

March 4, 2026

Mayor Jennifer Labadie  
Members of the Shorewood City Council  
5755 Country Club Road  
Shorewood, Minnesota 55331

Re: Wattens Pond 2nd Addition – Response to March 2, 2026 Correspondence

Dear Mayor Labadie and Councilmembers:

I write to reflect the opinion of residents of Maple View Court and the 400 individuals who supported the petition requesting an Environmental Assessment Worksheet (“EAW”) for the proposed Wattens Pond 2nd Addition and in response to the March 2, 2026 letter submitted by counsel for Gravity Investment LLC demanding rescission of Resolution 26-15 by the City Council (the “Council”).

We express our concerns regarding what appears to be an ongoing effort to avoid proper environmental regulation, mischaracterize facts, and assert baseless threats of legal action against the City of Shorewood. Applicant’s letter wholly disregards the Council’s extensive discussion of the EAW, ignores the input and legal opinion of the City Attorney, misstates the authority of the EQB and dismisses extensive factual information provided by residents. The letter levies threats designed to pressure the Council into wrongly reversing an appropriate, thoughtful and factually and legally supported determination. This controversy is not the product of the City’s action; it is the product of the applicant’s ongoing effort to avoid full application of the environmental review rules and receive special treatment.

**The “Pick and Choose” Legal Argument to Avoid Proper Environmental Review Is Both Incorrect and Already Decided**

EAW rules exempt residential developments that fall within specific parameters from preparing an EAW. There are three separate exemptions for residential developments (inapplicable parts omitted) –

(A) Construction of a sewerred residential development, of:...

(2) fewer than 20 units in a third or fourth class city;...

(B) Construction of less than ten residential units located in shoreland, provided all land in the development that lies within 300 feet of the ordinary high water level of the lake or river, or edge of any wetland adjacent to the lake or river, is preserved as common open space...

Subsection (A) is for non-shoreland developments and Subsection (B) is for developments in shorelands. Subsection (B) has higher standards that reflect the unique sensitivity of shoreland areas and the tendency of shoreland disturbances to “flow” to other areas.

The developer argues that it can “pick and choose” which Subsection of the exemptions it prefers in order to give it the best chance of avoiding environmental rules. Although the development is almost entirely in the shoreland district, the developer wishes to apply the exemption in Subsection (A) in order to evade the stricter requirements that apply to shorelands in Subsection (B). The Council’s decision, based on the

advice of the City Attorney, is that the developer cannot pick and choose – the development, because it is in a shoreland, is only exempt if it satisfies the shoreland exemption in Subsection (B).

Notwithstanding the City Attorney’s clear and explicit opinion on this matter, applicant’s letter argues for the “pick and choose” interpretation solely based on a brief email from Executive Director Neuschler of the Minnesota Environmental Quality Board (“EQB”) indicating that “one exemption is sufficient.” That statement is presented as though it conclusively resolves the exemption analysis. **It does not.**

The City Council considered this exact question and acted after soliciting and receiving legal advice from the City Attorney. The Council probed that advice, asked numerous questions to fully understand the rules, and engaged in extended discussion of the factual record. The letter deliberately ignores the City Council’s extensive discussion of the EAW exemptions, the active input and reasoned legal opinion from the City Attorney, and the analysis of the legislative intent behind this law. If they have not already done so, applicant’s legal counsel should review the recording of the February 23, 2026 Council meeting. The City Attorney confirmed unequivocally that the development is only exempt if it satisfies the requirements of Subsection (B), and that satisfaction of the Subsection (A) requirements is not adequate for an exemption. The City Attorney’s advice, and the Council’s extensive deliberation of it, is determinative, and the Council should simply disregard applicant’s argument.

In then considering whether this project met the requirements of Subsection (B), the City Attorney stated he had “serious doubts” that the development satisfies those requirements. After his legal opinion, the City Council extensively discussed the facts and cast its vote, 4 to 1, determining that this development must satisfy the exemption in Subsection (B) to be exempt from an EAW, that the development does not satisfy the requirements of Subsection (B), and that the EAW should move forward.

