

September 11, 2020

City Administrator Kevin Kress
Members of the City Council
City of North Oaks
100 Village Center Drive
Suite 230
North Oaks, MN 55127

Re: August 13, 2020 City Council Vote of No Confidence and Related Legal Correspondence

Dear City Administrator Kress, Mayor, and members of the City Council:

I was disappointed to see the August 10, 2020 letter that Councilmember Kara Ries's (Ms. Ries) attorney submitted in response to the City Council's July 27 special meeting and deliberations regarding the two formal written complaints dated July 8 and July 24, 2020, filed by the North Oaks Company (Company) with the City against Ms. Ries.

The Company filed the complaints in response to Ms. Ries's actions related to the Nord Parcel development plans prior to, during and after the City Council's regularly scheduled June 11 meeting at which their preliminary plan was subject to a final vote. The complaints centered on Ms. Ries's ethical violations, misrepresentations, trespass on their property, lack of transparency, and disregard and indifference to City and Company experts' work and analysis. Additionally, the Company referenced the actions of Dr. Joe Magner, a consultant engaged by Ms. Ries, who, with Ms. Ries, entered the Nord Parcel uninvited and without permission on June 10, 2020, and on that date issued an unsubstantiated opinion on the development. Ms. Ries presented his opinion to the Council barely 2 hours before the June 11 Council meeting, and without notice to the Company.

Following a special Council meeting held on July 27 to address the complaints, the Council, in a rare and significant action, admonished Ms. Ries with a formal vote of no confidence during the August 13 regular Council meeting. The Council's Vote of No Confidence resulted from Ms. Ries's actions in:

- a) engaging a consultant without authority, without following established Council processes, and without obtaining Council or City Staff approval;
- b) trespassing on the Nord Parcel with the consultant;
- c) failing to disclose the fact that the consultant is related to a vocal opponent of the East Oaks Development who is directly affected by the development, and thereby raising the question of conflict of interest and/or transparency concerns;
- d) being materially untruthful about the timing and the manner of her interactions with the consultant;
- e) presenting the consultant's opinion at the last minute without notice to the Council or the North Oaks Company, thereby potentially prejudicing the Company;
- f) repeatedly harassing, intimidating, disregarding and denigrating the City's administrator, engineer, planner, attorney, and the Company and its retained experts;
- g) repeatedly advocating against the Company and potentially violating the Company's right to due process before the City; and
- h) exposing the City to legal and financial risk as a result.

In their letter of defense, Ms. Ries and her attorney misrepresented my personal involvement in this matter. They criticized my efforts to contact Dr. Magner for an explanation of the circumstances and timing of Ms. Ries's outreach to and engagement of him. Despite rendering a controversial opinion, he has refused to speak to any City representatives and has chosen to communicate exclusively with Ms. Ries. They further allege that I misrepresented the Company's complaint to include Dr. Magner's actions, and that I threatened him with an ethics complaint with the University of Minnesota (we are both faculty members at the University).

The following provides some background on Ms. Ries's objectionable actions, the Company's complaints, the Council's vote, and my response to the criticisms levied at me by Ms. Ries's attorney.

Background

At the June 9th Planning Commission (PC) meeting and after almost 18 months of review and deliberation, the PC unanimously approved the Nord Parcel preliminary development plan. Like the entire East Oaks Development, the Nord Parcel is subject to the 1999 Planned Development Agreement (PDA) which includes seven amendments, and which is a binding contract between the City and the Company. Prior to the June 9th meeting the PC had held several lengthy public hearings allowing any and all residents the opportunity to raise questions or make comments regarding the development. The PC finished its review at the June 9th, meeting which culminated in unanimous approval of the Nord Parcel preliminary plan. (One PC member recused himself from the vote after he was pressed to reveal that he had a previously undisclosed direct relationship with Rachel Maher (his daughter) raising concerns regarding transparency.) Of note, no new information about the Nord Parcel was presented at the June 9th PC meeting.

Following the 11 p.m. adjournment of the PC meeting on June 9th and before the June 11th Council meeting where the development was to come up for a final vote, Ms. Ries entered the Nord Parcel with Dr. Joe Magner, a consultant she engaged to observe standing water in the development after recent rains. Ms. Ries did not seek permission from the Company to enter the Nord Parcel nor otherwise notify the Company of her and Dr. Magner's intent and actions; and did not notify or seek approval from the other members of the City Council or from the City Administrator for entry or engagement of the consultant. Dr. Magner then issued a formal letter dated the same day on University of Minnesota stationery, outlining his personal opinion, which Ms. Ries emailed to Administrator Kress who forwarded it to the Council on June 11, just hours before the Council's meeting. Based on the consultant's brief, one-time, visual inspection of the Nord Parcel where he and Ms. Ries noted standing water in some areas, he issued an opinion indicating there should be new studies of the development for potential water issues.

