subject property to perform all inspections deemed appropriate by the City relating to the installation or proposed installation on maintenance of any improvements by the developer. Attorney Nason said there is an access right, and it does appear to be focused on the installation of improvements and the review of those installed improvements, so it's a little bit more narrow in scope, it's not a general license for everyone. She stated that is perhaps the language that is being referred to. Attorney Nason said if it's private property, typically you do need to have permission and it's a little bit complicated because the general rule is that it's important that the Council and the Planning Commission have the same information regarding development sites. If the Planning Commission or Council wants to visit a development site as a group, they need to notice that as a special meeting and treat it as such. Otherwise, it's important that all Planning Commission and Councilmembers are working off of the same information with respect to the development sites. Ms. Nason said if someone wants to go onto private property to view a development, you do need to have the private property owner's permission unless the language in the PDA is broad enough to go farther than that. She noted again the language in the PDA is focused more on the inspection piece.

Administrator Kress asked Attorney Nason what options the City Council has given the two letters and the feedback heard tonight.

Councilmember Long asked to jump in and said that is where they need to be focused, that this isn't something that City Council created, it is an action because of two letters by the NOC. He asked if they are at risk of being sued by the NOC and what do they need to do.

Attorney Nason said she doesn't see a threat of a lawsuit, she does think there is some concern raised regarding due process by the NOC's letters. She said the Company can deal with its own situation if it believes someone is a trespasser. She said as far as Administrator Kress's question of what does the Council want to do, she noted the Council wanted more information and has had the opportunity to receive more information and clarification. She said if the Council has concerns or feels the information provided was in some fashion misleading, it has the option to

make a motion to issue some type of censure or verbal reprimand, adding that's really all the Council can do. She said if the Council chooses to make a motion, they should specify what the basis of that motion is for. Ms. Nason said the same could be brought forth in a resolution, but ultimately the Council doesn't have any ability to do much more than to ask questions and receive information.

Councilmember Ries asked Attorney Nason if the main issue was the introduction at the point of the video where she said she had contacted the University of Minnesota, could a correction record by Councilmember Ries also be provided so the record and representation is clear that she had contact Dr. Magner. She believes that the record after that does clarify that she contacted Dr. Magner at the University of Minnesota.

Attorney Nason said yes, it sounds like Councilmember Ries had offered a clarification explaining the exact context with respect to her communication to Dr. Magner. She stated there is no way to change the minutes once they are adopted, but a Councilmember could certainly offer a clarifying statement which is essentially what Ms. Nason heard Councilmember Ries saying tonight, and then the Council can take that statement and do with it what it may. She reiterated that yes, what she hears is a clarification that's been offered regarding that particular piece. With respect to the other issues and meetings, Ms. Nason said they've covered that with the developer and access to the property, but ultimately the Council could take the clarification and accept the clarification or choose to move forward as she mentioned on the other options.

Councilmember Kingston stated they're not talking about the same thing. He said they're talking about the fact that Dr. Joe Magner told our City Administrator that he and Councilmember Ries had talked about the potential conflict of interest. He said when Councilmember Ries was asked that, she specifically said she had no idea, when in fact they had talked about it before. He said it doesn't get any simpler than that and that's what the issue is.

Attorney Nason said she's not sure about the timing piece and if there are some follow-up questions people want to ask. She said she took notes that indicate there was a conversation that occurred after the Council meeting, and she didn't see in Administrator Kress's email a specific timeline, so there might still be some concerns about that timeline with respect to the relationship discussion.

Mayor Nelson thanked Ms. Nason and said he doesn't have any concern about the timeline, both Councilmember Ries and Dr. Magner avoided answering the question of when they first got together and when they discussed the conflict of interest. In his mind, that is enough of an answer right there. He said he finds two issues. One is the failure to disclose the conflict or the potential for conflict and the second is the introduction of this report at the last minute and representing it as a University of Minnesota document. Mayor Nelson said he thinks both of those are a problem but the misrepresentation relative to the potential conflict is at least as serious as the other. So there are two issues in front of them, it's not about the quality of Mr. Magner's background, whether he's an appropriate expert, etcetera, it is about the conduct of

their Councilmember and the complaint received from the NOC. He said that is what they're having an open meeting for.

Councilmember Ries said she'd be happy to look into her emails and disclose to Administrator Kress the information about timelines to show when she first contacted Mr. Magner and information they discussed. She has no problems gathering that information and having a meeting with Mr. Kress to disclose the information. She said again, to show that there is a conflict of interest, to make a statement that there is a conflict of interest, would be a legal issue, also, instead of an accusatory statement that would be raised. She reiterated she would be happy to work with Mr. Kress afterwards to gather that information, and she'd be happy to have a call with Dr. Magner to clarify the questions raised this evening. She stated she doesn't have anything to hide, she is happy to gather the information and provide it to the public.

Mayor Nelson said what is so dangerous about Councilmember Ries's behavior is that now, after this has been uncovered and after she has caused a great deal of problems, she is now willing to make an effort to disclose what actually happened and clarify the record. He said the danger was that on June 11, 2020, Councilmember Ries and Dr. Magner were fully prepared to present a situation to the City Council that would've stopped the development of a multimillion dollar project based on a twenty or thirty minute visit to the property that she'd never visited before with no scientific evaluation and based on the report of a person who may well be conflicted in this case, and she misrepresented how she got to him. He said there are all sorts of problems here and fixing it now doesn't save them from the problem they may have in the future should she try this again. He stated it's a big problem, he sees it as a huge problem, and it's very disconcerting to have a City Councilmember work outside of Staff and bring in things like this at the last minute and have the Staff and Council have to deal with it without prior information and it just doesn't make any sense for them to not be concerned. He noted he recognizes the NOC's concerns, they received the letter on July 24, 2020 and that's why they're having a meeting today.

Administrator Kress noted that Attorney Nason had a hard-stop timewise and asked if she had any final thoughts before they see the Council's perspective. Attorney Nason said no, and said she did have a hard-stop for another meeting at 6:35 p.m.

Councilmember Ries asked to make one clarifying statement, noting the letter that Dr. Magner had sent before the June 11, 2020 City Council meeting, she said the water management program should be looked at and data needs to be considered into the process. She said it wasn't anything that should particularly stop, it was more a part of the process, so she finds the statements the Mayor raised that she tried to stop a thirty million dollar project interesting. She stated the data should be collected in assessing the area and that someone brought up a point of further information that the Council may want to look at. She said it wasn't to stop a development, it was part of the consideration of the development. She wanted to clarify that the point was not to stop a thirty million dollar development and that was not the language in the letter.

Mayor Nelson said let's go back to the facts and in fact Councilmember Ries did vote against the motion to approve the preliminary plan, and asked if that was true. Councilmember Ries said she believes she did for multiple reasons. Mayor Nelson noted she didn't offer any explanation.

Administrator Kress said Attorney Nason left the Council with a couple of options. He said he thinks they've exhausted their research on the item with the minutes, the video and the discussion. He asked what the Council wants to see done with tonight's discussion.

Mayor Nelson said one thing they haven't done is replay Councilmember Ries's denial of the relationship between Dr. Magner and the resident in North Oaks and asked if they need to do that or if it's accepted.

Administrator Kress said he needs to know what they want him to do as their staff member.

Mayor Nelson asked if there was a motion.

Councilmember Kingston said he thinks they should finish it out and said that he goes back to Administrator Kress's conversation with Dr. Magner. He asked Mr. Kress if he had any indication, as he asked Dr. Magner quite blank if there is a relationship, and he mentioned that he and Councilmember Ries discussed the conflict of interest. Councilmember Kingston asked why you would do that after the meeting, saying you'd do that before, there would be no reason to bring it up and it just doesn't make any sense.

Administrator Kress said he really can't answer that. He stated the first question he asked was definitely concerning, Mr. Kress would've expected that Dr. Magner would've known that he was contacted that Wednesday before the Council meeting and developed that letter and that's not what Dr. Magner said; Dr. Magner said he wasn't able to disclose that. Mr. Kress asked how long Dr. Magner and Councilmember Ries had known each other just to get a perspective, and that wasn't discussed. Mr. Kress is still a little confused about why Dr. Magner would say they had the discussion but then it was after the fact, but that's really not for Mr. Kress to investigate as he has no way to figure that out.

Mayor Nelson noted that he and Councilmember Kingston both asked to play the recording relative to Councilmember Ries's response to Councilmember Kingston's request for information about the relationship between Dr. Magner and Gary Magner. He asked that they go to that tape around 104:15 on the recording.

Councilmember Kingston cued up the recording on his screen. While waiting for the recording, Administrator Kress said he'd like to talk a bit about bringing professional consultants in and that it is concerning to him. He said he'd rather see the Planning Commission or City Council address that at a meeting if they are going to bring someone of that level onto the playing field.

Councilmember Ries asked what the consultants would be reviewing.

Administrator Kress said it depends on what the Councilmember or Commissioner wants them to do. He said if you're going to bring someone from outside the City's consultants they need to know about it. He noted that he is careful about who he brings to a meeting and what type of presentation it is. He said he wants to have an open discussion with the Council on what their expectations are for Staff and Council.

Councilmember Kingston said he was ready to play the recording. The Council watched a portion of the recording from June 11, 2020. In the recording, Councilmember Kingston asked Councilmember Ries if the individual that came out (Dr. Magner) was a paid consultant. Councilmember Ries said it was all pro bono. Councilmember Kingston asked if Dr. Magner was related to the Magner that signed Franny's petition and lives in North Oaks. Councilmember Ries said she didn't have any idea. (End of recording.)

Councilmember Kingston said he understands that Councilmember Ries went to school with Gary Magner's daughter, and that there had been some posts on the NOHOA Facebook page. He said something just isn't adding up here and it just doesn't make sense.

Councilmember Ries said she finds it very interesting that Councilmember Kingston is literally conducting a Salem witch trial right now, looking into Facebook posts and accusing her of things. She said Dr. Magner's information was simply to educate her on area and standing water, and she had the right as Attorney Nason just stated to go out and tour the site, as officials are allowed to go and inspect the site. She said now they're trying to create a conflict of interest or some special relationship with Gary Magner who lives nowhere near Nord, and she happens to be working with someone who is related to him, and they're going into Facebook posts about communicating with people. She said this is turning into harassment and a witch hunt, noting that she would like to be afforded the opportunity to work with Administrator Kress to provide the information. She said she believes in respect for his position, if Mr. Kress thinks that there is still an issue, then they can pursue that in another meeting. Councilmember Ries said she'd be happy to disclose when she started talking to Dr. Magner, what the questions she asked were, and what the site visit entailed. She reiterated she is more than happy to work with Administrator Kress to provide the details that he thinks are necessary to find out when she started contacting Dr. Magner and what was the extent of the communication.

Councilmember Kingston said that wasn't the issue, that none of them are questioning Dr. Magner's credentials in terms of whether or not he's an expert in his field. He said the whole question is about giving people the opportunity to know if there is a conflict and let them decide...it's all about disclosure. It's as simple as that. He said there may not be a conflict, and the point is, Councilmember Ries was asked if there was a relationship and Dr. Magner told Administrator Kress that the two of them talked about the conflict of interest. He asked why would they talk about it after the meeting, it doesn't even make sense; they would talk about it before and then decide, "What do we do about it?"

Councilmember Ries said of the conversation at the June 11, 2020 meeting, Councilmember Kingston asked her the question at the meeting and she answered the question at the meeting. She said in a follow-up conversation with Dr. Magner, it does not show what he is claiming or accusing her of false information during a meeting. It simply shows that she answered Councilmember Kingston's question and later had a discussion, following up research that Councilmember Kingston had clearly done, to find out information. She said she does not know the names on that petition, she understands there are 430 names on the petition, but she does not know all the names.

Councilmember Kingston said the petition was submitted to the Council so she has a copy of it.

Councilmember Ries said she went to Administrator Kress and asked for the four paragraphs of the petition but she did not look through the names on it.

Administrator Kress said there are a couple of things he needs the Council to clarify as obviously this is not a fun discussion and he needs clarity from the Council on what the expectations are moving forward. He said his expectation of anyone that goes on site is that they should get written permission. He stated that is what was discussed in part of the PDA and that is what he would advise the Planning Commissioners to do each and every time they go on site and he would ask the Council to do the same thing. Mr. Kress noted he does the same thing when he goes on site, it's just to cover-your-bases. He said he understands that it's written in the PDA but to keep things straight, that's what should be done moving forward.

Councilmember Ries said to clarify that, she thinks when people ask for permission to go on site, it should be a group effort so that it gets communicated who is going on site, and permission is given to people so they're all afforded the opportunity to do a group discussion with the NOC. She said she believes that is how they did it twenty years ago and it might be nice to have that procedure again, that they're all together to receive the information that Mr. Houge provides the Councilmembers.

Administrator Kress said if they're going to do that, his suggestion would be to do that as part of the Council meeting with a motion and a second because that is technically a special meeting. He stated if there's a quorum of the Planning Commission or the City Council, his suggestion is if anyone goes on site, they don't say anything, but they absorb the information of the walk or whatever was said by the Company, but the questions and comments should be kept to a minimum.

Councilmember Ries said her other concern with that is that it may bias the process as some people may be afforded opportunities that others are not and she wants to point out that Mr. Houge had simply raised that there may be safety concerns on this vacant land that he would be concerned about. She said she would stress that it's the NOC's responsibility to secure the property, they should be keeping it safe when the Council does inspections. She said there is an expectation that the Council will be touring when there are applications before them. She also

stated the NOC should give written notice of unsafe conditions on the property when they occur, so the Council can stay safe when they inspect the property.

Administrator Kress said that's fine, and what he wants the Council to do is to clarify what their expectations are of anyone going on the site. He noted he's said that his expectations are written permission, that's a pretty fail-safe method of "I want to go on site with two or three members," etcetera. He said he thinks there is too much gray area in just going on the site and he just doesn't like it. He would like a different process for the Council and Planning Commission.

Mayor Nelson stated he thought they had a process and that was for a person to contact the NOC if they want to see the land and they will allow them on it. He said that's the process that everyone has followed to his knowledge, other than Councilmember Ries. He said he does not know what former Councilmember Katy Ross did, or what Councilmember Ries has done in the past, but she claimed she'd never been on the property previously, so he does not know. He said that is the rule, that is how they follow it and that is how it's done, and no, he doesn't play golf and yes, he has been on the property. He noted no, it was not with Mr. Houge to his recollection, although he probably was there somewhere along the line with Mr. Houge along the many years he's been dealing with this. He stated he remembers a trip where he looked at the property very early on with Mr. Gary Eagles, because he requested that so he would know what they were talking about. He said he's really irritated that Councilmember Ries has turned this into a question of her being excluded when in fact she's never asked to get on the property. He said that is what you're supposed to do, and that is not the issue for the day. The issue for the day is, did Councilmember Ries misrepresent things to the City Council, that's a very serious thing, and it was intended to confuse the City Council by bringing in a last minute report, which also concerns him a great deal.

Mayor Nelson then asked if there is any action the City Council wants to take, because he thinks they belabored the issue and he does not want to visit it again, but if they do need to they can.

