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May 9, 2020

Andrew Olson
32 Amelia Ave.
West St. Paul, MN 55118

Dear Mr. Olson:

I received your letter dated March 28, 2020, regarding the January 27, 2020, West St. Paul City Council meeting. It appears you have some concerns regarding the Wakota Life Care Center zoning application approval from that evening. I appreciate you taking the time to articulate your perspective in such a thorough manner.

It may be helpful for you to learn some additional background information on the situation, facts that you could not have known prior to your letter but may alleviate your concern. In addition, below I will outline the legal basis for the Council's vote on Wakota Life Care Center's zoning application.

Facts

Prior to the City Council meeting on January 27, 2020, I had conversations with Council Members Justen, Berry, and Eng-Sarne. While the political beliefs or opinions of any business is not relevant to a zoning application; neither is the type of services provided by the applicant, as long as they meet the requirements of the relevant zoning ordinances and all CUP conditions. However, given the political nature of Wakota Life's business and the intense personal perspectives surrounding the issue, as well as additional comments made by the applicant toward one of the Council Members, the three Council Members, Justen, Berry, and Eng-Sarne requested additional guidance. They were concerned that they had potential actual or perceived conflicts of interest that may make it difficult for them to make an impartial decision based solely on the merits of the zoning application.

During the course of our conversations, I told each Council Member to think about the following question: Could they be fair and impartial when it came to Wakota's application? I informed them that if they found themselves with a conflict of interest that prevented them from voting in a non-arbitrary manner, their vote may potentially violate the applicant's due process rights. I was informed

during one of those conversations that at least two of them had consulted with an attorney from the League of Minnesota Cities Insurance Trust and that she had offered the same advice.

As you know, in *Lenz v. Coon Creek Watershed Dist.*, 278 Minn. 1 (1967), the Court stated that the purpose for recusal is “to insure that [a Council Member’s] decision will not be an arbitrary reflection of their own selfish interests.” *Id.* at 15. Although the word “selfish” sounds harsh, what the Court means is that is that recusal is necessary when a public official would allow a personal interest (their “own selfish interest”) to prevent the official from voting based only on the merits of the case.

That evening, Council Member Justen, Berry, and Eng-Sarne announced they were recusing themselves from the vote related to the Wakota application. Each of the Council Members made a statement, providing their position on the conflict of interest that prevented them from participating in the vote. It appears you may have taken issue with the difference in language used as it relates to terms like “personal bias,” “personal interest,” “perceived bias,” “financial interest,” and “conflict of interest.” I understand the confusion, but the conclusion is the same: if a Council Member does not feel that they can vote on something in a fair and impartial manner due to some conflict of interest (be it actual or perceived personal bias, financial interest, personal interest, or some other arbitrary reason), they can and should recuse themselves from the vote.

As Council Member Eng-Sarne recited from the City’s Code of Ethics, “Public officials, elected and appointed, shall not knowingly engage in any business or transaction or shall have a financial *or other personal interest, direct or indirect, which is incompatible with the proper discharge of official duties in the public interest or would tend to impair independence of judgement or action in the performance of official duties.*”

The City’s Code of Ethics and definition of a Conflict of Interest is a high standard.

Importantly, at no point did anyone require any Council Member to recuse themselves. On the contrary, each Council Member made his or her own decision based on his or her unique situation. It was commendable that the Council Members endeavored to conduct themselves in a manner that would respect the applicant’s due process rights and ensure that the City conducted its business in a fair and impartial manner.

Legal Basis for Council Vote

The questions raised in your letter surrounding a quorum and voting were largely resolved in *1989 St. Imp. Program v. Denmark Twp., Washington Cnty., Minn.*, 483 N.W.2d 508 (1992), involving a statute requiring that municipal resolutions for proposed improvements be adopted by a vote of four-fifths of all the members of the council. However, in that case two members of the council had recused themselves from the vote due to a conflict of interest. The issue before the Court was how to interpret the requirement that the resolution be approved by four-fifths of all members of the council.

The Court affirmed their ability to presume that literal interpretations of statute which create a result that is “absurd, impossible of execution, or unreasonable” to be unintended. *Id.* at 510. The Court went on to cite an Attorney General opinion which concluded that public policy demands that for the purposes of a quorum, the majority should be computed based upon the membership as it exists after

a vacancy, not the total number elected. *Id.* The Court held that if you are disqualified from a vote due to a conflict of interest, for the purposes of quorum and a voting majority, it is the same as if the position is vacant. *Id.* 510-11.

In West St. Paul there are seven City Council Members. Under the West St. Paul Charter Section 3.03 a majority of all Council Members shall constitute a quorum. Under Section 3.04, subd. 1, an affirmative vote requires the majority of all the members of the Council. On January 27, 2020, there were four members of the City Council who had not recused themselves, a majority of the council, and therefore a quorum. The vote was passed 3-0, which was a majority of all the members of the City Council who had not recused themselves. Per the holding in *Denmark Twp.* the resolutions passed by the Council related to the Wakota application were valid.

Very truly yours,

/s/ Korine L. Land

Korine L. Land
City Attorney

C: West St. Paul City Council
City Manager Ryan Schroeder