At the June 11th Council meeting, Ms. Ries presented Dr. Magner's opinion and advocated for the development to be voted down and that new water table-related studies be initiated. During the Council meeting, Ms. Ries misrepresented the circumstances of her engagement of Dr. Magner and the nature of his personal opinion. Given the peculiar circumstances, (i.e., Ms. Ries said that the consultant agreed on June 10 to meet with her, he apparently dropped everything to visit the Nord Parcel site, and he wrote his formal opinion letter all in time for the June 11 City Council meeting), the facts, and the motives of both Ms. Ries and her consultant, were appropriately questioned during and following the meeting.

The most significant part of the discussion regarding Ms. Ries and Dr. Magner's assertion that there were water issues with the Nord Parcel occurred when City Engineer DeWalt introduced the following facts regarding work that had already been completed to refute the assertion of Ms. Ries and Dr. Magner. Her comments as stated in Council minutes are as follow:

"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."

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."

Subsequent to the June 11 Council meeting, the Company questioned Dr. Magner's opinion and invited him to meet to discuss it. To the Company's surprise, Ms. Ries appeared at the meeting uninvited by the Company, but, as it turned out, invited by Dr. Magner without notice to the Company. During the meeting, the Company learned that he had not reviewed any of the work that had been completed and presented to the PC by numerous experts on behalf of either the City or the Company, prior to issuing his opinion. Furthermore, when pressed, he disclosed that he was related to a North Oaks resident whose property is adjacent to the East Oaks Development,

and has been a vocal critic of the Development which included him signing a discredited petition (see March 2020 Council meeting) against the East Oaks Development that was circulated to some North Oaks residents by Franny Skamsner-Lewis whose property is directly adjacent to the Nord Parcel. Of note, Dr. Magner's relative is also well known to Ms. Ries as evidenced by public communications on Facebook between the two going back over a year. Based on this information, the Company filed the first of two written complaints to the City regarding the behavior of Ms. Ries and Dr. Magner.

In response to receipt of the Company's July 8 letter of complaint, City Administrator Kress called Dr. Magner on July 8th. During that brief conversation Mr. Kress learned that not only was Dr. Magner aware of a potential conflict of interest given his family connection to the Development, but he and Ms. Ries had discussed the potential conflict of interest and both elected not to disclose it in or with his June 10 opinion or at any time thereafter. With this additional information, the Company filed its second written complaint on July 24th.

Following receipt of the second of the two complaints, the Mayor determined that the issues raised were of such significance that a special City Council meeting was warranted to address the Company's complaints, and the meeting was convened on July 27. During the meeting, and following Ms. Ries's inability to recall the timing of her initial and other interactions with Dr. Magner, she agreed to work with City Administrator Kevin Kress to have Dr. Magner provide answers to the basic questions that Ms. Ries failed to answer (about the timing and manner of her initial contacts with Dr. Magner, and the means by which she became aware of him).

At the Council's direction, Mr. Kress contacted Dr. Magner by email whereupon Dr. Magner responded via email that he would not have any additional conversations on the matter without being paid \$150/hr. Shortly thereafter, Dr. Magner abruptly sent an additional email to Mr. Kress cutting off all communications with City personnel. Mr. Kress subsequently learned from Ms. Ries that she had contacted Dr. Magner just prior to his sudden no contact correspondence, and despite his refusal to talk with any City personnel, he continued to correspond with Ms. Ries. Mr. Kress questioned Ms. Kensity on why the email correspondence between Dr. Magner and himself was included in her correspondence when it had previously not been shared with the Council. This confirmed that there had been additional communications between Dr. Magner, Ms. Ries and Ms. Kensity. Despite the three of them continuing to communicate, the City is still waiting to hear from Dr. Magner.

Ms. Ries's behavior was the subject of a special City Council meeting convened on July 27th and is available for viewing at the City website. As regards the involvement of Dr. Magner and the refusal of both Dr. Magner and Ms. Ries to disclose an obvious potential conflict of interest, their defense at the July 27th meeting was that since their view was that they had no actual conflict of interest, they had no obligation to disclose anything.