Councilmember Kingston said he remains concerned about truthfulness here. He thinks that Mr. Kress should follow up with Dr. Magner and they need to get to the bottom of it, he doesn't think that it's reasonable to just let it go without some resolution. He noted the second thing that he is concerned about is that Councilmember Ries just misrepresented the facts and made no attempt to correct them, even when he brought it up at the June 11, 2020 meeting. Councilmember Kingston said he told her what he thought was the concern there, and she made no attempt to change that, she knew about what Mr. Kress found out from Dr. Magner around two weeks ago with no attempt to question that 'maybe it isn't quite like this.' Councilmember Kingston said it doesn't make sense, if there was something that was misstated, certainly that would've been corrected immediately. He reiterated that is what concerns him.

Councilmember Ries said as she stated on the record, she is happy to work with Mr. Kress to provide the clarification that they're seeking, and she also said no one reached out to her that this

was a concern. She said clearly they're looking at Facebook posts, they're reviewing footage, they have the minutes and the seconds of the meeting, but no one reached out to her to ask her.

Councilmember Kingston said it was all shared with her, Administrator Kress sent it out directly to all the Councilmembers, they knew what the discussion was with Dr. Magner. He said the Company did the same thing, they saw it in black and white, and she was at that meeting.

Councilmember Ries said no, what she's saying is if someone had concerns about an issue, they didn't reach out to her; no one bothered to contact her, instead it's a witch hunt set up in a special meeting.

Mayor Nelson said they could not have met more rapidly than they did, as the complaint was filed on July 24, 2020 and they are now exploring the facts. He said he thinks personally, Councilmember Ries is not telling the whole truth, but he's waiting to find out. He said if they want to table this and revisit after they talk to Dr. Magner, it would be an interesting discussion.

Administrator Kress said he is fine talking to Councilmember Ries and Dr. Magner about the situation.

MOTION by Long, seconded by Kingston to table the discussion until the August 13, 2020 City Council meeting. Motion carried by roll call with Members Long, Kingston and Nelson voting for; Member Ries abstained.

In closing, Mayor Nelson said he does not like this and does not think their City Council should have to address these kinds of issues. He stated he is very disappointed in the behavior of going outside of the Staff, presenting sudden reports right before a meeting with individuals who have a questionable relationship and a potential conflict. He said these are all things that should not happen in the City of North Oaks and he is very distressed and said at the next meeting or before, he hopes to get to the bottom of it.

ADJORNMENT

MOTION by Kingston, seconded by Long, to adjourn the Council meeting at 6:53 p.m. Motion carried unanimously by roll call.

Kevin Kress, City Administrator

Gregg Nelson, Mayor

Date approved _____

**CITY OF NORTH OAKS
RAMSEY COUNTY, MINNESOTA
RESOLUTION NO. 1392**

**RESOLUTION ADOPTING FINDINGS OF FACT AND APPROVING A
VARIANCE TO THE PROPERTY LINE SETBACK REQUIREMENTS FOR
INSTALLATION OF A SUB-SURFACE SEWAGE TREATMENT SYSTEM
(SSTS) FOR THE PROPERTY LOCATED AT 2 ISLAND ROAD**

WHEREAS, North Oaks Zoning Ordinance Section 151.050(F) prohibits an individual sewage treatment system from being located within thirty (30) feet of the lot lines on any individual lot; and

WHEREAS, an application for a variance has been submitted by Ilya Berchenko and Tara Berchenko, the owners of the real property located at 2 Island Road, Ramsey County, MN (Property) legally described on the attached **EXHIBIT A** for the following variance:

1. To allow the construction of a sub-surface sewage treatment system (SSTS) within the required thirty (30) foot property line setback, with an encroachment fifteen (15) feet into the required thirty (30) foot west property line setback, and fifteen (15) feet into the required thirty (30) foot southwest property line setback.

WHEREAS, the current system has been classified as non-compliant under MPCA Rule 7080.1500, Subp. 4(D) due to the lack of the required three-foot separation between the bottom of the drainfield and the limiting soil conditions; and

WHEREAS, City Staff have determined that the proposed location of the SSTS, as shown on the site plan provided to the City in conjunction with the variance application attached hereto is the most viable location for the SSTS based on the site constraints identified above; and

WHEREAS, the request has been reviewed against the relevant requirements of North Oaks Zoning Ordinance Sections 151.078 and Minnesota Statutes, Section 462.357, subd. 6, regarding the criteria for issuance of a variance, the requisite practical difficulties were found to support a grant of the requested variance, and the Council further makes the following findings of fact with respect to the variance application:

- The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.
- The plight of the landowner is due to circumstances unique to the property not created by the landowner.
- The variance, if granted, will not alter the essential character of the locality.

- The variance is in harmony with the general purposes and intent of the zoning ordinance.
- The terms of the variance are consistent with the comprehensive plan.
- Granting the requested variance will not confer on the applicant any special privilege that is denied by Chapter 151 of the City Code to other lands, structures, or buildings in the same district.
- The Variance requested is the minimum variance which would alleviate the practical difficulties.
- The proposed variance will not impair an adequate supply of light and air to adjacent land, or substantially increase the congestion of the roads and streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.
- At no time after the land became nonconforming was the property under common ownership with contiguous land, the combination of which could have been used to reduce or avoid the nonconformity of the land.

WHEREAS, the variance application was considered by the North Oaks Planning Commission at its July 30, 2020, meeting, at which time a hearing concerning the variance application was held, following which the Planning Commission voted unanimously to recommend approval of the Variance application subject to the conditions listed in the Planner’s Report dated June 22, 2020.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH OAKS, that the findings of fact related to the requested variance listed above are hereby adopted as the Council’s findings of fact to support the grant of the requested variances, and the following variance is approved:

1. To allow the construction of a sub-surface sewage treatment system (SSTS) within the required thirty (30) foot property line setbacks, with an encroachment fifteen (15) feet into the required thirty (30) foot west property line setback, and fifteen (15) feet into the required thirty (30) foot southwest property line setback.

subject to the following two conditions:

1. The sub-surface sewage treatment system (SSTS) shall be installed in the location shown on the site plan provided to the City dated September 29, 2019 by Jesse Kloeppner.
2. Completion of the SSTS installation shall occur within 120 days from approval.

BE IT FURTHER RESOLVED that the City Clerk, Deputy City Clerk, or City Attorney are hereby authorized to record a certified copy of this Resolution with the Ramsey County Registrar of Titles.

Adopted by the City Council of the City of North Oaks this 13th day of August, 2020.

By: _____
Gregg Nelson
Its: Mayor

Attested:

By: _____
Kevin Kress
Its: City Administrator/City Clerk

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Tract I, Registered Land Survey No. 295, on file with the of Registrar of Titles, Ramsey County, Minnesota.

Parcel Identification Number: 073022330001
Registered Property

**CITY OF NORTH OAKS
RAMSEY COUNTY, MINNESOTA
RESOLUTION NO. 1393**

**RESOLUTION ADOPTING FINDINGS OF FACT AND APPROVING
VARIANCES TO THE SOUTH PROPERTY LINE SETBACK REQUIREMENT
FOR INSTALLATION OF A SUB-SURFACE SEWAGE TREATMENT SYSTEM
(SSTS) FOR THE PROPERTY LOCATED AT 4 BUFFALO ROAD**

WHEREAS, North Oaks Zoning Ordinance Section 151.050(F) prohibits an individual sewage treatment system from being located within thirty (30) feet of the lot lines on any individual lot; and

WHEREAS, an application for a variance has been submitted by Seema Rizvi and Shambeel H. Rizvi, the owners of the real property located at 4 Buffalo Road, North Oaks, Ramsey County, MN (Property) legally described on the attached **EXHIBIT A** for the following variance:

1. To allow the construction of a sub-surface sewage treatment system (SSTS) within the required thirty (30) foot south property line setback, with an encroachment four (4) feet into the required thirty (30) foot south property line setback.

WHEREAS, the current system has been classified as non-compliant under MPCA Rule 7080.1500, Subp. 4(D) due to lack of the required three-foot separation between the bottom of the drainfield and the limiting soil conditions; and

WHEREAS, City Staff have determined that the proposed location of the SSTS, as shown on the site plan provided to the City in conjunction with the variance application attached hereto, is the most viable location for the SSTS based on the site constraints identified above; and

WHEREAS, the request has been reviewed against the relevant requirements of North Oaks Zoning Ordinance Sections 151.078 and Minnesota Statutes, Section 462.357, subd. 6, regarding the criteria for issuance of a variance, the requisite practical difficulties were found to support a grant of the requested variance, and the Council further makes the following findings of fact with respect to the variance application:

- The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.
- The plight of the landowner is due to circumstances unique to the property not created by the landowner.
- The variance, if granted, will not alter the essential character of the locality.

- The variance is in harmony with the general purposes and intent of the zoning ordinance.
- The terms of the variance are consistent with the comprehensive plan.
- Granting the requested variance will not confer on the applicant any special privilege that is denied by Chapter 151 of the City Code to other lands, structures, or buildings in the same district.
- The Variance requested is the minimum variance which would alleviate the practical difficulties.
- The proposed variance will not impair an adequate supply of light and air to adjacent land, or substantially increase the congestion of the roads and streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.
- At no time after the land became nonconforming was the property under common ownership with contiguous land, the combination of which could have been used to reduce or avoid the nonconformity of the land.

WHEREAS, the variance application was considered by the North Oaks Planning Commission at its July 30, 2020, meeting, at which time a hearing concerning the variance application was held, following which the Planning Commission voted unanimously to recommend approval of the Variance application subject to the conditions listed in the Planner’s Report dated June 22, 2020.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH OAKS, that the findings of fact related to the requested variance listed above are hereby adopted as the Council’s findings of fact to support the grant of the requested variances, and the following variance is approved:

1. To allow the construction of a sub-surface sewage treatment system (SSTS) within the required thirty (30) foot south property line setback, with an encroachment four (4) feet into the required thirty (30) foot south property line setback.

subject to the following two conditions:

1. The sub-surface sewage treatment system (SSTS) shall be installed in the location shown on the site plan provided to the City dated April 9, 2020 by Jesse Kloepner.
2. Completion of the SSTS installation shall occur within 120 days from approval.

BE IT FURTHER RESOLVED that the City Clerk, Deputy City Clerk, or City Attorney are hereby authorized to record a certified copy of this Resolution with the Ramsey County Registrar of Titles.

Adopted by the City Council of the City of North Oaks this 13th day of August, 2020.

By: _____
Gregg Nelson
Its: Mayor

Attested:

By: _____
Kevin Kress
Its: City Administrator/City Clerk

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Tract JJ, Registered Land Survey No. 43, on file with the Register of Titles, Ramsey County, Minnesota.

Parcel Identification Number: 183022140007
Registered Property

**CITY OF NORTH OAKS
RAMSEY COUNTY, MINNESOTA
RESOLUTION NO. 1394**

**RESOLUTION ADOPTING FINDINGS OF FACT AND APPROVING
VARIANCES TO THE PROPERTY LINE SETBACK REQUIREMENTS FOR
INSTALLATION OF A SUB-SURFACE SEWAGE TREATMENT SYSTEM
(SSTS) FOR THE PROPERTY LOCATED AT 31 SOUTH LONG LAKE TRAIL**

WHEREAS, North Oaks Zoning Ordinance Section 151.050(F) prohibits an individual sewage treatment system from being located within thirty (30) feet of the lot lines on any individual lot; and

WHEREAS, an application for a variance has been submitted by Royce Pavelka and Kristin Pavelka, the owners of the real property located at 31 South Long Lake Trail, Ramsey County, MN (Property) legally described on the attached **EXHIBIT A** for the following variance:

1. To allow the construction of a sub-surface sewage treatment system (SSTS) within the required thirty (30) foot property line setback, with an encroachment fifteen (15) feet into the required thirty (30) foot southwest property line setback, ten (10) feet into the required thirty (30) foot northwest property line setback, and fifteen (15) feet into the required thirty (30) southeast property line setback.

WHEREAS, the current system has been classified as non-compliant under MPCA Rule 7080.1500, Subp. 4(B) due to the cesspools, the site has limited space for placing a new system, and a standard system under Minnesota Chapter 7080 Rules cannot be designed; and

WHEREAS, City Staff have determined that the proposed location of the SSTS, as shown on the site plan provided to the City in conjunction with the variance application attached hereto is the most viable location for the SSTS based on the site constraints identified above; and

WHEREAS, the request has been reviewed against the relevant requirements of North Oaks Zoning Ordinance Sections 151.078 and Minnesota Statutes, Section 462.357, subd. 6, regarding the criteria for issuance of a variance, the requisite practical difficulties were found to support a grant of the requested variance, and the Council further makes the following findings of fact with respect to the variance application:

- The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.

- The plight of the landowner is due to circumstances unique to the property not created by the landowner.
- The variance, if granted, will not alter the essential character of the locality.
- The variance is in harmony with the general purposes and intent of the zoning ordinance.
- The terms of the variance are consistent with the comprehensive plan.
- Granting the requested variance will not confer on the applicant any special privilege that is denied by Chapter 151 of the City Code to other lands, structures, or buildings in the same district.
- The Variance requested is the minimum variance which would alleviate the practical difficulties.
- The proposed variance will not impair an adequate supply of light and air to adjacent land, or substantially increase the congestion of the roads and streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.
- At no time after the land became nonconforming was the property under common ownership with contiguous land, the combination of which could have been used to reduce or avoid the nonconformity of the land.

WHEREAS, the variance application was considered by the North Oaks Planning Commission at its July 30, 2020, meeting, at which time a hearing concerning the variance application was held, following which the Planning Commission voted unanimously to recommend approval of the Variance application subject to the conditions listed in the Planner’s Report dated June 22, 2020.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH OAKS, that the findings of fact related to the requested variance listed above are hereby adopted as the Council’s findings of fact to support the grant of the requested variances, and the following variance is approved:

1. To allow the construction of a sub-surface sewage treatment system (SSTS) within the required thirty (30) foot property line setback, with an encroachment fifteen (15) feet into the required thirty (30) foot southwest property line setback, ten (10) feet into the required thirty (30) foot northwest property line setback, and fifteen (15) feet into the required thirty (30) southeast property line setback.

subject to the following two conditions:

1. The sub-surface sewage treatment system (SSTS) shall be installed in the location shown on the site plan provided to the City dated June 5, 2020 by Steve Schirmers/S-P Testing Inc..
2. Completion of the SSTS installation shall occur within 120 days from approval.

BE IT FURTHER RESOLVED that the City Clerk, Deputy City Clerk, or City Attorney are hereby authorized to record a certified copy of this Resolution with the Ramsey County Registrar of Titles.

Adopted by the City Council of the City of North Oaks this 13th day of August, 2020.

By: _____
Gregg Nelson
Its: Mayor

Attested:

By: _____
Kevin Kress
Its: City Administrator/City Clerk

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Tract R, Registered Land Survey No. 239, on file with the Registrar of Titles, Ramsey County, Minnesota.

Property Identification Number: 123023110026
Torrens Property

July 20, 2020

Mayor Gregg Nelson
City of North Oaks
100 Village Center Drive, #230
North Oaks, MN 55127

Dear Mayor Nelson:

Thank you for taking the time out of your busy schedule to speak with us regarding the financial impact of the COVID-19 pandemic.

As we discussed, St. John's Hospital has played a critical role in the North Oaks response to the pandemic. When it became clear that our community needed to prepare for COVID-19, we dramatically altered almost every aspect of our operations. This included halting non-time sensitive surgeries and medical visits; training staff to safely care for infected patients; ensuring an adequate supply of personal protective equipment, ventilators, medicines and other supplies; investing in and rapidly accelerating a move to telehealth technology to continue to care for patients. Physical facility changes included modifying our ventilation systems to create negative pressure airflow rooms; increasing infection prevention measures and cleaning within the hospital; and creating and executing extensive surge plans that allow St. John's to handle the surge of COVID-19 patients needing emergency room and inpatient care during the pandemic. Half of the 20 Intensive Care Unit (ICU) rooms, all 22 emergency rooms, and several inpatient rooms were converted into negative air flow rooms.

