

May 11, 2018

City Council  
City of Federal Dam  
222 Main Street  
Federal Dam, MN 56641

RE: *Zion Harbor Road*  
Our File No. 4030-0007

Dear Council:

As you know, in February I wrote a letter on the City's behalf to the Isle Harbor on Leech Owners Association indicating that the City would no longer maintain Zion Harbor Road to the east of Isle Harbor Drive. The reasoning was that the road is a private access road that is to be maintained by the Association in accordance with the original Maintenance Agreement provided by the Isle Harbor developer.

The Association asserts that the City agreed to undertake road maintenance in 2005, and that agreement constituted a rescission of the original Maintenance Agreement. The Association therefore argues that the City is still obligated to maintain Zion Harbor Road.

I respectfully disagree with the Association's position. The record documents indicate that Zion Harbor Road was intended to be a private road from the beginning. The developer asked the City to get a road easement from the DNR (likely because the DNR would not provide such an easement to a private developer) and paid for the easement application. The easement was for a pre-existing private road dating back to the 1960's. That road is a corduroy design that does not meet any public road standards. In northern Minnesota, such corduroy roads are used for logging roads, not public streets. The developer then expressly agreed to maintain the road. There is no indication in the record that Zion Harbor Road was intended to be anything but a private, dead-end road for the benefit of Isle Harbor.

In 2005, the Council agreed to assume some maintenance, but as far as can be discerned from City records, did not take any action to open the road as a public street. Indeed, a portion

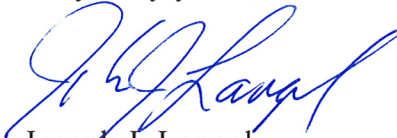


of this road is not even within City limits and is therefore outside the City's jurisdiction. I am not aware of any authority by which a city can open a public street outside its jurisdiction.

All that exists between the City and Isle Harbor is an understanding about maintenance, and that only concerns minimal maintenance, such as snow plowing and the occasional addition of Class 5 gravel. This arrangement was arguably void as a matter of law from the beginning, because cities cannot expend public funds to maintain private roads. The City should not have agreed to perform maintenance, no matter how minor, on this private bog road. Furthermore, given the substandard road design, any maintenance should have been at a minimum-maintenance road standard. This corduroy road was simply not designed for long-term public use and, as a public street, would necessitate substantial repairs that would result in assessments against Isle Harbor.

The only issue now is whether the City's continued maintenance of the road can be terminated. I see no reason why the City cannot do so, and in fact, a strong argument can be made that it must do so in the absence of any valid reason for the continuing expenditure of public funds. This is not a public road and never has been. Maintenance of the bog road to Isle Harbor is the responsibility of Isle Harbor, as intended from the beginning by the developer who built it.

Very truly yours,



Joseph J. Langel