

Dear Mayor and Councilmembers:

On Friday, February 27th, Catherine Neuschler, executive director of the Minnesota Environmental Quality Board (“EQB”) confirmed our position, and that of your staff, that satisfying one exemption standard under Minnesota Rules 4410.4600, subp. 12 precludes consideration of any other factor for ordering an Environmental Assessment Worksheet (“EAW”). Her email statement is copied below. We request that the Shorewood City Council take immediate action to rescind its Resolution 26-15 at the March 9th meeting of the City Council. Failure to act in accordance with the law will result in a claim being brought not only for declaratory relief, but also for damages arising from the City’s arbitrary and capricious failure to follow state law, as affirmed by the EQB.

On Monday, February 23rd, the Shorewood City Council purported to authorize an EAW for Wattens Pond 2nd Addition (“the Site”). The City included in its findings that the “petition is not exempt under Minn. R. 4410.4600, subp. 12.” That conclusion is legally and factually incorrect.

The Wattens Pond project is exempt from environmental review. Exempt projects include those that meet the criteria contained in Minnesota Rules 4410.4600, subp. 12(A)2. This provision exempts from environmental review a proposed project for a residential development of less than 20 units in a sewered area in a city of the fourth class. It is undisputed that Wattens Pond 2nd proposed two lots and is exempt from EAW review under the Rules.

In a request to the EQB seeking confirmation of the exemption provided under Minn. Rules 4410.4600, subp. 12, Executive Director Neuschler stated: “Thanks for your patience. My recall of your question was, essentially, whether a project needed to review multiple exemptions after one exemption had been reached. Our answer there is no – one exemption is sufficient.” (emphasis added) Email dated February 27, 2026 from Catherine Neuschler to Peder Larson, Larkin Hoffman law firm. This conforms with the position taken by the project applicant and your staff at the meeting on February 23rd.

The City Council acted based on an arbitrary belief that the proposed development does not also meet the exemption criteria in Minnesota Rule 4410.4600, subp. 12(B). The analysis is unnecessary for a project satisfying the criteria of Subpart 12(A) 2 referenced above.

The City Council arbitrarily determined in its meeting that the proposed development is not exempt from state rules because the Site “could” be within 300 feet of Lake Minnetonka and also within 300 feet of an adjacent wetland outside the legal boundary of the Site. The Council simply speculated, with no contrary evidence, that the information presented by staff may be inaccurate. The Council then speculated that the wetland to the SE of the Site “appears” to be closer than 300 feet to the Site. This conclusion was reached with no official measurement. The Council then determined that since the SE wetland is less than 300 feet from the Site and appears to directly connect to Lake Minnetonka, it is an adjacent wetland.

We have since confirmed with Minnesota DNR and Hennepin County mapping resources that the Site, along with the other parcels owned by Gravity Investment, is more than 300 feet from both Lake Minnetonka and the wetland located southeast of the Site. See attached maps.

The approved Resolution 26-15, relying on 4410.1700, provides only that the Site is within the Shoreland District and “adjacent to wetlands”—no factual justification for its “adjacent wetlands” conclusion is stated in the Resolution. More important, even if the City’s action was justified, the Resolution makes no finding that the project poses a risk of “substantial environmental impact.” Staff and your Planning Commission have already determined the project satisfies City and state regulations pertaining to tree preservation, wetland preservation and shoreline protection.

The petition for an EAW included all four properties owned by the applicant, even though

the proposed development does not include the other parcels. By applying its purported action to property outside the project area, the City has slandered the title of such property, including that of 25725 Birch Bluff Road which is currently on the market for sale, and effectively bars issuance of building permits for such property until the City Council rescinds its unlawful action.

Based on the well-documented and confirmed legal exemption under Minnesota Rules for a two-lot subdivision with access to public sewer in a City of the Fourth Class or, alternatively, because the Wattens Pond Site is not within 300 feet of a wetland draining to Lake Minnetonka, we strongly object to the City's ordering preparation of an EAW. The City Council's action should be deemed legally and factually incorrect and immediately rescinded. The City's reckless action slanders the title of its owners, Gravity Investment LLC for which legal recourse will be sought if no further action is taken by the City.

The project applicant understands the concerns raised by City residents in advocating for the wrongly-approved EAW. If the EAW is rescinded immediately, Gravity Investment will agree to (1) defer final action on its pending subdivision application for Wattens Pond 2nd until such time as Minnehaha Creek Watershed District completes its review of potential watershed impacts and (2) locate each tree situated on the Site's east boundary while also conforming to the City's tree preservation Ordinance as confirmed previously by staff. These conditions assume that the unrelated parcels owned by Gravity Investment will no longer be subject to any continuing regulatory limitation affecting their sale and development as single family home sites.