Located in Maplewood, St. John's opened in 1985 and has proudly served the surrounding communities which comprise 14 zip codes. It has 184 licensed inpatient beds with more than 12,000 inpatient admissions, 40,000 emergency room visits, 3,000 births, 5,500 surgeries and 200,000 outpatient visits per year. It is one of the largest employers in the area. Strengths include caring for a culturally diverse population that equates to 63 different languages. Community partnerships include Police and Fire Departments, Schools, Chambers of Commerce, Rotary Clubs, City Administrators, Legislators, Business Leaders, Economic Development and Workforce Planning, and others. St. John's is a clinical training site for local Colleges and Universities to train physicians, nurses, radiology techs, ultrasound techs, physical and occupational therapists, respiratory therapists, pharmacists, and paramedics/EMTs.

The extraordinary actions that we took at St. John's in response to COVID-19 were critical to our ability to serve our community. They were also costly. These COVID-specific actions have placed an extraordinary financial burden on our hospital that will not be covered by insurance reimbursements, the State of Minnesota, or the federal government.

We respectfully request that North Oaks consider allocating from the \$399,605 that you received to help St. John's offset non-reimbursable costs that the hospital has incurred, or will incur, by the end of this calendar year in response to the pandemic.

We are in the process of finalizing our costs and cost estimates and will have a specific request in the next few weeks. The non-reimbursable costs that we are asking for will represent the North Oaks proportional share within our service area. We are making similar requests of neighboring municipalities.

We thank you for discussing this matter with us and for your consideration of our request. If you require any additional information, please feel free to contact me directly at LKeithahn@healtheast.org or cell or pager at (651) 983-1657. Please also feel free to reach out to Andy McCoy and Mary Edwards of Fairview Health at AMCCOY2@Fairview.org or MEDWARD1@Fairview.org.

We look forward to hearing from you on this important matter. We appreciate our long-standing partnership in caring for the residents of the community, during COVID and beyond.

With kindest regards, I am

Sincerely yours,

A handwritten signature in blue ink that reads "Laura Keithahn".

Laura Keithahn
VP Hospital Operations

cc: Kevin Kress, City Administrator

July 31, 2020

Mayor Gregg Nelson
City of North Oaks
100 Village Center Drive, #230
North Oaks, MN 55127

Dear Mayor Nelson:

Thank you for once again for your consideration of St. John's Hospital's Coronavirus Relief Fund request toward alleviating the financial impact of the COVID-19 pandemic.

As we discussed, the urgent actions that we took at St. John's to care for COVID-19 patients have been critical to our ability to successfully serve our community, but they have come at a cost. We have been able to finalize our pandemic-related costs and have found that they span several buckets:

Supplies and Equipment Costs: St. John's had to acquire a significant amount of Personal Protective Equipment (PPE) to keep our staff safe. Because of shortages of PPE, not only was it hard to get, but prices increased over historic levels. We also needed to acquire additional monitors, ventilators and other equipment to prepare for a COVID-19 surge.

Infrastructure Costs: St. John's needed to make changes in our heating and ventilating (HVAC) systems to convert rooms to negative airflow, as standard HVAC systems recirculate air throughout the facility. In order to protect staff and other patients, rooms designated to house confirmed or suspected COVID-19 patients needed to be negative airflow rooms, meaning that air is no longer recirculated but discharged safely outside the hospital. In addition, St. John's needed to convert rooms from Med/Surg or Emergency to Intensive Care Units (ICU), which have a higher level of capability to care for higher acuity patients admitted with the virus.

Training and Education Costs: Additional staff training had to be performed to better prepare St. John's staff to better care for COVID-19 patients, educate staff on how to properly don and doff PPE without becoming infected in the process, and train staff deployed to different areas of the organization due to changing needs resulting from the shut down of some parts of our operation.

Thus, we respectfully ask that North Oaks consider allocating \$32,405 from the \$399,605 that you received. This funding will help St. John's offset non-reimbursable costs that the hospital has incurred, or will incur, by the end of this calendar year in response to the pandemic. The amount we are asking for represents the North Oaks proportional share within our service area. We are making similar requests of neighboring municipalities.

We thank you for discussing this matter with us. If you require any additional information, please feel free to contact me directly at LKeithahn@healtheast.org or cell or pager at (651) 983-1657. Andy McCoy at AMCCOY2@Fairview.org and Mary Edwards at MEDWARD1@Fairview.org may also be reached for questions.

We thank you for working with us and are available to provide additional information or discuss our request further. We cherish our long-standing partnership in serving the community and hope to continue to be able to do so, now and into the future.

With kindest regards, I am

Sincerely yours,

A handwritten signature in blue ink that reads "Laura Keithahn". The signature is written in a cursive, flowing style.

Laura Keithahn
VP Hospital Operations

cc: Kevin Kress, City Administrator

**LEVANDER,
GILLEN &
MILLER, P.A.**

ATTORNEYS AT LAW

TIMOTHY J. KUNTZ
DANIEL J. BEESON
ANGELA M. LUTZ AMANN
KORINE L. LAND
DONALD L. HOEFT
BRIDGET McCAULEY NASON
PETER J. MIKHAIL
TONA T. DOVE
AARON S. PRICE
DAVID L. SIENKO
CASSANDRA BAUTISTA
SCOTT LUCAS
AMANDA JOHNSON

MEMO

TO: Kevin Kress, City Administrator
FROM: Bridget Nason, City Attorney
DATE: August 10, 2020
RE: North Oaks Company Complaint/Council Concerns

Section 1. Background. At the June 11, 2020 Council meeting, during Council consideration of the preliminary plan/plat (subdivision) applications (Applications) for the East Oaks Development Sites known as the “Nord Parcel” and “Anderson Woods” site, the Council discussed various aspects of the Applications, and during the discussion Councilmember Ries made several statements regarding communications she had with Dr. Joe Magner, a research professor at the University of Minnesota, as well as a site visit she and Dr. Magner made on June 10, 2020. (*See Minutes of June 11, 2020 Council Meeting, adopted on July 9, 2020*).

Following the June 11, 2020 Council Meeting, a meeting was held between representatives of the North Oaks Company and Dr. Magner, which Councilmember Ries attended at the invitation of Dr. Magner.

On July 8, 2020, the City received the attached letter from North Oaks Company expressing its concerns regarding the involvement of Dr. Magner. (*See July 8, 2020 Letter from North Oaks Company*)

On July, 9, 2020, City Administrator Kevin Kress sent an e-mail the City Council regarding his correspondence with Dr. Magner on July 7th and 8th, seeking clarification and in response to questions and concerns raised at the June 11, 2020 Council meeting and in the July 8, 2020 Letter from the North Oaks Company.

On July 24, the City received a second letter, also attached, from the North Oaks Company expressing further concerns regarding the statements made by Councilmember Ries at the June 11, 2020 Council Meeting as well as the information provided by City Administrator Kress to the Council in his July 9, 2020 e-mail.

On July 27, 2020, a Special City Council Meeting was held regarding the complaints received from the North Oaks Company at which time the Council discussed the concerns raised in the July 8, 2020 and July 24, 2020 letters.

On July 28 and July 29, City Administrator Kress had further correspondence with Dr. Magner, seeking further clarification regarding his interactions and communication with Councilmember Ries and the timeline for those interactions and communications. (See July 28, 2020 and July 29, 2020 e-mails). Limited additional information was provided by Dr. Magner in those e-mails, and Dr. Magner has indicated that he is not interested in further involvement with the City at this time.

On August 6, 2020, Councilmember Ries provided a timeline of her interactions and communication with Dr. Magner and additional clarification regarding the same to City Administrator Kress along with copies of certain e-mails between herself and Dr. Magner. (See attached August 6 e-mail.)

Section 2. Continued Discussion of July 27, 2020 Agenda Item.

At the July 27, 2020 Council meeting, the Council continued (tabled) the discussion of this matter to the August 13, 2020 Council Meeting in order for Councilmember Ries to provide the information she volunteered to provide to the City regarding the timeline of her interactions with Dr. Magner that she volunteered to provide to the Council at the July 27, 2020 meeting. That information has been received, and the Council will again discuss the concerns that several members have articulated related to the information provided by Councilmember Ries at the June 11, 2020 Council Meeting, the site visit made by Dr. Magner and Councilmember Ries to the Nord Parcel on June 10, 2020, and concerns related to transparency and accuracy regarding communications made related to the same.

Section 3. Follow-Up Questions/Discussion Items from July 27, 2020 Meeting.

At the July 27, 2020 meeting, several questions/discussion items were introduced for further consideration and discussion by Council. They include the following:

- a. **Council Site Visits.** Councilmembers may visit development sites. Permission should be obtained from private property owners prior to entering a privately-owned site, except when such entry occurs on a legal, dedicated trail or road easement and the entry is made in compliance with the terms of that easement. As previously discussed, the Council or Planning Commission have the option to schedule a special meeting at a development site to permit a quorum of the Council/Planning Commission to review the site as a group. Such meeting would be open to the public and must otherwise comply with the open meeting law.

There is no specific legal prohibition on visiting a site with a developer, but Council are cautioned that decisions made in quasi-judicial proceeding should be made based on the information in the record and presented to all members of the body. If a member of the Council has access to information outside that comprising the official record upon which they are basing their decision, the member should take affirmative action ensure that the

information is included property in the record in a timely manners so that all members, the public, and applicants are aware the information and have an opportunity to respond or address the information.

- b. **Section 19.10 of the PDA.** Section 19.10 of the PDA reads as follows:

19.10 ACCESS. In addition to rights that exist as a matter of law, the Developer hereby grants to the City, its agents, employees, officers, and contractors an irrevocable license to enter the Subject Property to perform all inspections deemed appropriate by the City relating to the installation or proposed installation and maintenance of any improvements by the Developer.

This language from the PDA provides a license for the City and its officers, employees, agents, and contractors to enter onto the Subject Property for the purpose of “perform[ing] all inspections deemed appropriate by the City relating to the installation or proposed installation and maintenance of any improvements by the Developer.” The term “improvements” is not a defined term in the East Oaks PDA, although the term “Developer Improvements” is defined as “those improvements which Developer is obliged to construct pursuant to a Development Contract for a Development Site or this Planned Development Agreement.” Likewise, the term “Development Site Improvements” is defined in the PDA as those street and utility improvements required to be installed by the Developer for a particular Development Site of the East Oaks PUD Project.” Finally, there are a number of references to “grading improvements,” “storm sewer improvements,” “trail improvements,” “park improvements,” and “improvements” related to wetlands.

Section 19.10 of the PDA grants a limited irrevocable license for access to the Subject Property for the purposes articulated therein. Similar language is commonly included in development contracts to ensure that staff and consultants have the right to enter onto development sites to inspect the installation of city streets and public facilities as development progresses. Council and Planning Commission members should obtain prior approval of the North Oaks Company in order to enter onto development sites in a pre-development phase. Any other access to the privately-owned East Oaks development sites should be pursuant to explicit permission from the owner or its authorized agents, unless accessed on existing trail or road easements pursuant to the terms of those easements.

- c. **Due Process Considerations.** Council is reminded that in quasi-judicial decision-making settings, members must ensure to avoid adopting a position of advocacy that could be found to constitute a due process violation, as was found in Continental Property Group, Inc. v. City of Minneapolis, 2011 WL 1642510 (Minn. Ct. App. 2011), *unpublished*. (Attached hereto).
- d. **Representations Made During Council Meeting/Timeline of Interactions.** At the July 27, 2020 Council meeting, Councilmembers raised concerns regarding how Councilmember Ries explained her interactions with Dr. Wagner and represented his involving in reviewing the proposed Nord development site. Councilmember Ries provided clarification of her interactions with Dr. Wagner and her process for contacting

him, volunteered to provide the City Council with information regarding the dates of her interactions with Dr. Magner, and clarification regarding when she became aware of Dr. Magner's relationship with a North Oaks Resident who had previously expressed concerns regarding development on the East Oaks Development Sites. The attached timeline of those communications/interactions is attached hereto. Concerns were raised regarding when those contacts were made, how the timeline was presented at the June 11, 2020 Council meeting, when the City Administrator was made aware of these interactions, and why requests for additional information/clarification were not channeled through City Staff but were rather addressed individually.

Section 4. Council Options. The City Council has discussed the concerns raised in by councilmembers at the June 11, 2020 council meeting, as well as those concerns has the ability to respond to the concerns raised and information provided as follows.

1. **Accept Information and Explanations Offered and Determine No Further Action or Response is Warranted.** The Council could conclude this matter by taking no further action, following the Council's previous discussion of this matter and review of the relevant materials, including the information attached to this memo.
2. **Vote of No Confidence/Reprimand.** Council could consider a motion for a vote of no confidence/reprimand based on specific actions/statements identified by the maker of the motion as violating one or more standards of council conduct or otherwise unbecoming of a council member.

Mayor Nelson asked if there was any discussion. Councilmember Ries stated she thinks Administrator Kress sent around an email she had written to him. She went out to the site and saw a lot of standing water, and also after the last Planning Commission meeting on June 9, 2020, there were statements made about the designation of the wetland. She began to inquire into this and contacted the University of Minnesota and they were kind enough not only to take her call but to inspect the site. She contacted an expert in the area who specializes in this, whose name is Joe Magnar. Mr. Magnar visited the site with Councilmember Ries yesterday and her concern was that there was a lot of surface water and also about the water table because there has been virtually no discussion about this at the Planning Commission level. She inquired about this with Mr. Magnar and also inquired into the Delineation Report. She stated there was a Delineation Report done but it was five years ago and is about to expire in a couple of weeks. Councilmember Ries also discovered that in the past 2-3 years, there has been a substantial amount of rainfall that has occurred, particularly in their area, and it has really affected the ground table levels and is substantially affecting building sites, sewage treatment centers and all of these things. She inquired further and noticed there is no topographical map to study that was provided to the Planning Commission to study. She explained that the Delineation Report studies the vegetation, soil, the hydrology, it looks at everything and determines the buildability of the site, how much land there is, where the water table is. Because the North Oaks Company Delineation Report is due to expire in a few weeks, she thinks they need to study this and get the topographical map and they need to do their full due diligence. The Delineation Report is also used to get the wetland designation. She said they do not really have a wetland designation at this point, so in order to be fully compliant with the Wetland Act, they would need to do the study and get their designation. She was provided information from a Department of Natural Resources (DNR) hydrologist who told her there's not really a process but the delineation study would be very helpful in determining what the area is, because at this point they don't know. Councilmember Ries also received information she thought was very informative. She said walking through the area with an expert is so eye-opening because they've been talking about the area as a 2D level, but when you're developing sites you really need to look at 3D and look at the ground water, the surface water, the building, how the flow all around it is affected. She said this looks almost to be the title basin for North Deep Lake and all of the surrounding area. She stated if the trends continue with the heavy rainfall and the water table is rising at such a high rate like it has been over the last few years, they need to get updated information. This would be critical to determine how much fill is going to be needed for a foundation because they haven't been provided any of that information from the North Oaks Company. It would also help them to look at areas because there's a north pond that is visibly unnaturally high. Councilmember Ries said she provided Administrator Kress and the Council with pictures of oak trees where the base of the tree is underwater. She stated a water management plan would need to be developed for this area to know if culverts are needed to drain ponds, and to alleviate some of the area. She said it might also be helpful to drop some transducers down into the soil to see where they're at with the water because they just don't have the current information. She stated at this point, it's very difficult to look at the area, particularly the two new lots that have been added in the quite low wet area and know if they can even be built upon or not. Councilmember Ries would like to propose doing the study to figure out a water management plan and to get an accurate and current delineation because the old one is under old rainfall measures and is about to expire. She said it would be very advantageous going forward.