Moreover, the Council cannot rely on Executive Director Neuschler’s email even if it wishes to. To confirm the specifics of Executive Director Neuschler’s statements, we emailed her and specifically asked the question at hand - whether it was her intent to provide a legal opinion that the Council could rely on and whether the development must satisfy Subsection (B) or whether it can evade the stricter shoreland rules in that section if it complies with Subsection (A). In an emailed response sent March 3, 2026, Executive Director Neuschler states as follows:

**The EQB provides generalized guidance on the environmental review process. We are not lawyers and do not provide legal advice. It is up to the RGU to interpret and implement the rules, such as the specific application of any exemptions.**

This makes clear that it was not Executive Director Neuschler’s intent, nor was it her place, to provide legal analysis in this matter. By Executive Director Neuschler’s own instruction, her comments may not be relied on, and certainly cannot replace the reasoned advice of the City Attorney. The Council did exactly what Executive Director Neuschler stated and rescinding that decision would unquestionably be arbitrary and capricious. The Council’s prior decision must stand.

We have attached the emails to and from Executive Director Neuschler for your reference.

Also, the decision on the application of exemptions is to be made by the City, as the Relevant Governmental Unit (RGU), and not by the EQB. Executive Director Neuschler made this clear, and the applicant itself recognizes this fact – it represented to the Council by letter:

“My engineers also spoke directly to the EQB. They explained that they do not make the final decision on a discretionary EAW, which is why the decision is now before the Mayor and the Council.”

That statement is correct, and applicant knew that the argument advanced in its letter was not true. The EQB does not decide discretionary EAW petitions. The Responsible Governmental Unit does. The applicant cannot simultaneously acknowledge that EQB does not make these determinations and then rely on informal staff communication as controlling authority.

In any event, Executive Director Neuschler’s email does not support applicant’s argument. Applicant omitted Executive Director Neuschler’s email from the letter circulated to residents, and the question presented to her is unknown. What is clear from the short snippet strategically excerpted into the letter is that the question was not the one at issue here - whether applicant can “pick and choose” between the Residential Development exemptions. Her answer might be useful for something, but it is not this matter.

As shown above, applicant has not provided any basis whatsoever for the Council to conclude that its original, considered understanding of the exemptions is incorrect.

### **Defective and Untimely Factual Arguments Must Be Rejected**

The letter also includes a mishmash of factual arguments, all of which are new and not previously submitted to the Council. All factual arguments had to be made at or prior to the Council meeting. Applicant freely chose not to present facts or make factual arguments at the proper time and in the proper forum, and applicant may not advance them now. The letter’s factual points may not be considered and must be summarily rejected as untimely and improper.

Applicant had the same opportunity as everyone else to provide input and chose not to do so. The Council must not bend the rules or provide special dispensation simply because of applicant’s belligerence or otherwise – and the Council therefore must not allow applicant to add to the record after the decision is complete. Applicant must live by the same rules as everyone else. There simply is no legal basis to allow applicant’s arguments and they must be disregarded in their entirety.

That said, the points are also universally unconvincing, and I will address some of them as illustrations.

### **The Letter is Rife With Factual Mischaracterizations**

With respect to shoreland and adjacency, the letter mischaracterizes the Council’s deliberations as “speculative.” To the contrary, the transcript demonstrates extensive Council discussion of mapping, distance measurements, and adjacency criteria. Residents submitted written materials in advance and presented information on the record at the meeting, including calculations of the distance to the lake and adjacent wetlands. The Council thoroughly evaluated that information alongside staff input before reaching its determination. The assertion that the Council acted without factual support is wholly inconsistent with the record and disregards both the Council’s assiduous and dedicated effort and the factual record provided by residents, which were submitted in compliance with the Council’s rules.