A note about the Nord Parcel

The 12 lot Nord Parcel is one of the most extensively vetted neighborhoods in the history of North Oaks, involving VLAWMO and their coordinating partners, the city arborist, two independent city attorneys, three city engineers, two city administrators, the Planning Commission, multiple Company consultants, and NOHOA, over a period of approximately 18 months. Any suggestion that Councilmember Ries was simply trying to protect the environment or the eventual homeowners is, in my opinion, without merit.

Response to personal criticisms levied at me by Ms. Ries's attorney

Regarding the criticism about my contacting Dr. Magner: Contact with Dr. Magner was necessitated by the fact that Ms. Ries refused to explain, completely and truthfully, how, when and why she contacted him. Following the July 27 Council meeting, I emailed Dr. Magner simply asking him to contact City Administrator Kress and answer outstanding questions that Councilmember Ries was specifically asked, and failed to answer. She was given the opportunity to clear up those questions by cooperating with City Administrator Kress in his attempt to obtain additional information from Dr. Magner; however, instead of cooperating with Mr. Kress, Ms.

Ries contacted Dr. Magner on her own, whereupon he abruptly cut off all communications with City personnel. There is evidence of this based on Ms. Ries's attorney referencing the email correspondence where Dr. Magner cut off his communications with the City.

Regarding the criticism that I misrepresented the Company's complaint to include Dr. Magner's actions: The North Oaks Company repeatedly and prominently mentioned Dr. Magner's involvement in its July 24, 2020, written complaint to the City Council; specifically, his unauthorized, 11th hour abbreviated appearance and investigation, and unsubstantiated written opinion. Regarding his hasty opinion: Soil borings by qualified soils and boring engineers, who were voluntarily commissioned by the Company, confirmed the water table to be well below that asserted by Dr. Magner, and confirmed that they did not and do not cause concern for future homeowners in the Nord Parcel. Dr. Magner was a willing participant and he has made no effort to correct the misrepresentations made by Ms. Ries regarding his involvement or opinion in the matter. As he is not a City employee nor did the City engage him as a consultant to render an opinion on anything, the City may have little recourse against him.

Lastly, regarding the allegation that I misrepresented the situation and threatened Dr. Magner with an "ethics complaint": The circumstances warrant an ethics investigation regarding Dr. Magner's involvement in this issue. As a faculty member at the University of Minnesota, I know the conflict of interest rules, as should Dr. Magner and it is appropriate to file a complaint in these circumstances. Ms. Ries was relying on Dr. Magner's opinion to influence the vote on a multi-million dollar project in favor of denying the development. Such a denial would benefit those opposed to the development including Dr. Magner's relative. Such a denial under these circumstances would certainly have raised the likelihood of the Company seeking, and possibly winning, a litigated judgment against the City that all of our residents would pay for, in the absence of liability coverage.

In my opinion and the opinion of others, Dr. Magner violated the University of Minnesota's conflict of interest disclosure policy and code of ethics. His on-going silence in this matter and refusal to be forthcoming regarding misrepresentations of others raises additional questions. Accordingly, an ethics complaint against Dr. Magner is appropriate, and it is appropriate for the University of Minnesota to review his actions. More information on the University's COI policy, is available here: (https://regents.umn.edu/sites/regents.umn.edu/files/2019-09/policy_individual_conflicts_of_interest.pdf).

Conclusion:

I hold myself accountable for being an honest, forthright, direct and transparent Council member. And I take very seriously my oath of office and responsibility to be a fair and open-minded council member. Our residents have the right to expect honesty and integrity from their elected leaders and those who come before the Council.

I also value the truth and expect my fellow councilmembers to be truthful in all their council deliberations consistent with the Council's Code of Conduct; and expect council members to follow process. If there are legitimate concerns regarding any item that comes before the Council, there are systems and processes in place to ensure they are addressed, and I expect fellow council members to adhere to those processes in a forthright and honest manner.

The simple fact is that based on the facts of Ms. Ries's conduct, the North Oaks City Council determined that condemnation of Ms. Ries through a vote of no confidence was appropriate. Unfortunately, she has yet to take responsibility for any of her behavior related to this incident.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Kingston". The signature is stylized with a large, circular initial "R" and a long, horizontal stroke extending to the right.

Rick Kingston
Councilmember and Deputy Mayor