Mayor Nelson asked if there were any other comments. Councilmember Ross said she agrees with Councilmember Ries and she is concerned that people will be buying homes that potentially could wind up with a lot of water in their basements if the Council doesn't understand the situation and look at the water levels. She said she wants people to come to North Oaks and feel like they have a great place to live but she doesn't want to see them having problems and find that people are upset about because they wind up with water and they're not happy with the way their home has been built.

Mayor Nelson asked Administrator Kress if these concerns were brought to the attention of staff prior to today. Administrator Kress replied the concerns were brought this morning. Mayor Nelson then asked if they were brought to the attention of the Planning Commission during their multi-month deliberations. Administrator Kress said not to his knowledge.

Councilmember Ries said all of these comments were a direct result of new information brought up during the Planning Commission meeting on June 9, 2020. The meeting ended at 10:00 p.m. She stated that the fact the University of Minnesota was able to assist them and look at the land is amazing and she appreciates their due diligence in this.

Councilmember Long stated that he sits on the water board for the University of Minnesota research and development, and he is one of fifteen members. He said he is also vice-chair and they have a GIS on all of this information, they have water plans and yes, it has been a wet season so there is going to be more water and a higher table. He stated he doesn't know who the person was that came out and trespassed on the property without being invited and this is the first he's heard of this. He said it's a little too late and homeowners will have to decide if these are lots that are too wet but this is not a stop-type program.

Councilmember Ries replied that part of the problem is they're not bringing in the PhD's and the hydrologists to analyze the area. Councilmember Long said he doesn't know who the guy is. Councilmember Ries stated she is trying to talk. She said at this point they need to bring the PhD's and the specialists; they need to get people that are qualified to look at the area because it's their responsibility as a City, as City Council members to look out for the health, safety and general welfare. If they're allowing houses to be built that are going to have sump pumps running 24/7, foundations that will be underwater, and constant mold issues, they can look at this now and determine if it's a good idea. She said they need to get the data and they haven't provided the Planning Commission with the data. They did not see the information on the report that was filed before. They didn't get a topographical map. She said you can't study the area unless you're talking to these experts who know how to look at this in a 3D way and collect the data. Councilmember Ries said what they're doing is inappropriate and negligent.

City Engineer DeWalt asked to speak. Mayor Nelson granted permission. City Engineer DeWalt wanted to clarify that the preliminary application does meet the submittal requirements which includes full topographical map Existing Conditions Survey with water elevations. She said the professional engineers who were hired to prepare these plans, which were preliminarily reviewed by herself, a professional engineer, contains all the required information which they have on their checklist for preliminary plan approval. The wetland delineation was done by a certified wetland delineator. The applicant has procured geotechnical exploration, which is

required to do the design, to understand the ground water levels on the site. VLAWMO has done a preliminary review of the wetlands, understanding that there are no proposed wetland impacts. City Engineer DeWalt said she feels they do have a large number of experienced professionals in their respective fields who have done a thorough analysis and presented all of the analysis and information continuously over many months to the Planning Commission. She said with all due respect, she doesn't feel that there was any information that was withheld or misrepresented regarding information presented at the Planning Commission regarding wetlands and public waters wetlands. She stated there was mention of speaking with the DNR and also the application did provide the Minnesota Routine Assessment Method (MnRAM) Report and that gives them the information they need to understand what type of wetlands those are. This is how the DNR originally created their public wetlands list, which these wetlands are not a part of. City Engineer DeWalt said she respectfully disagreed with statements being made that this information has not been presented or analyzed by professionals in the respective fields. She would like the applicant to also speak to the work that's been done to present the information.

Mayor Nelson asked City Engineer DeWalt if the investigation and testing she described, the topographical maps and the experts that evaluated this property was all done before it was submitted. City Engineer DeWalt replied that was correct. Mayor Nelson stated that this issue was addressed a year and a half ago plus, and has been in front of the Planning Commission and the City Council that entire time. City Engineer DeWalt replied she believes it's been exhaustively studied over the past two years in many different ways and she agreed there are important improvements in process and studies that could be made citywide regarding surface water management and dealing with climate change and water tables. She stated she doesn't necessarily believe that it is relevant to this particular application tonight. She said she thinks that work is important and can be done outside of this application and she believes that what is necessary to approve this application has been done.

Councilmember Ries said she thought City Engineer DeWalt misunderstood what she said. She said there was a Delineation Report done, but it was done five years ago and there is substantial information, particularly in their area that shows the rainfall is much higher than it used to be. She said there needs to be a current analysis of the ground table and the wetlands that are around there because of this extraordinary situation over the last three years. She clarified that she didn't say it was not done and she's not trying to say that they haven't done a good job. She is saying they have a Delineation Report that is about to expire and it's based on conditions that have changed substantially over the past few years. This is being talked about at the State House level and this is data collected by the University of Minnesota. She said they have done an engineering study, but under the current trends and the current rainfall, they need to understand what the current wetland situation is. Councilmember Ries said she is proposing doing a new study. The old one is based on rainfall levels that have not been consistent for the past three years, they are considerably higher, and it's also about to expire. She said it would be very prudent of the City to get a new delineation study done because of the change in the rainfall levels and the groundwater tables have changed so substantially. She said it would also be very prudent to do it because of the obvious recent signs of the ground table levels. She said what she mentioned was not to say that the staff has not done a thorough job at the engineering level, but they need to get the study done from certified professionals in this area to study the vegetation, the soil, they need to get the hydrologists involved. She said with the current status of what's

happening in the area with ground table water, they could then get a current designation of their wetland. With that information, although she knows it was done five years ago, but what is being determined is that five years ago is way too long, even though the delineation study still has just a few weeks left on it and it's expired, the trends show that's not good enough. She said the information would be based on old trends and would not be representative of the current water table levels. She said it would be prudent at this time to get the delineation study done to understand it and to understand how much fill they're talking about and building challenges on the site. Councilmember Ries said she doesn't see how they could approve the plans without properly studying this information. The delineation study that was done five years ago had the water table data and showed these things, but this information was not brought to the Planning Commission and she said she thinks it's very important that they do study this.

Mayor Nelson asked if Councilmember Kingston or Councilmember Ross had any comments.

Councilmember Kingston asked Councilmember Ries if she is saying that their staff and consultants are not qualified to make the decisions on the recommendations here.

Councilmember Ries replied what she is saying is that their staff is qualified at the level they're employed and they've done a good job at that level, but when you're talking about doing these types of studies, they are done by hydrologists and specialists in the wetland area. She said you really need to hire the wetland specialists because of the topographical 3D issue. She stated an engineer can talk about roads and surface water, etcetera but they also need to understand what's happening underground in the entire area. She said you hire the hydrologist and the specialist because they have an understanding of the current data of how much rainfall is happening, where the water is flowing, what the re-absorption rates are and they would also understand if you put a building there, how it would impact surface water and sub-surface water.

City Engineer DeWalt asked to add something quickly. She wanted to clarify that she doesn't know if she misunderstood Councilmember Ries and she apologized if she did, but she heard her say that a topographical map was not completed. City Engineer DeWalt clarified that a topographical map is the Existing Conditions Survey which is then provided, and is what the design is then based on. Secondly, she wanted to clarify that a final plan submittal requirement is to submit a full hydrological storm water management plan for the site. So the applicant will need to hire their engineer who is experienced and professionally trained in hydrology reports and they need to submit that to the City. She said it needs to follow the policies of the City's storm water management. She wanted to clarify that some of the work Councilmember Ries was talking about is part of the conditions of approval that need to be done before final plan approval.

Mayor Nelson asked if there was any further discussion. Councilmember Kingston said Councilmember Ries kept saying that the University of Minnesota came out. He stated he is on the faculty at the University of Minnesota and that's not what happened. He said Councilmember Ries talked to someone at the University and they came out and gave their personal opinion, which is fine. He said he knows the Board of Regents didn't weigh in on this and issue a proclamation to take that particular stand. Councilmember Kingston asked if the individual who came out was a paid consultant. Councilmember Ries replied that it was pro

bono. Councilmember Kingston asked if the person was related to the Magnar that signed Franny's petition that happens to live in North Oaks.

Councilmember Ries said she didn't have any idea. She wanted to clarify that the report that was given is not a full report, and that it wasn't a report given, but a letter. She said the letter simply said that the scientific trends that have been happening the past few years have determined that there is such a substantial change in the ground, particularly in their area. She said it confirmed to her, because there are a lot of visual determinants in this area of water that is substantially higher than a natural level, and is far higher than the water table would normally be, the letter was not a report offering an opinion, it just went to the fact that generally in the last few years, the trends show there would need to be more information gathered for this particular site. She said they stood on the road and just looking from there down into the swamp area you can see how low setting it is and is substantially lower than the surrounding area. She said the topographical maps didn't go into the exact levels within the wetlands and other areas you'd need to analyze. She said the reason it would be good to get a current delineation study done is so they can actually ask the DNR what their wetland status is. Councilmember Ries said to her knowledge, they have not done that and they would need to do that because these things change based on water levels, rain levels, etcetera. She said the designation can actually change, vegetation can change and soil can change. So it would be a really good idea to understand what the designation is to make sure they're complying with everything. She said she understood that an engineer is part of the condition that they're going to be doing a study, but five years ago what happened was when they had someone walk around and check the area, they found a lot of things were missing. There was an additional wetland that was added, etcetera. She stated that even if it's a condition, they need to double check it. She said there is missing information and they should ask the DNR with the current study, with current conditions, and what their wetland status is. She said she hasn't seen or heard that that has been done yet.

Attorney Nason wanted to point out a procedural piece. She said there is a motion and a second on the table. There can be a motion made at this time to require, for example, an updated wetland delineation be provided prior to final plat approval, or any other modification to the motion which is to move the resolution with the conditions articulated. She wanted to clarify that debate can continue, but she wanted to make sure the Council understood there is an opportunity for a motion to amend the motion that's already been made.

Administrator Kress asked how long a new delineation lasts and if it something that needs to be done each year. He also asked if they going to run into this with every application.

Mr. Corcoran replied that per state statute, delineations are good for five years, so from the decision that delineation or boundary and type for this particular spot and every other spot that has a boundary and type is five years from the date of the decision. That decision was on September 9, 2015; therefore, this delineation expires on September 9, 2020. Administrator Kress asked how long delineation takes. Mr. Corcoran answered if you're doing one wetland, obviously it will go quicker than the eight or nine that are on the fifty-four acre parcel. He said it all depends on the consultant hired to do it; there's a process to it. The consultant can probably do it in a day or two, then there's the review process with the DNR, the Conservation District and VLAWMO. He said it would probably be a month, depending on work load and when it's asked to be done.

Mayor Nelson said he thinks they understand Councilmember Ries's concern. He said if there are no other comments, he suggests they have a roll call vote.

Motion carried by roll call as Councilmembers Kingston, Long and Mayor Nelson voted to approve; Councilmembers Ries and Ross voted against.

c. Joint Powers Agreement with White Bear Township

Administrator Kress stated he probably could have put this in the Consent Agenda as the Council has seen a number of these come through in the past years. He asked if anyone wanted any discussion or background or if they were comfortable accepting those addendums. Mayor Nelson stated he had no concerns.

MOTION by Long, seconded by Kingston to approve the Joint Powers Agreement with White Bear Township. Motion carried unanimously by roll call.

d. City Response to Death of George Floyd

Administrator Kress stated they had invited Ms. Rumna Chowdhury to provide a statement. Ms. Chowdhury said she and her husband have lived in the community for eight years and like many in the community, she was upset by the delay by the City and NOHOA in making any statement or acknowledgement regarding the death of George Floyd and the unrest in their community. There was a request for community input so she wrote a letter and knowing that many in their community may either not have the time or capacity to write their own letter, Ms. Chowdhury decided to share that letter publicly and told residents if anyone wanted to sign on if they agreed with what she'd written, to please let her know. She sent the letter to Mayor Nelson and the four Councilmembers by email yesterday and seventy-two people signed on to the letter within a day-and-a-half of Ms. Chowdhury posting it on Facebook. She stated that she knows not everyone looks at Facebook and she did not reach out to anyone individually, but to her, this strong response within such a short time indicates that most likely, others would also share this as their community values of standing against racism and standing against police brutality. She said the delay by the Council or the Mayor to make any statement, she will assume was just a misstep and not malice on anyone's part and that the Council and Mayor are ready to move forward to meet the community's needs in this respect. Ms. Chowdhury said she really appreciates Mayor Nelson's earlier comments during the meeting. The first request in the letter was for a formal statement or resolution condemning the actions of the Minneapolis officer who violently murdered George Floyd. Ms. Chowdhury also made the same request of NOHOA in a separate but similar letter and they did make a statement via social media that afternoon. Looking into the roles of NOHOA versus the City, Ms. Chowdhury stated she is learning a lot right now as she hadn't looked very closely into that before. She wanted to make sure she made her request of the right group, so regarding the City, she said her understanding is the City of North Oaks is responsible for contracting their police presence with the Ramsey County Sherriff's office. She stated she thinks it makes sense for the City to look into the Ramsey County Sherriff's office to be sure that their policies and procedures are up-to-date, that their handling of officer misconduct is in line with their community values of standing against police brutality. She said this is not



July 8, 2020

Mr. Kevin Kress
City Administrator
City of North Oaks
100 Village Center Drive, Suite 230
North Oaks, MN 55127

Re: Nord Site
Joe Magner Letter

Dear Kevin,

Based on the City Council approving the Preliminary Plans for the subdivision of the Nord site and Anderson Woods site, North Oaks Company LLC ("NOC") would like to begin grading and drainage improvements immediately. Historically, the City issues a permit to complete grading and drainage work prior to Final Plan approval. This provides the opportunity to make minor adjustments to the location of the lot lines if required to preserve trees and accommodate field conditions, as approved by the City's Engineer.

We were surprised to see a June 10, 2020 letter regarding Nord drafted by Dr. Joe Magner presented by Council Member Reis at the last Council Meeting, since he has no specific knowledge of the Nord project development. Dr. Don Pereira, Director of Conservation Programs for North Oaks Company LLC, reached out to Dr. Magner to request a meeting to discuss the contents of his letter. Dr. Pereira, who was previously with the Department of Natural Resources, currently an Adjunct Professor at the U of M, Commissioner of the Great Lakes Fishery Commission, and President of the South Washington Watershed District is working with the NOC to provide insights and guidance on how climate change may affect storm water management in East Oaks.