The letter further inaccurately states that “The Council then speculated that the wetland to the SE of the Site “appears” to be closer than 300 feet to the Site.” This is simply not true, as shown by the record and the meeting transcript. The Council’s decision was based on information provided by residents in writing

and delivered verbally on the record, which provides abundant factual support for the Council's decision. Applicant could have presented contrary arguments to the Council but chose not to, and the Council made its decision based on more than adequate information. The applicant cannot be allowed to re-litigate matters in which it did not participate simply because it dislikes the Council's decision. The voluminous record and extensive discussion abundantly support the Council's reasoned and reasonable decision.

**In any event, the application of the exemption must be clearly proved – if the Council is uncertain about whether the exemption applies, then it must find that it does not.**

Moreover, the map in the letter, in addition to being improperly submitted and untimely, provides no evidence that the development is more than 300 feet from the lake or an adjacent wetland. The map attached to the letter includes a "300" notation but does not identify the Ordinary High Water Level ("OHWL"), disclose the methodology used to determine the 300-foot distance, specify whether measurement was taken from the development footprint or parcel boundary, or demonstrate formal wetland delineation. Further the map provides no evidence of preserved common open spaces. The Council considered the points addressed in this map, and this map, even if allowed, would add nothing to the Council's decision based on the detailed consideration it has already undertaken.

The letter further inaccurately states that "no factual justification for its "adjacent wetlands" conclusion is stated..." This too is inaccurate. The Council fully discussed both the legal and factual basis for the determination of adjacency in detail. If the applicant's point is that the extensive Council discussion was not reflected in the resolutions, then the solution is obviously to correct the resolutions, not to reverse the Council's thoroughly considered decision.

The applicant chose to present no evidence addressing environmental impact, while the record includes literally hundreds of pages submitted by petitioners detailing potential impacts. Those materials were included in the Council's public packet and discussed by the Council in detail at the meeting. The Council's deliberations were grounded in and fully supported by that record. If applicant is again suggesting technical failures for the resolutions to reflect the record, then the resolutions should be corrected. Simple, technical documentation failures do not invalidate multiple hour meetings.

The letter's suggestion that compliance with tree preservation, wetland, and shoreline regulations resolves the EAW question improperly conflates zoning compliance with environmental review. The EAW statute and Rules require broader consideration, including cumulative effects and coordinated development. Compliance with baseline ordinances does not eliminate the need for environmental review. If it did, then no petition for an EAW could ever be granted.

### **Slander of Title Is Not Applicable**

The threats of "slander of title" and damages are unsupported. There are four elements in a slander-of-title claim: (1) a false statement was made concerning the real property owned by the plaintiff; (2) the false statement was published to others; (3) the false statement was published maliciously; and (4) the false statement concerning title to the property caused the plaintiff pecuniary loss in the form of special damages. *Paidar v. Hughes*, 615 N.W.2d 276, 279–80 (Minn. 2000). Applicant must prove them all but has provided support for literally none of these elements. No such publication occurred here. There clearly is no malice. There is no falsity. An EAW determination made pursuant to state rule is a

regulatory act. It does not publish false statements of ownership nor constitute a tort. Municipal environmental review decisions routinely occur without exposure to defamation liability. The “slander of title” claim is frivolous and not remotely actionable.

### **Applicant’s Illusory “Offer”**

Finally, the closing portion of the March 2, 2026 letter purports to offer “generous” concessions if the EAW is rescinded. Those representations warrant clarification.

The applicant offers to defer final action on the pending subdivision application until the Minnehaha Creek Watershed District completes its review. That is not a concession. Watershed review is independently required and is already a condition to development approval. This can be confirmed in City Shorewood documentation, including the February 2, 2026, Planning Commission Meeting Minutes and in the City of Shorewood Engineer letters. Deferring final action until watershed review is complete is not an act of generosity; it is compliance with existing obligations.

The applicant further offers to “locate each tree situated on the Site’s east boundary.” That, too, is not discretionary. Accurate survey work and compliance with tree preservation ordinances seem to be the absolute minimum threshold for development, not a concession, and are mandatory, and presumably is something the applicant has already done for its “final” plat application. Recent independent survey work performed by Jim and Mary Benson demonstrates that current applicant-submitted mapping and inaccurately identified approximately six trees on the Benson’s property for removal. Applicant’s argument seems to amount to holding neighbors’ trees hostage to extract favorable treatment.

