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September 10, 2018

Mr. Thomas P. Carlson
Carlson & Associates, Ltd.
1052 Centerville Circle
Vadnais Heights, MN 55127

Via Mail and E-mail

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

Dear Mr. Carlson:

I am writing in response to your letter dated August 14, 2018, in which you make several inaccurate factual assertions concerning the history of road, and then conclude that the City has no choice but to maintain the road. I will respond to each of your assertions in turn.

It is undisputed that the road was built by private parties decades ago. At the time of its construction, it was not built to any road standards, and it does not meet any such standards today. It was, and is, a narrow corduroy road that was never built for long-term use.

For the next 43 years, that road, which crosses State school trust land, was privately maintained. From at least 1962 until 1998, the road was operated over land leased by the owner/developer from the State. In September 1997, Dynamics Design & Land Co. (the developer) requested that the City apply for an easement from the DNR. The developer had to obtain a permanent easement for its development; a simple lease (which is what existed previously) was not sufficient for the State. At the time Dynamics Design sought the easement, State law prohibited such easements from being granted to private parties. Minn. Stat. § 84.631 (1997) (prohibiting granting road easements across school trust land to private persons). The only way the developer could obtain the easement to protect his access road to the proposed development was if the City held the easement on his behalf, which is what occurred. We confirmed this with the DNR. It was a fiction undertaken for the developer's benefit; it was not a unilateral action by the City. The developer paid all costs incurred for the transaction, including the \$500 DNR application fee, and undertook the minimal road improvements that were completed at that time. This is a matter of public record.

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During the discussions about that easement, the developer told the Council that it would always maintain that road to the stop signs, just as it had before. This was consistent with the fact that the Easement was for the sole benefit of Dynamics Design and its new development. The Maintenance Agreement, signed by the owner of Dynamics Design, Marly Glines, confirmed that statement. You point out that it was never recorded. That fact is irrelevant. No law requires that it be recorded in order to be enforceable, or to be evidence of the arrangement that did, in fact, exist for many years. It is also rather disingenuous to argue that the Association had no notice of the Agreement when the Association had it posted on its own website. Multiple copies are also in the City's files. No one has ever questioned the veracity of this Agreement until now, and such questioning is without merit when there is no evidence that this document, with Mr. Glines' signature, is anything but genuine. The Association follows that baseless assertion with another: that the maintenance agreement was intended to be temporary. There is nothing about that document, or anything in the record, to support the Association's new allegation that it was temporary until the City had more resources. That is a 2018 assertion about a 1997 arrangement without any basis in fact.

In 2005, despite the fact that the City had never maintained the road during its 40+ years of existence, the Association decided that it no longer wanted the cost burden and requested that the City take over maintenance. At that time, the Association was successful in getting representation on the Council. In its April 18, 2005, letter to the Association, the Council wrote that it "would entertain an equitable arrangement between the Association and the City, as our budget will allow, for maintenance." In other words, the City would consider maintenance of that private road for the Association's benefit. This was not a legitimate expenditure of public funds, but the decision was apparently made without the assistance of counsel.

Based on the Council's 2005 decision, you argue that the City is, in essence, forever obligated to maintain the road. You rely heavily on statutory dedication under Minnesota Statutes section 160.05. Three points bear mentioning on that issue. First, no road can be dedicated by statute if it is outside the City's jurisdiction. There is simply no authority for reaching beyond one's borders and permanently assuming authority over roads within the jurisdiction of other government entities, whether that is a township, county or the State. As you indicate, a city can maintain a road outside its jurisdiction, but that does not equate to dedication, and the city can decide to stop maintaining such roads at any time, which Federal Dam did, in fact, do. With respect to the portion of Zion Harbor Road that is outside city limits, it is not, and cannot, be a city street by statutory dedication.

Second, it is highly questionable whether a voluntary agreement to maintain a private road suffices to meet the standard for statutory dedication. In every instance I have come across over the years, the property owner seeks to deny public access after years of public maintenance; there was never an agreement to maintain. Here, the Council agreed to "an

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equitable arrangement” as its budget allows. If challenged, I doubt this scenario would suffice as a statutory dedication.

Finally, you rely heavily upon the fact that an easement of record exists between the City and the DNR. I am not aware of any legal support for the notion that a city can obtain statutory dedication over a road for which it already has a road easement. The concept of statutory dedication, which is akin to adverse possession, assumes the city had no existing right to utilize the road as a public road; it allows for the creation of a public road where none exists. By statute, a new right of access is created based on years of government conduct. If the DNR road easement is valid, however, then the public right of access already existed before the statutory dedication process could begin, rendering any such process moot. The existence of the Easement eliminates the possibility of statutory dedication. Section 160.05 has no bearing on this matter.

That leaves us with the Easement, the sole purpose of which was to facilitate the very development that no longer wants to pay for what amounts to a private driveway. Nothing in that easement prevented Dynamics Design from assuming all maintenance obligations, which it did for years. Because of how this road was originally built, and the fact that it was intended from the beginning to be solely for the benefit of the private development it serves (which the public cannot even access) it is not in the best interests of the City to spend public funds to maintain it.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. J. Langel". The signature is fluid and cursive, with the first and last names being the most prominent parts.

Joseph J. Langel

cc: Martha Lavrenz-Johnson, City Clerk

RRM: 302878