Dr. Magner agreed to meet to discuss the assertions in his letter. To our surprise, Council Member Reis showed up as an uninvited guest at the meeting. Unbeknownst to us, and without our permission, Dr. Magner indicated that he had invited her. We asked how Dr. Magner came to be involved in this issue Council Member Reis answered, stating that she Googled "ground water" or "hydrology" and found Dr. Magner. We are not familiar with Dr. Magner's expertise or research in this area. When asked if Dr. Magner is familiar with North Oaks he stated he is Gary Magner's cousin, does not see Gary often, but has talked with Gary during the last year. To your question about potential conflicts of interest, prior to your arrival in North Oaks, Gary Magner has been a vocal critic of the East Oaks Development, has publicly stated his opposition both on NOHOA's Facebook page and allegedly signed a petition opposing the proposed development plans in East Oaks. In our meeting Dr. Pereira shared the environmental work completed by the NOC for the project and the fact NOC monitors ground water at the Site, after

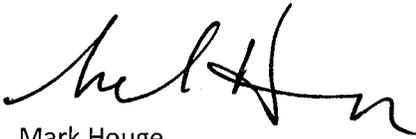
which Dr. Magner was asked if he had any specific questions regarding the development and he said he had none.

NOC understands it takes direction from the City Administrator and the City Council, not individual Council Members. It seems highly irregular for a City Council Member, Ms. Reis, to introduce theoretical information like this at the last minute of a formal City subdivision approval process without giving the applicant (NOC), City staff, or VLAWMO staff the benefit of time to review assertions made by a scientist who has no detailed knowledge of the Nord Site, implying the statements shared in the letter are the opinion of the University of Minnesota, which they are not.

We also would like to reiterate the agreement NOC and the City have that representatives of the City (and residents) must obtain NOC's permission to go on the Sites, prior to doing so, for safety reasons. Going on property owned by NOC, if not on dedicated trail easements, is considered trespassing. We want to confirm the City Council does not condone Council Members or their associates accessing private property without your knowledge and permission of the property owner. North Oaks Company is happy to arrange tours of our future development sites for interested parties, we just ask for reasonable notice.

We look forward to Don's participation in the upcoming Natural Resources Commission meeting. Don can speak to his knowledge of the effects of climate change at that meeting, if you wish.

Sincerely,
North Oaks Company LLC

A handwritten signature in black ink, appearing to read 'Mark Houge', written in a cursive style.

Mark Houge
President

CC: Gary Eagles
Don Pereira

From: [Kevin Kress](#)
To: [Kevin Kress](#)
Subject: Letter from NOC regarding interaction with Dr. Magner and my interaction with Dr. Magner/Agenda item removal and addition
Date: Thursday, July 9, 2020 4:21:06 PM
Attachments: [image001.png](#)
[2020.07.08 Ltr City of North Oaks regarding Joe Magner.pdf](#)

Council,

I received the attached letter from NOC this afternoon regarding their interaction with Dr. Magner. There is also concerns raised about council member Ries participating in this meeting. Additionally, they point out concerns about trespassing.

I also reached out to Dr. Magner after concerns were raised at our last Council meeting. NOC raised concerns as well during the site visit I participated in and I told Mark I would talk with Dr. Magner regarding those concerns. I asked Dr. Magner several questions during our discussion and have detailed them below:

- When and how were you contacted by council member Ries? *He didn't recall and said he would have to look back.*
- Did you have a discussion with council member Ries about Gary Magner? A question was raised during our meeting whether you were related to him and if you discussed this with council member Ries. *He replied, yes, we did discuss this matter and discussed if there was a conflict of interest.*
- What is your relationship to Gary? *He replied that Gary is his cousin and that they don't speak often and hadn't discussed any development sites.*
- Did you review any other development sites? *He answered no, but he discussed Nord and Anderson Woods during his meeting with NOC.*
- Have you been in contact with any other members of the Council, commissions, or public? *He answered no.*
- I also asked for his perspective regarding surface water management and presenting to the Council/commissions. *He replied he is willing to provide a presentation if desired. He recommended NOC conduct testing of water tables over a 1 year span. This was discussed with NOC during their meeting. Don Pereira has had additional discussion with Dr. Magner as well.*

I wasn't able to prepare anything additional regarding the letter or the above information.

I am recommending removal of the following agenda items tonight:

- Discussion on Process for Filling Council vacancy. I haven't received any feedback on this item so I recommend removing it from the agenda. I am unprepared to discuss this item as I don't know if there is any timeline for council member Ross selling her home.
- Discussion on North Oaks News Newspaper. This item is no longer necessary as the issue has been resolved.

I recommend the addition of the new business item as mentioned in a previous email. This item was recommended by council member Ries. I suggest council member Ries word this agenda item as you

see fit and it can be added.

I will be unavailable until the meeting tonight as I have to deal with a dog bite incident involving my daughter while she was playing outside.

See you all tonight.

Kevin Kress
City of North Oaks
City Administrator



100 Village Center

North Oaks, MN 55127

651-792-7750



July 24, 2020

Mr. Kevin Kress
City Administrator
City of North Oaks
100 Village Center Drive, Suite 230
North Oaks, MN 55127

Dear Mr. Kress,

Earlier this month you informed me of certain conversations you had with Council Member Ries and Dr. Joe Magner. The information you provided relates to Council Member Ries' conduct at the June 11th City Council Meeting and is of concern to North Oaks Company LLC ("North Oaks Company"). I expressed these concerns to Councilmember Kingston and he suggested that it would be appropriate if I directed my concerns to you, as City Administrator. Accordingly, I am sending this to your attention, but I am also copying members of the City Council.

As you know, North Oaks Company has been asking for and obtaining input from members of the community, City staff, Planning Commission, and City Council for more than a year to arrive at plans for the Anderson Woods and Nord subdivisions, which the Planning Commission unanimously recommended for approval to the City Council. These plans were before the City Council for approval at the June 11, 2020 meeting. Hours before that Council meeting, Council Member Ries provided the other Council members with a letter from Dr. Joe Magner setting forth his opinion as to the impact global warming may have on the hydrology of the Nord site. North Oaks Company, in its normal course of business, contracted with American Engineering and Testing to complete soil borings and confirmed Dr. Magner's assessment of high ground water as not correct.

North Oaks Company's principal concern is that Council Member Ries appears to have intentionally misrepresented to the City Council and the public how Dr. Magner came to be involved in this issue and to have deliberately withheld from the City Council and the public Dr. Magner's relationship to Gary Magner and the potential conflict of interest that relationship creates. The actions of Ms. Ries undermine the ability for North Oaks Company to rely on the City to carry out its obligations under the terms of the PDA in good faith.

North Oaks Company's concerns stem from three different but related actions at the June 11th City Council Meeting, below we outline our understanding of what occurred:

1. During the June 11th City Council meeting, Ms. Ries stated that she contacted the University of Minnesota and that the University sent someone out to inspect the proposed Nord parcel. Her exact words were:

"I went out to the site and saw a lot of standing water, and also after the last Planning

Commission meeting on June 9, 2020, there were statements made about the designation of the wetland. I began to inquire into this and contacted the University of Minnesota and they were kind enough not only to take my call but to inspect the site"

The Company now believes that Council member Ries did not, in fact, contact the University of Minnesota and that the University of Minnesota played no role in causing Dr. Magner to visit the site. Instead, the Company believes Council member Ries contacted a relative of a vocal opponent of the Nord and Anderson Woods subdivision applications who happens to be a member of the University of Minnesota's faculty to ask for his assistance in her opposition to the project. It appears Dr. Magner did visit the site with Council Member Ries and that he did provide her with a letter on University of Minnesota stationery outlining his personal opinions, but rather than describing the letter as such, Council Member Ries presented this letter to the City Council and the public as coming from the University of Minnesota and appears to have intentionally sought to create the impression that the University of Minnesota had concerns regarding approval of the development.

The Company now believes that Council member Ries intentionally misrepresented how Dr. Magner became involved in order to create a false impression that the University Minnesota agreed with and sanctioned Dr. Magner's personal opinions for the purpose of influencing other Council members' and the public's opinion as to the appropriateness of the City's approval of the Nord and Anderson Woods subdivision applications.

2. Ms. Ries was directly asked twice during her presentation on June 11th if Dr. Magner was related to Gary Magner, a resident of North Oaks who had signed a petition apparently designed to strip housing counts from a binding contract between the North Oaks Company and the City of North Oaks so as to limit and restrict the Company's contractual development rights. In response to the question of whether the two Magners were related, Ms. Ries replied "***I have no idea***", a statement which has subsequently been determined to be false.
3. Based on your conversation with Dr. Magner, we now know that not only was Council member Ries aware of the family relationship between the Magners, but both Dr. Magner and Council member Ries discussed this significant potential conflict of interest prior to the June 11th Council meeting. Council member Ries withheld the details of this material conflict of interest from North Oaks Company, City staff, the City Council and the public at large.

Council Member Ries's actions are not trivial. The Company is concerned that her actions have damaged North Oaks Company's reputation in the community and could have adverse impacts on North Oaks Company's development and sale of lots in Nord and Anderson Woods subdivisions.

In addition to the actions documented above, the Company is also concerned that Council Member Ries trespassed onto North Oaks Company's property with Dr. Magner. There is photographic evidence of her doing so. This trespass appears to violate the Council's Code of Conduct. As previously stated, we are concerned that the actions of Ms. Ries may cause North Oaks Company financial injury in addition to any potential civil and criminal violations that may have occurred. Community members who have been watching the detailed review and scrutiny of these development projects have received misleading information that may have tainted their determination of the appropriateness of these two projects.

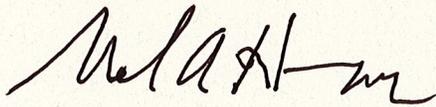
The Nord and Anderson Woods development sites, and the remaining three sites slated for development in the City of North Oaks represent millions of dollars North Oaks Company is investing in

the City. Going forward we ask measures be taken to ensure all members of the City Council are forthcoming with concerns and operate in an honest and transparent manner. North Oaks Company has and continues to make substantial investments in this community and acts as a steward of the environment in North Oaks. We have dedicated land that is the largest conservation area (approximately 900 acres) in the Twin Cities managed by the Minnesota Land Trust. We continue to improve this beautiful natural environment and network of trails for the benefit of North Oaks residents. In our opinion, it is important to the residents of North Oaks that City Officials are acting in good faith with North Oaks Company to ensure the successful completion of all remaining development sites in a manner that reflects the spirit of the master plan outlined in the PDA. We have consistently experienced honest and forthright behavior by City officials which makes Council Member Ries' actions so unusual and worthy of calling to your attention.

We request that the City Council review Council Member Ries' actions and to determine the most appropriate response. Thank you for your attention in this matter.

Sincerely,

North Oaks Company LLC

A handwritten signature in black ink, appearing to read "Mark Houge". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark Houge

President

CC: Honorable Mayor Gregg Nelson
Members of the City Council

Kevin Kress

From: Joe Magner <jmagner@umn.edu>
Sent: Wednesday, July 29, 2020 7:24 AM
To: Kevin Kress
Subject: Re: Availability

Caution: This email originated outside our organization; please use caution.

It has become clear to me now, that I have stepped into a very divided situation. I wrote a letter under the assumption that the City of North Oaks wanted some expert advice about rising groundwater and wetland response, Ms. Ries stated she wanted to know what data should be gathered to better understand surface and groundwater as it related to future development, such as the Nord. As a community service, I have done that.

I met with North Oaks Company at the request of Dr. Pererira, I explained my position about climate change and the need to install piezometers and measure water table response for a year. Dr. Pererira agreed with me and invited me to discuss further collaboration with my students and data collection in North Oaks.

I assumed there was interest from both the City and North Oaks Company about the need to learn more about increased precipitation and rising water levels - I was proceeding on good faith. I was wrong, I see now that I'm a political pawn in a battle of wills. I don't need this! Right now my plate is overflowing with work with people who truly want my help! Sorry - but I don't have time for this

On Tue, Jul 28, 2020 at 10:03 PM Kevin Kress <KKress@cityofnorthoaks.com> wrote:

Joe,

I understand that your time is valuable but I can't pay \$150/hour. I was looking to get your feedback and learn about what you were planning to present on August 12th. I am looking for about a 15 minute free discussion on that event which I assume was/is being done for free. There is a planning commission meeting this Thursday where I could update them about the event and I could share it with the Council to gauge interest. I could also offer them other presentations you provide. I also wanted to follow up with you on your review of the Nord parcel and your interactions as part of that. I look forward to hearing from you soon.

Thanks,

Kevin Kress

City of North Oaks

City Administrator



100 Village Center

North Oaks, MN 55127

651-792-7750

From: Joe Magner <jmagner@umn.edu>
Sent: Tuesday, July 28, 2020 6:08 PM
To: Kevin Kress <KKress@cityofnorthoaks.com>
Subject: Re: Availability

Caution: This email originated outside our organization; please use caution.

I have a 7 pm meeting I need to attend tonight, just you know upfront my billing rate is \$150/hour, I will send you an invoice for the phone call we have Wednesday

On Tue, Jul 28, 2020 at 5:08 PM Kevin Kress <KKress@cityofnorthoaks.com> wrote:

Joe,

I appreciate you getting back to me. I'm available tonight or tomorrow morning let's have a call. You can reach me at 651-210-7851.

Thanks,

Kevin Kress

City of North Oaks

City Administrator



100 Village Center

North Oaks, MN 55127

651-792-7750

From: Joe Magner <jmagner@umn.edu>
Sent: Tuesday, July 28, 2020 3:27 PM
To: Kevin Kress <KKress@cityofnorthoaks.com>
Subject: Availability

Caution: This email originated outside our organization; please use caution.

Mr. Kress,

I'm in continuous zoom meetings today through 6 pm. As I have shared with Ms. Ries, I'm happy to provide you consulting services apart from UMN, or if you prefer we can set up a contract directly with my Department at UMN.

When I was first called by Ms. Ries on June 4th, I agreed to help the City of North Oaks by observing first-hand high water. I did this as part of my community service that professors give back to citizens of Minnesota. Unfortunately, I cannot continue to give free advice over the phone or by email. There too many communities who are asking for my help, because I'm one of the few individuals at UMN who is focused on this issue. As part of my EXTENSION outreach, I can give presentations, but specific issues need to be handled in a contractual way. Let me know how you would like to proceed.

Sincerely Dr. Magner

--

Joe Magner,

Research Professor

Interim Director of Graduate Studies,

Water Resource Science Graduate Program

Dept of Bioproducts & Biosystems Eng.

University of Minnesota, St. Paul Campus

Ph: 612-626-0875

Cell: 715-222-9809

jmagner@umn.edu

<http://bbe.umn.edu/people/faculty/joemagner>

--

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Kevin Kress

From: Kara Ries
Sent: Thursday, August 6, 2020 10:38 AM
To: Kevin Kress
Subject: Dr. Joe Magner site Visit Info
Attachments: Phone Number Magner Email.pdf; Fwd: Meeting tomorrow 29June2020 Magner email.pdf; Magner email forwarded site visit Address.pdf

Timeline

April 14, 2020: email from Kevin to CC and PC about attorney's review - no conflicts of interest (Hara) when "immediate family members have taken on advocacy role in opposition to approval of the application" -- and it cause an abrogation of a First Amendment Right and a due process violation to prevent them from taking on the role.

June 3: research internet for hydrologists and U of MN.

June 4:

- Call Dr. Magner to introduce myself
- Subjects discussed - work with VLAWMO (conflicts with VLAWMO).
- Last 3 years of weather changes (Clouds) and impacts on water tables
- Discuss Hydrology and water testing

June 9: Planning Commission meeting

June 10: Site visit of NORD with Dr Joe Magner

- Topic discussed at site:
 - Topography
 - Visible water
 - Surface waters and water tables (generally)
 - How utilities are impacted by trends

June 11: Send Dr. Magner letter in email to Kevin

- CC meeting - Accusations made; no discussion of hydrology related information - focus on cousin relationship with Joe and Gary.

June 12: call Joe to report on meeting and discuss presenting research And discuss relationship with Gary Magner/accusations during meeting

June 17, 24, 29: emails from NOC about meeting at NOC with Dr. Magner

June 29ish: Call with Dr. Magner about moving meeting back a day and joining (call may have happened a day or so earlier)

June 30: Email from Joe about meeting (forwarding meeting info (Don email to Dr. Magner) (Kara invited by Dr. Magner to join)

- Houge asks Joe about his relationship with Gary and how I met Joe; Joe discusses doing research with NO Co (Don) in NO.

July 2-4?: Call Kevin/Kara to discuss presentation and report meeting with NOC

July 6?: Kevin calls Joe to discuss Work with Kara

July 7: Kevin sends out CC email summarizing questions for Joe and responses

July 8: Complaint letter Nr 1 from the company

July 9: CC meeting

July 16: CC meeting

July 24: Complaint letter Nr 2 from Company with "we believe" language (no facts) and demanding that issue be addressed

July 27: Special Meetings - possible "disciplinary" action - no attorney presentation or comments addressing conflict of interest; no identification/clarification of timeline events that would have clarified events did not support accusations.

Attachments:

Email from Dr Joe Manger to Kara June 4th where he sends number to contact him

Email from Kara to Dr. Joe Manger with her address to go on site visit (June 10th)

Email from Dr. Joe Manger to Kara June 30th confirming date of NOC meeting was June 30th (after June 11th accusations made) - letter also

evidences the NOC's had interest in meeting with Joe Magner without concern of a conflict of interest.

Note/Attention: sending attached hereto pdf documents of emails from my personal email accounts does not grant you permission to any of my personal information or waive my right to privacy. These emails are considered confidential and distribution should be limited to only related, reasonable and necessary circumstances.

I am happy to answer any relevant questions.

Thanks,

Kara Ries

City Council, The City of North Oaks

100 Village Center Drive, Suite 230

North Oaks, MN 55127

2011 WL 1642510

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION IS DESIGNATED AS UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINN. ST. SEC. 480A.08(3).

Court of Appeals of Minnesota.

CONTINENTAL PROPERTY GROUP, INC., Respondent,

v.

CITY OF MINNEAPOLIS, Appellant.

No. A10–1072.

May 3, 2011.

Hennepin County District Court, File No. 27–CV–07–5826.

Attorneys and Law Firms

[William R. Skolnick](#), [Rolin L. Cargill III](#), [LuAnn Petricka](#), Skolnick & Schiff P.A., Minneapolis, MN, for respondents.

[Charles N. Nauen](#), [Gregory J. Myers](#), Lockridge Grindal Nauen P.L.L.P., Minneapolis, MN, for appellant.

[Susan L. Naughton](#), League of Minnesota Cities, St. Paul, MN, for amicus curiae League of Minnesota Cities.

[John M. Baker](#), [Erin Sindberg Porter](#), Greene Espel P.L.L.P., Minneapolis, MN, for amicus curiae American Planning Association.

Considered and decided by [SCHELLHAS](#), Presiding Judge; [HALBROOKS](#), Judge; and [STAUBER](#), Judge.

UNPUBLISHED OPINION

[SCHELLHAS](#), Judge.

*1 Appellant City of Minneapolis challenges the district court's decision that it violated respondent's procedural due-process rights by depriving respondent of a fair hearing on its land-use applications. Respondent cross-appeals to challenge the district court's dismissal of its other claims for relief. Because we conclude that respondent did not have a property interest entitling it to due-process protection, we reverse the district court's decision that the city violated respondent's

procedural due-process rights. We affirm the district court's dismissal of respondent's equal-protection and substantive due-process claims. But because the hearing before the city council was unfair, rendering the city's decision arbitrary and capricious under state law, we reverse and remand for a new hearing.

FACTS

In the fall of 2003, respondent Continental Property Group (CPG) purchased an option on property located at 343, 401, 403, and 409 Oak Grove Street, and 416 Clifton Avenue, in the Loring Hill neighborhood of Minneapolis. CPG purchased its option with the intention of developing the property. The property consisted of a surface parking lot, which served nearby office buildings, and was zoned as part of an Institutional Office Residence (OR3) district. The OR3 zoning classification restricts the height of buildings to six stories or 84 feet. Additionally, because the property is located within 1,000 feet of the ordinary high-water mark of Loring Pond, it is also subject to the standards of the Shoreland Overlay (SH) district, which imposes a height restriction of 2–1/2 stories or 35 feet.

CPG engaged an architectural firm to design the project and assist in the process of applying for needed land-use permits and variances. CPG settled on one of the architect's designs that included a slender mixed-use tower bordered by two-story townhouses fronting on the adjacent streets. Because the project design exceeded the height restrictions of the two applicable zoning districts, in July 2004, CPG applied for two conditional-use permits (CUPs): one to increase the maximum permitted height from a maximum of 2–1/2 stories or 35 feet to 21 stories and 230 feet; and a second to allow for a multiple-family project containing 104 units. CPG simultaneously applied for two variances: one to reduce the required corner side-yard setback off Clifton Place from the required 48 feet to 16 feet for the proposed building and 4 feet for the proposed patio area; and a second to reduce the rear-yard setback off the south property line from the required 45 feet to 19 feet for the building and 8 feet for patios. CPG also requested a major site-plan review.

In August of 2004, Minneapolis Community Planning and Economic Development (CPED) staff reviewed the application and issued a 14–page report recommending that the Minneapolis Planning Commission deny the application. Later that month, acting on the recommendation of CPED, the

planning commission denied CPG's application by votes of five to two on the CUPs, five to two on the variances, and six to one on the site plan.

*2 In September 2004, CPG appealed the planning commission's decision to the Minneapolis City Council. On September 15, 2004, the planning commission's decision was reviewed by the city council's zoning and planning committee. The zoning and planning committee comprised five city-council members, including Lisa Goodman. Following its receipt of testimony from CPED staff and CPG representatives, the committee recommended that CPG's application be denied. The committee's vote was unanimous—five to zero.

On September 24, by a vote of 13–0, the full city council adopted the findings and recommendation of the zoning and planning committee and upheld the planning commission's denial of CPG's requested CUPs, variances, and site-plan review.

Despite the city council's decision, CPG exercised its option to purchase the property in later September 2004 and, on November 23, submitted an application for a second proposed project on the property. That project design consisted of a seven-story, 77-foot, 74-unit building, and required CUPs for height and density as well as a site-plan review. But the project design required no variances.

On January 23, 2005, CPED staff issued a report recommending that the planning commission approve the application. But, on February 23, CPG withdrew its application, citing infeasibility due to higher-than-anticipated construction costs.

On March 27, 2007, CPG sued the City of Minneapolis alleging that the city council's decision in 2004, as well as a development moratorium it imposed in May 2005, were arbitrary and capricious and violated CPG's equal-protection rights, entitling it to relief under [42 U.S.C. § 1983 \(2006\)](#). On October 10, 2008, the district court granted the city summary judgment on CPG's equal-protection claim but allowed CPG to proceed with its action under a due-process theory and under [Minn.Stat. § 462.361, subd. 1 \(2010\)](#), based on its claim that the city council's actions were arbitrary and capricious. The court ordered a trial to supplement the record of the city-council proceedings and for CPG to challenge the reasonableness of the city's decision and the fairness of

the process afforded. The court later reinstated CPG's equal-protection claim.

Following trial, the district court found that the city violated CPG's procedural due-process rights and concluded that CPG was entitled to compensatory damages and attorney fees. The court dismissed CPG's other claims. Appeals by both parties follow.

DECISION

CPG's Due-Process Claims

The district court concluded that CPG was entitled to relief under [42 U.S.C. § 1983](#) because the city did not afford CPG procedural due process in its consideration of CPG's land-use application. The city argues on appeal, among other things, that CPG is not entitled to due-process relief because it did not have a protected property interest in its CUP and variance applications. CPG argues that the district court erred by dismissing its substantive due-process claim.

*3 The United States Constitution provides that the state shall not “deprive any person of life, liberty, or property, without due process of law.” [U.S. Const. amend XIV, § 1](#). As a threshold matter to any due-process claim, “the plaintiff must identify a protected property interest to which the Fourteenth Amendment's due process protection applies.” [Snaza v. City of Saint Paul](#), 548 F.3d 1178, 1182 (8th Cir.2008); see also [Nexus v. Swift](#), 785 N.W.2d 771, 779 (Minn.App.2010) (“The threshold requirement of any due-process claim is that the government has deprived a person of a constitutionally protected liberty or property interest; in the absence of a liberty or property interest, a right to due process does not accrue.”). This prerequisite applies to both substantive and procedural due-process claims. See [Snaza](#), 548 F.3d at 1182 (substantive); [Snyder v. City of Minneapolis](#), 441 N.W.2d 781, 791 (Minn.1989) (procedural).

“Property interests are created and their dimension defined by existing rules or understandings that stem from an independent source, such as state law, rules or understandings that support claims of entitlement to certain benefits.” [Snyder](#), 441 N.W.2d at 791 (quotation omitted). “A protected property interest is a matter of state law involving a legitimate claim to entitlement as opposed to a mere subjective expectancy.” [Snaza](#), 548 F.3d at 1182 (quotation omitted). “A permit applicant may have a legitimate claim to entitlement if the government's discretion is constrained by a regulation or

ordinance *requiring* issuance of a permit when prescribed terms and conditions have been met.” *Id.* at 1183 (emphasis added).

The property at issue in this case is located in an OR3 primary zoning district as well as an SH overlay zoning district. Minneapolis, Minn., Code of Ordinances (MCO) §§ 521.10 (2009),¹ .30 (1999); Minneapolis Official Zoning Map Primary Plate 18 (2010), Overlay Plate 18 (2002). The Minneapolis Zoning Code provides that certain uses in the OR3 district are “permitted” while others are “conditional.” MCO § 547.30(a)-(c) (2010). Permitted uses “are permitted *as of right* in the district ... provided that the use complies with all other applicable provisions of this ordinance.” MCO § 547.30(b) (emphasis added). In contrast, conditional uses are allowed “provided that the use complies with all other applicable provisions of this ordinance” and the person wishing to establish the conditional use “obtain[s] a[CUP] for such use.” MCO § 547.30(c).

Multiple-family dwellings comprising more than four units are allowed only as a “conditional use,” not a “permitted use,” in an OR3 district. MCO § 547.330 (1999). Therefore, a person wishing to establish a multiple-family dwelling of more than four units within the OR3 district must obtain a CUP. And a CUP is required for structures over six stories or 84 feet in the OR3 district, and over 2–1/2 stories or 35 feet in the SH overlay district. MCO §§ 547.350(a) (2010), 551.480 (2008).

*4 CPG's proposed project included a 21–story tower comprising more than four dwelling units. Because the project proposed a conditional use of the property, rather than a permitted use that CPG could build “as of right,” CPG could proceed with the project only if it obtained a CUP from the city. And the city's issuance of a CUP is discretionary. *See Minn.Stat. § 462.3595, subd. 1* (2010) (“Conditional uses *may* be approved by the governing body ... by a showing by the applicant that the standards and criteria stated in the ordinance will be satisfied.” (emphasis added)); MCO § 525.300 (1999) (“A [CUP] ... allows the city to review uses, which because of their unique characteristics, *cannot be permitted as of right* in a particular zoning district, but which *may* be allowed upon showing that such use in a specified location will comply with all of the conditions and standards of this zoning ordinance.” (emphasis added)); *Amoco Oil Co. v. City of Minneapolis*, 395 N.W.2d 115, 117 (Minn.App.1986) (“Conditional or special use permits are zoning devices designed to meet problems that arise when

certain uses, although generally compatible with the basic use classification of a particular zone, should not be permitted to be located *as a matter of right* in a particular area of that zone.” (emphasis added)); *see also Minn.Stat. § 645.44, subd. 15* (2010) (“‘May’ is permissive.”); MCO § 520.40(4) (2000) (“The word ‘may’ is permissive.”); *Bituminous Materials, Inc. v. Rice Cnty.*, 126 F.3d 1068, 1070 (8th Cir.1997) (where ordinance provided that permit “*may* be granted,” grant of permit was discretionary, and applicant's interest “amount[ed] to nothing more than an abstract need or desire” (quotation omitted)).

If an applicant who meets the bare requirements in an ordinance had an automatic right to a CUP, the distinction between conditional and permitted uses would be meaningless. CPG therefore was not entitled to a CUP simply because it otherwise complied with the ordinance and filed an application. Because CPG could not obtain a CUP as of right, it did not have a protected property interest in its CUP application. Similarly, CPG did not have a protected property interest in its variance application because an applicant has no claim of entitlement to a variance. *See Kruppenacher v. City of Minnetonka*, 783 N.W.2d 721, 727 (Minn.2010) (stating that a governing body has broad discretion to grant or deny a variance).

Citing *Carey v. Piphus* for the proposition that “the right to procedural due process is ‘absolute’ in the sense that it does not depend upon the merits of a claimant's substantive assertions,” CPG argues that it was not required to demonstrate a protected property interest for its due-process claims. 435 U.S. 247, 266, 98 S.Ct. 1042, 1054 (1978). But *Carey* does not support CPG's argument. *Carey* stands for the proposition that a person has a right to due process regardless of the merits of the substantive claims to be decided at the hearing; the person still must have a property interest at stake to be entitled to due process. *See id.* at 266, 98 S.Ct. at 1053 (“It is enough to invoke the procedural safeguards of the Fourteenth Amendment *that a significant property interest is at stake*, whatever the ultimate outcome of a hearing.” (emphasis added) (quotation omitted)). The right to procedural due process does not guarantee process for process's sake; the right to due process guarantees process for the sake of protecting an established property interest. To assert its procedural due-process claim, CPG therefore was first required to demonstrate that a protected property interest was at stake.

*5 Citing *Northpointe Plaza v. City of Rochester*, 465 N.W.2d 686 (Minn.1991), CPG argues that it was entitled to a CUP as a matter of right despite the permissive language in the statute and ordinance. In *Northpointe Plaza*, the supreme court noted that where “the applicant for a CUP complies with the specified permit requirements, ‘approval of a *permitted use* follows as a *matter of right*.’” 465 N.W.2d at 689 (emphasis added) (quoting *Chanhassen Estates Residents Ass’n v. City of Chanhassen*, 342 N.W.2d 335, 340 (Minn.1984)). But, here, CPG applied for a permit for a *conditional use*, which the Minneapolis ordinance expressly states is a use that “cannot be permitted as of right.” MCO § 525 .300. In *Northpointe Plaza*, the parties did “not challenge the lower courts’ rulings that [the applicant] had a protectable property interest in the CUP,” 465 N.W.2d at 689; the court accordingly did not examine the issue closely, and the statement upon which CPG relies is dictum. Moreover, the ordinance at issue in *Northpointe Plaza* set out several specific requirements that an applicant must meet before a CUP could be granted. *Id.* at 687. Here, in contrast, the ordinance specifically states that a CUP “*may*” be granted for uses that “*cannot be permitted as of right*,” and lists factors that the city must consider in deciding whether or not to issue the CUP. *See* MCO §§ 525.300, .340 (1999), 547.110 (2011) (emphasis added). Finally, *Northpointe Plaza* relied on *Chanhassen Estates* in which the supreme court discussed *permitted*, not *conditional*, uses, stating, “[T]he council’s review of an application for a *permitted use* need go only to the applicant’s compliance with the specific requirements, regulations and performance standards prescribed by the ordinance. Subject to such compliance, approval of a *permitted use* follows as a matter of right.” *Chanhassen Estates*, 342 N.W.2d at 340 (emphasis added) (quotation omitted). The *Chanhassen Estates* court then immediately distinguished *permitted* uses from *conditional* uses, which may be denied for reasons other than failure to strictly comply with the ordinance. *Id.* *Northpointe Plaza* therefore does not establish a rule that an applicant has a per se property interest in a CUP application.

CPG also argues that it had a protected property interest in the form of its option to purchase the subject property. But the property interest at stake in the context of a denial of due process relative to a land-use application is the application itself, not the title to the underlying property. *See Snaza*, 548 F.3d at 1183 (stating that a plaintiff’s fee title in the land did not entitle her to due process with respect to a CUP where the plaintiff “has not presented any evidence that she has been denied her fee simple title in the land”). The *Snaza* court noted

that there were “over 70 principal uses for a property” in the given zoning district that were “allowed without obtaining a [CUP].” *Id.* Similarly, in this case, at the time CPG filed its application there were 19 permitted uses to which CPG could put the property “as of right” and for which a CUP would not be required, *see* MCO § 547 .30(a), (b) (2004), and there are now 25 such permitted uses, *see* MCO § 547.30(a), (b) (2010). Because the city did not deprive CPG of its interest in the property, CPG’s interest in its option to purchase the property did not entitle it to due process with respect to the CUP.

*6 Because CPG did not have a protected property interest in its CUP and variance applications, we conclude that it had no constitutional right to due process in the application-review process. The district court therefore correctly dismissed CPG’s substantive due-process claim, but erred by granting CPG relief on the basis that the city violated its right to procedural due process.

Statutory Judicial Review under Minn.Stat. § 462.361, subd. 1

Arguing that the city council’s decision was arbitrary and capricious, CPG maintains that the district court erred by dismissing its claim for judicial review under Minn.Stat. § 462.361, subd. 1.² We review “the decision of the city council independent of the findings and conclusions of the district court.” *VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 508 (Minn.1983). But where the district court has found that the municipal record was inadequate and allowed discovery and a trial to supplement the record, we may use the district court’s record in conducting our review. *See Swanson v. City of Bloomington*, 421 N.W.2d 507, 313 (Minn.1988) (noting that the purpose of allowing a trial to supplement the municipal record is to enable “satisfactory review”).

Minnesota law provides that a person aggrieved by a city council’s land-use decision is entitled to judicial review in district court. Minn.Stat. § 462.361, subd. 1. A reviewing court must “determine whether the municipality’s action ... was reasonable.” *VanLandschoot*, 336 N.W.2d at 508. The decision is unreasonable if “it was arbitrary and capricious” or “the reasons assigned by the governing body do not have the slightest validity or bearing on the general welfare of the immediate area.” *Id.* (quotation omitted). Generally, a decision to deny a CUP application is arbitrary if the applicant meets the standards specified by the zoning ordinance.³ *Yang v. Cnty. of Carver*, 660 N.W.2d 828, 832 (Minn.App.2003)

(citing *Zylka v. City of Crystal*, 283 Minn. 192, 196, 167 N.W.2d 45, 49 (1969)). But a decision is also arbitrary and capricious if the decision-maker “relied on factors it is not permitted or intended to consider.” *In re Charges of Unprofessional Conduct Contained in Panel File 98–26*, 597 N.W.2d 563, 567 (Minn.1999); see also *In re Block*, 727 N.W.2d 166, 178 (Minn.App.2007) (mentioning this standard in the CUP context). Although a city council has broad discretion to deny land-use permits, we may invalidate its decision if it did not act in good faith. *VanLandschoot*, 336 N.W.2d at 508–09.

We agree with the district court that the city council's decisions to deny the CUPs and variances had some basis in the record: the record contains evidence that CPG's proposal was inconsistent with the scale and character of the neighborhood and might block views of landmarks, open spaces, or bodies of water, which were sufficient bases to deny the CUPs under MCO §§ 547.110(3), (4), 551.480(3), (4); and CPG made no showing whatsoever of the “undue hardship” necessary to support a variance under Minn.Stat. § 462.357, subd. 6(2) (2010), and *Krummenacher*, 783 N.W.2d at 727–28. But when deciding CPG's procedural due-process claim, the district court found that Councilmember Goodman, who took part in making the council's decision: “took a position in opposition and exhibited a closed mind with regard to [CPG's] proposed project prior to hearing [CPG's] appeal”; “adopted an advocacy role in opposition to [CPG's] proposed project well before she discharged her quasi-judicial duties”; and “was clearly involved in an effort not only to assist to organize and mobilize neighborhood opposition to the project, but also to sway the opinions of her fellow council members.” The court also noted that “the opinion of the council member in whose ward a project is proposed is given substantial weight” by other members of the council. The court's findings, which are supported by the record, establish that the city council relied on factors it was not intended or permitted to consider in denying CPG's applications. We therefore conclude that the city council's decision was arbitrary and capricious and that the district court erred by upholding it on review under Minn.Stat. § 462.361, subd. 1.

*7 We turn now to the appropriate remedy. In *Krummenacher*, the Minnesota Supreme Court recognized that the standard remedy for the arbitrary-and-capricious denial of a land-use permit is an order that the permit be issued. 783 N.W.2d at 732–33 (quotation omitted). “But,” the court continued, “there is an exception to this general rule when the zoning authority's decision is premature and

not necessarily arbitrary.” *Id.* at 733 (quotation omitted). Concluding that the city council had applied the incorrect legal standard in its initial determination, the court remanded the case to the city council to allow the applicant to have her application considered under the correct legal standard. *Id.* at 732, 733. Here, like in *Krummenacher*, the city council's decision would not necessarily have been arbitrary and capricious had the council followed the correct standards and procedures in considering CPG's applications—namely, had it not allowed a biased councilmember to participate in the decision. Under *Krummenacher*, we therefore remand to the Minneapolis City Council for a new hearing and decision.

CPG's Equal-Protection Claim

CPG argues that the district court erred by dismissing its equal-protection claim. The Equal Protection Clause of the Fourteenth Amendment requires the government to “treat all similarly situated people alike.” *Barstad v. Murray Cnty.*, 420 F.3d 880, 884 (8th Cir.2005). The threshold inquiry in a zoning case is whether the denied applicant was “similarly situated” to successful applicants. *Id.* The applicant must then demonstrate that there was no rational basis for differential treatment. *Id.*

CPG has failed to meet its burden on the threshold requirement that it identify “similarly situated” successful applicants. CPG's brief mentions in conclusory fashion that it was “intentionally treated differently by the City than others similarly situated,” but fails to identify the applicants or explain how they were similarly situated. CPG's equal-protection claim therefore fails.

The City Council's Development Moratorium

CPG argues that the district court erred by dismissing its “claim for damages related to the development moratorium imposed selectively by the City in April 2005.” In its complaint, CPG alleged:

14. In April 2005, Councilmember Goodman introduced an ordinance to impose a moratorium on all development in the Loring Hill neighborhood. The alleged basis for the moratorium was to allow the City to have a detailed study prepared concerning the impact of the development on neighboring buildings and the community. The City imposed the moratorium in May 2005.

15. The City acted arbitrarily and capriciously with respect to the moratorium because it discriminated against [CPG] and the City did not exercise good faith in imposing it.

The moratorium interfered with CPG's revised plan to build a seven-story structure comprising three stories of offices atop four stories of parking.

*8 On September 16, 2009, between the liability and damages phases of the trial, the district court issued its order dismissing all of CPG's claims except its procedural due-process claim. The court stated that CPG “was denied a fair hearing on its appeal by the Zoning and Planning Committee and, subsequently, by the City Council,” and the court permitted CPG to present damages evidence on that claim alone. Despite the court's limitation on the scope of damages to be tried, CPG submitted a proposed damages calculation asserting “more than \$17 million damages it attributed to the moratorium and the office tower concept.” And CPG also submitted a trial memorandum stating that it had additional evidence to present on the moratorium issue, which the court had “not allowed” it to present during the liability phase. The district court denied CPG's request to submit additional evidence on the moratorium issue and clarified that CPG's claims with respect to the moratorium were “dismissed with prejudice.”

On appeal, CPG does not challenge the district court's dismissal of the statutory or constitutional claims that it might have had arising out of the moratorium's allegedly arbitrary and capricious nature—CPG's substantive arguments are aimed entirely at the city's denial of its CUP and variance applications, rather than the moratorium. But CPG does argue that the district court should have allowed it to present evidence of *damages* related to the moratorium, even though the court found liability only with respect to the fairness of the hearing on the CUP and variance requests. This is an evidentiary and procedural issue—CPG challenges the manner in which the district court directed that evidence be offered for trial. “[M]atters such as trial procedure [and] evidentiary rulings ... are subject to appellate review only if there has been a motion for a new trial in which such matters have been assigned as error.” *Sauter v. Wasemiller*, 389 N.W.2d 200, 201 (Minn.1986). Because CPG did not move for a new trial, it failed to preserve this issue for appeal.

Damages

Both parties challenge the district court's damages award, which was based on CPG's 42 U.S.C. § 1983 claims that the city had violated its constitutional rights. As we have already concluded, CPG was not entitled to relief on its constitutional claims. And money damages are not appropriate under Minn.Stat. § 462.361, subd. 1, for wrongful denial of a land-use permit. See *Krummenacher*, 783 N.W.2d at 732–33 (noting that if a denial is arbitrary and capricious, “the standard remedy is that the court orders the permit to be issued”); *Carl Bolander & Sons v. City of Minneapolis*, 378 N.W.2d 826, 829 (Minn.App.1985) (stating plaintiff “has shown no Minnesota cases in which money damages were awarded for the wrongful denial of a building permit”), *review denied* (Minn. Feb. 14, 1986). CPG's available remedy in this case is a fair hearing before the city council. We conclude that CPG is not entitled to monetary damages, and we reverse the district court's damages award.

Attorney Fees

*9 The district court awarded CPG attorney fees under 42 U.S.C. § 1988(b) (2006), which authorizes fee awards to prevailing parties in section 1983 cases. Based on our conclusion that CPG is not entitled to relief on its constitutional claims, we reverse the district court's attorney-fee award.

The city argues that it is entitled to an award of attorney fees on the basis that a section 1983 defendant may be entitled to a fee award if a lawsuit is initiated or continued in bad faith and for the purpose of harassment. See *Buford v. Tremayne*, 747 F.2d 445, 448 (8th Cir.1984) (affirming fee award where plaintiff “was more interested in harassing those persons he deemed responsible than vindicating his rights in a bona fide lawsuit”); *Am. Family Life Assurance Co. v. Teasdale*, 733 F.2d 559, 569 (8th Cir.1984) (affirming fee award where plaintiff brought suit to harass and attack the integrity of defendant and offered no evidence supporting claims); see also Minn.Stat. § 549.211, subd. 2(1), 3 (2010) (providing that district court may sanction party who presents a claim for an “improper purpose, such as to harass”). The city points to evidence in the record suggesting that CPG did not genuinely expect to win in court, but instead sought only to “exact [its] revenge on those who have wronged [it]” and to force Councilmember Goodman “to pay a price for this.”

The district court was not persuaded that CPG manufactured this lawsuit for the purpose of harassing the city; nor are we. Although CPG did not successfully prosecute its constitutional claims, its complaints were not unfounded—

we have upheld the district court's finding that CPG did not receive a fair hearing. We therefore decline to award attorney fees to the city.

All Citations

Not Reported in N.W.2d, 2011 WL 1642510

Affirmed in part, reversed in part, and remanded.

Footnotes

- 1 Because the relevant ordinances have not materially changed since CPG filed its applications, we cite to the most recent versions.
- 2 Although on appeal CPG characterizes its challenge as one to the district court's decision on its substantive due-process claim, CPG's argument and cited cases demonstrate that its challenge is to the district court's decision on its state-law claim as well. As the district court noted, CPG seems to conflate two bases of relief with similar legal tests—statutory judicial review of land-use decisions under [Minn.Stat. § 462.361, subd. 1](#), and substantive due process under the federal constitution. Although both tests use the words “arbitrary and capricious,” these words carry different meanings. Compare [VanLandschoot v. City of Mendota Heights](#), 336 N.W.2d 503, 507–08 (Minn.1983) (discussing standard under state law), with [Northpointe Plaza](#), 465 N.W.2d at 689–90 (discussing standard under federal constitution's due-process clause). The district court noted that because “[t]he Federal threshold is higher than the threshold under Minnesota law[,] ... it logically follows that if [CPG's] claim fails under Minnesota law, it must also fail under Federal law.”
- 3 CPG argues that “[w]hen, as in this case, a zoning ordinance expressly authorizes the proposed use by conditional use permit, the City's denial of the permit must be for reasons relating to public health, safety and general welfare,” citing [C.R. Invs., Inc. v. Village of Shoreview](#), 304 N.W.2d 320, 324 (Minn.1981). But the standard set forth in [C.R. Invs.](#) is merely the default standard that applies when the ordinance does not set forth specific issues for the city to consider. [Condor Corp. v. City of Saint Paul](#), 912 F.2d 215, 221 (8th Cir.1990) (citing [Zylka v. City of Crystal](#), 283 Minn. 192, 195, 167 N.W.2d 45, 49 (1969)). Here, the ordinance enumerates factors for the city's consideration. Therefore, the default “public health, safety, and general welfare” standard does not apply.

**AGREEMENT BETWEEN
CITY OF SHOREVIEW, MINNESOTA,
CITY OF ARDEN HILLS, MINNESOTA,
AND
CITY OF NORTH OAKS, MINNESOTA
FOR
THE LAKE JOHANNA FIRE DEPARTMENT FIRE STATION PROJECT**

THIS AGREEMENT is made and entered into the ___ day of _____, 2020 by and between THE CITY OF SHOREVIEW, a municipal corporation and political subdivision of the State of Minnesota, THE CITY OF ARDEN HILLS, a municipal corporation and political subdivision of the State of Minnesota, and THE CITY OF NORTH OAKS, a municipal corporation and political subdivision of the State of Minnesota (hereinafter jointly referred to as the “Parties” and individually as each “City”) (the “Agreement”).

RECITALS

WHEREAS, each City is responsible for providing fire protection and prevention services for the people and institutions within its boundaries; and

WHEREAS, each City contracts with Lake Johanna Fire Department to provide each City’s fire protection and preventions services; and

WHEREAS, the costs of said fire protection and prevention services are allocated pursuant to contracted service agreements between the Parties and Lake Johanna Fire Department; and

WHEREAS, Lake Johanna Fire Department conducted a needs analysis that reviewed the adequacy of Fire Station number 4 and identified future department facility needs; and

WHEREAS, the needs analysis concluded that the existing Fire Station number 4 located at 3615 Victoria Street in the City of Shoreview, MN, was undersized and had many deficiencies; and

WHEREAS, the needs analysis concluded that it would not be feasible to expand the station, due to the limited lot size and subpar access to Victoria Street on the north of the railroad tracks, and this location may impact response times; and

WHEREAS, Lake Johanna Fire Department reviewed potential property locations in southern Shoreview and Arden Hills; and

WHEREAS, Lake Johanna Fire Department identified vacant property owned by Bethel University on Pine Tree Drive in the City of Arden Hills, MN (“the Property”) as a potential site for a new fire station; and

WHEREAS, the Property is large enough to accommodate headquarters for Lake Johanna Fire Department and has improved access ideally situated to cover southern Arden Hills and Shoreview as well as the entire service area for Lake Johanna Fire Department; and

WHEREAS, Lake Johanna Fire Department’s Board of Directors authorized the Fire Chief to negotiate and execute a letter of intent to purchase the property from Bethel University; and

WHEREAS, in early April 2020, Lake Johanna Fire Department and Bethel University executed a letter of intent to purchase the Property for a purchase price of \$1.35 million; and

WHEREAS, the letter of intent also requires Lake Johanna Fire Department to contribute one third of the cost, up to a maximum of \$325,000, to relocate an access road on the Property;

WHEREAS, the purpose of this agreement is to define each City’s responsibilities for the Lake Johanna Fire Department’s purchase of the Property and the construction of improvements on the Property (“the Project”); and

WHEREAS, the new fire station would be owned and operated by the Lake Johanna Fire Department to serve the three contract cities of Arden Hills, North Oaks, and Shoreview, the Parties.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual undertakings herein expressed, the City of Shoreview, the City of Arden Hills, and the City of North Oaks agree as follows:

1 Term of Agreement

1.1 Effective date: This Agreement and any amendments thereto shall be in full force and effect upon the filing of a certified copy of the resolution approving this Agreement by each City. Said resolutions shall be filed with the Shoreview City Attorney who shall notify each City in writing of its effective date.

1.2 Expiration date: This Agreement expires upon the Bond, issued pursuant to paragraph 2.3, being repaid in full.

2 Agreement between the Parties

2.1 Cost. The cost of the land purchase, access road relocation, and property improvements of the Property will be funded by a \$300,000 contribution from the Lake Johanna Fire Department and by contributions from each City allocated proportionally through the current cost share agreement for fire department operations and capital costs.

2.2 Cost share formula. The cost share formula will be used to allocate each City’s contribution for the land acquisition, and is currently defined as 25% population, 25% households, 40% fire calls, and 10% assessed value.

2.3 Bond issuance. At the time financing is needed for the construction of a new station, the financing will be provided by one of the two following methods:

Unless otherwise unanimously agreed upon, one of the Parties will provide financing for the cost to construct a station (the “Financer City”), including any costs associated with the financing, and each of the other Parties will annually reimburse t the Financer City for its portion of the debt service payment based on the cost formula. Should a station be constructed in the allotted timeline for reimbursement of the land acquisition costs, the Financer City will include the land acquisition costs in the financing and each Party will be repaid via the financing proceeds for their portion of the land acquisition. If the Station is not constructed in the time frame that is necessary to include the property acquisition costs as part of the financing, each Party will be responsible for their proportionate share of the property acquisition costs in accordance with the cost share formula in effect at the time.

2.4 Bond repayment. The bond issue will be repaid through annual appropriations by each Party consistent with the cost share formula calculated and adjusted annually to account for growth and development in each respective City.

2.5 Station Construction. Station construction will begin no later than June 30, 2026, unless an alternative date is unanimously agreed upon by the Parties.

2.6 Development Approvals. The City of Arden Hills will review the proposed project as part of its normal development process.

2.7 Option to Acquire. Should the Lake Johanna Fire Department no longer serve the City of Arden Hills or no longer use, occupy, or otherwise cease to operate in the fire station, the fire station, at the discretion of the JPA, may be used by a successor organization that provides fire protection to the Parties. Should no acceptable successor organization be identified the City of Arden Hills will have the option to reimburse the other two Parties, the Cities of Shoreview and North Oaks, for their respective contributions to the purchase of the Property, construction of the fire station, and any applicable capital improvements to the station plus inflation as measured by the Consumer Price Index (CPI) and take ownership of the land and associated buildings.

2.8 Project Abandonment, Option. If the project does not move forward and the station is not constructed, the City of Arden Hills will have the option to reimburse the other Parties for their direct cost to acquire the land and take ownership of the land. Should the City of Arden Hills not exercise this option, the land may be sold and the proceeds will be divided amongst the Parties and fire department based on their initial direct cost for the land purchase of the Property.

3 Assignment, Amendments, Waiver, and Contract Complete

3.1 Assignment. The Parties may not assign or transfer any rights or obligations under this Agreement.

3.2 Amendments. Any amendment to this Agreement must be in writing and will not be effective until it has been signed and approved by the signatories of each City who signed and approved the original Agreement, their successors in office, or other individual duly authorized.

3.3 Waiver. If any party fails to enforce any provision of this Agreement, that failure does not waive the provision or the right to enforce it in the future.

3.4 Contract Complete. This Agreement contains all negotiations and agreements between the Parties. No other understanding regarding this Agreement, whether written or oral, may be used to bind the Parties.

4 Liability

Each City will be responsible for its own acts and behavior and the results thereof and shall not be responsible or liable for the other Party's actions and consequences of those actions. The Minnesota Municipal Tort Claims Act, Minn. Stat. Ch. 466, governs the municipality's liability.

5 Venue

Venue for all legal proceedings involving this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

6 Signatures

This Agreement may be executed in several counterparts, and all so executed shall constitute one Agreement, binding the Parties notwithstanding that each City may not be a signatory to the original of the same counterpart.

IN WITNESS WHEREOF, the Parties have hereunto set their hands the day and year first above written.

CITY OF SHOREVIEW

By: _____
Mayor

SEAL

DATED: _____, 2020

ATTEST:

City Clerk

CITY OF ARDEN HILLS

By: _____
Mayor

SEAL

DATED: _____, 2020

ATTEST:

City Clerk

CITY OF NORTH OAKS

By: _____
Mayor

SEAL

DATED: _____, 2020

ATTEST:

City Clerk

**CivicPlus**

302 South 4th St. Suite 500
 Manhattan, KS 66502
 US

Quote #:

Q-10424-1

Date:

7/13/2020 4:40 PM

Expires On:

9/1/2020

Product:

CivicReady

Ship To

Deb Breen
 North Oaks MN - CivicReady

Bill To

North Oaks MN - CivicReady

SALESPERSON	Phone	EMAIL	DELIVERY METHOD	PAYMENT METHOD
Jordan Cairns	x	cairns@civicplus.com		Net 30

Exhibit A.1 - Statement of Work

QTY	PRODUCT NAME	DESCRIPTION	PRODUCT TYPE
1.00	2020 CivicReady Mass Notification Promotion	2020 CivicReady Mass Notification Promotion	
1.00	CivicReady Mass Notification Annual Fee	CivicReady Mass Notification Annual Fee	Renewable
1.00	CivicReady Year 1 Annual Fee Discount	Year 1 Annual Fee Discount	Renewable
1.00	CivicReady Promo Implementation Fee	CivicReady Implementation - Single User Group Setup, 2 Hour Training Engagement	One-time

List Price - Year 1 Total	USD 3,551.53
Actual Investment - Year 1	USD 1,198.26
Annual Services – Year 2	USD 2,396.53

Total Days of Quote:365

CivicPlus hereby provides a license to North Oaks MN - CivicReady ("Client") to utilize CivicReady software (the "Service") for the term of this SOW. In consideration of the payments described herein. Client shall be responsible for all activity occurring under Client's account(s) and shall abide by all applicable laws and regulations in connection with the use of any service or license provided under this SOW. Client shall: (i) notify CivicPlus immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to CivicPlus immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by Client; and (iii) not impersonate another CivicPlus user or provide false identity information to gain access to or use the Service.

Term & Payment

- Performance and payment under this SOW shall be subject to the terms & conditions of the Agreement by and between Client and CivicPlus, to which this SOW is hereby attached.
- This SOW shall remain in effect for a period of one year (12 months) from signing, unless terminated, by either party in writing to the other party, within 90 days from signing or implementation, which ever comes first. In the event that neither party gives 60 days' notice to terminate prior to the end of the initial or any subsequent renewal term, this Agreement will automatically renew for an additional 1-year Renewal Term.
- Unless Client terminates this SOW and the services within 90 days of signing this SOW or implementation which ever comes first, the First Year Fees will be invoiced ninety (90) days from signing, the Client will have thirty (30) days from receipt of the invoice to pay the invoice and continue the services.
- Renewal Term Annual Services shall be invoiced, in full, on the date of signature of relevant calendar years. Annual services are subject to a 3% annual increase beginning in the third year of service.
- The Client will be invoiced electronically through email. Upon request CivicPlus will mail invoices and the Client will be charged a \$5.00 convenience fee.

CivicReady Functionality

- The CivicReady services being provided herein are offered under a limited promotion. In the event Client would like to upgrade the services at any time, Additional Groups and Training can be purchased by Client at a later date.
- CivicReady provides the ability for Client to generate high-speed notifications to listed databases through an Internet- hosted software application. Client's database(s) shall be limited to containing contact data located within the geographic boundaries of North Oaks MN - CivicReady. Licensee may only place calls via the system to telephone numbers assigned within the 48 contiguous United States of America.

CivicReady Appropriate Use of Service

- Client agrees to use Service in ways that conform to all applicable laws and regulations. Client agrees not to make any attempt to gain unauthorized access to any of CivicPlus' systems or networks. Client agrees that CivicPlus shall not be responsible or liable for the content of messages created by Client, or by those who access Service, or otherwise delivered by Service on behalf of Client.
- Client shall be responsible for compliance with all applicable laws regarding outbound telemarketing including State and Local telemarketing laws and requirements. Client will be solely responsible and liable for any such violations.

CivicReady Security and Confidentiality

- CivicPlus will use commercially reasonable practices and standards to secure and encrypt data transmissions. Client understands that CivicPlus is providing Service on the World Wide Web through an upstream third party Internet Service Provider, using public utility services which may not be secure. Client agrees that CivicPlus shall not be liable to Client in the event of any interruption of service or lack of presence on the Internet as a result of disruption by the third party Internet Service Provider or public utility. Client agrees that CivicPlus cannot guarantee the integrity of Client supplied or user supplied data. Any errors, duplications, or inaccuracies related to the Client or user supplied data will be the responsibility of the Client.
- CivicPlus acknowledges the confidential nature of Client and user supplied data and agrees to prevent the disclosure to the public or to anyone not employed by CivicPlus, any confidential data. Data collected by CivicPlus will remain secured and will only be released upon mutual agreement by both parties or a court order. Client agrees that private citizens may voluntarily contribute their contact information to be used in Service, and CivicPlus shall maintain a database of such information. CivicPlus acknowledges the confidential nature of Client and user supplied data and agrees to prevent the disclosure to the public or to anyone not employed by CivicPlus, any confidential data. Data collected by CivicPlus will remain secured and will only be released upon mutual agreement by both parties or a court order. Client agrees that private citizens may

voluntarily contribute their contact information to be used in Service, and CivicPlus shall maintain a database of such information.

Account Information and Privacy

- CivicPlus does not own any data, information or material that Client submit to the Service in the course of using the Service ("Client Data"). Client, not CivicPlus, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Client Data, and CivicPlus shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Client Data. CivicPlus reserves the right to withhold, remove and/or discard Client Data without notice for any breach, including, without limitation, Client's non-payment. Upon termination for cause, Client's right to access or use Client Data immediately ceases, and CivicPlus shall have no obligation to maintain or forward any Client Data.

Intellectual Property Ownership

- CivicPlus alone shall own all right, title and interest, including all related Intellectual Property Rights, in and to the CivicPlus Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Client relating to the Service. This Agreement is not a sale and does not convey to Client any rights of ownership in or related to the Service, the CivicPlus Technology or the Intellectual Property Rights owned by CivicPlus. The CivicPlus name, the CivicPlus logo, and the product names associated with the Service are trademarks of CivicPlus, and no right or license is granted to use them. Client may use CivicPlus' name or trademarks (CivicPlus) for promotion, publicity or other commercial purposes with our prior written consent. All other trademarks not owned by CivicPlus that appear on this site are the property of their respective owners, who may or may not be affiliated with, connected to, or sponsored by CivicPlus.

Representations & Warranties

- Each party represents and warrants that it has the legal power and authority to enter into this Agreement. This service is provided on an "AS-IS" basis without warranty (express or implied, including merchantability, fitness for a particular purpose and non-infringement of third party rights). We will use commercially reasonable efforts to maintain continuous access but will not be responsible for events beyond our control.
- Client represent and warrant that Client has not provided any false information to gain access to the Service and that Client's billing information is correct.

Disclaimer of Warranties

- CIVICPLUS MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. CIVICPLUS DOES NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET CLIENT'S REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY CLIENT THROUGH THE SERVICE WILL MEET CLIENT'S REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL CONTENT IS PROVIDED TO CLIENT STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR

NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY CIVICPLUS.

Internet Delays

- CIVICPLUS'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. CIVICPLUS IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

Acceptance

We, the undersigned, agreeing to the conditions specified in this document, understand and authorize the provision of services outlined in this Agreement.

Client

CivicPlus

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

Contact Information

*all documents must be returned: Master Service Agreement, Statement of Work, and Contact Information Sheet.

Organization		URL
Street Address		
Address 2		
City	State	Postal Code
CivicPlus provides telephone support for all trained clients from 7am –7pm Central Time, Monday-Friday (excluding holidays). Emergency Support is provided on a 24/7/365 basis for representatives named by the Client. Client is responsible for ensuring CivicPlus has current updates.		
Emergency Contact & Mobile Phone		
Emergency Contact & Mobile Phone		
Emergency Contact & Mobile Phone		
Billing Contact		E-Mail
Phone	Ext.	Fax
Billing Address		
Address 2		
City	State	Postal Code
Tax ID #		Sales Tax Exempt #
Billing Terms		Account Rep
Info Required on Invoice (PO or Job #)		
Are you utilizing any external funding for your project (ex. FEMA, CARES):		
		Y [] or N []
Please list all external sources: _____		
Contract Contact		Email
Phone	Ext.	Fax
Project Contact		Email
Phone	Ext.	Fax

July Month in Review

July 2020



Rehder Forestry Consulting

- Emerald Ash Borer Resident letter has been well received. Sent out 185 letters to homeowners and have consulted on 45. Providing valuable information to homeowners on how to manage for EAB on their property. Spreadsheet of results included.
- CTV allows for educational videos per contract. Plan on doing an EAB video entitled, “How to Manage EAB on your Property” for North Oaks residents
- Working with NRC members to draft a tree preservation policy with guidance from the Woodland Subcommittee (WSC). Have reached out to professionals in the field for opinions, next meeting is August 3rd.
- Meet with North Oaks Company on site at Nord and Anderson to discuss working around specific trees.
- Both Dutch Elm Disease and Oak Wilt inspections are in full swing. Have submitted numerous samples to U of M Plant Health Disease Clinic for positive diagnosis.
- Meet with contractor on site to define property lines. Bids have been provided to several residents with an Oriental Bittersweet infestation.
- County volunteer employee Sarah Zellmar is surveying the rest of the community for Japanese Knotwood and Oriental Bittersweet.
- Completed 7 homeowner calls but used proper social distancing and a mask as a precaution if homeowners were present.
- Attended NRC and WSC meetings
- Sent letters requesting vegetation around certain intersections be pruned back to remove site obstructions and provided input on Operation Clearview