In short, the applicant proposes to perform obligations already required by ordinance and watershed regulation in exchange for relief from proper environmental review. That is neither a legal basis for rescission nor even a good deal.

Perhaps most concerning is the applicant’s statement that 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.” This demand is breathtakingly broad and unambiguously illegal. The City cannot simply foreswear any future enforcement of legally proper regulations. By conditioning its “offer” on an impossibility, the applicant giveth with one hand and taketh away with the other, its “offer” nothing but a cynical illusion to extract concessions to which it is not entitled.

### **The City Must Not Bend to Applicant’s Threats**

The letter’s threat to bring “a claim ... 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”, is notable for its wholly unsupported bravado. The Council solicited and received a legal opinion from the City Attorney, asked numerous questions about that opinion and engaged in a full discussion of the facts as they apply to the law. The public record runs to nearly 1,000 pages. The Council’s process was the literal opposite of “arbitrary and capricious” and claims to the contrary are either wholly uninformed, very disrespectful of both the Council and residents who participated according to the rules, or both. Overturning that decision, on the other hand, would undoubtedly be arbitrary and capricious.

Litigating would be more expensive and time-consuming for applicant than completing the EAW, raising the question, if the threat is not mere bluffing, what is applicant so concerned about in the EAW?

**Applicant's Extraordinary Demand for Special Treatment Must Be Rejected**

Applicant must prove that the exemption applies – if the Council is unsure whether the exemption applies, then it must decide that it does not. Applicant freely chose not to provide any facts on the applicability of the exemption and must now live with that decision.

At the end of the day, applicant had its chance to present its legal positions and facts to the Council the same as everyone else and failed to do so. Applicant now regrets its decision and demands that the Council bend its rules to provide applicant with a second chance - using baseless legal threats to force the Council to apply separate rules to it, rules that only it can take advantage of.

But the decision has been made and the record is closed. Further factual arguments are simply not allowed. The Council and the City must be able to make decisions and move on. The applicant demands special treatment, but the Council must apply its rules even-handedly and without favoritism, including favoritism born from threats of legal action. If the Council is willing to open up any decision because of a threatening letter, no decision is ever final. Residents worked hard to take advantage of the opportunity to be heard and provided relevant and dispositive facts, applicant should live by the same rules.

The Council's interpretation of the relevant statute was supported by the opinion of the City Attorney and the extensive facts discussed by the Council in painstaking detail fully support the Council's decision. There is simply no basis for the Council to take the extraordinary step of reconsidering its prior decision. Applicant's attempt to strongarm the Council into doing so with a litany of inaccuracies, mischaracterizations and threats certainly must call into question its claims of being a reasonable and responsible developer and neighbor.

For these reasons, the March 2, 2026 correspondence does not provide a legal or factual bases for rescission of Resolution 26-15 and the City must reject applicant's demand.

Please ensure that this correspondence is included in the record for the EAW matter.

Respectfully submitted,

Todd Murtha

Shorewood Resident

**Attachment**

**March 3, 2026 Email from Executive Director Neuschler of the Minnesota Environmental Quality Board**

RE: Question on application of exemptions for EAW application, EQB legal opinion

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From: Neuschler, Catherine (She/Her/Hers) (EQB) (catherine.neuschler@state.mn.us)

To: t\_murtha@yahoo.com

Date: Tuesday, March 3, 2026 at 02:43 PM CST

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Mr. Murtha –

The EQB provides generalized guidance on the environmental review process. We are not lawyers and do not provide legal advice. It is up to the RGU to interpret and implement the rules, such as the specific application of any exemptions.

~Catherine

**Catherine Neuschler** (she/hers) | Executive Director

Minnesota Environmental Quality Board (EQB)

520 Lafayette Road N | Saint Paul, MN | 55155

651-757-2607 (o) | 651-470-4941 (c)

[catherine.neuschler@state.mn.us](mailto:catherine.neuschler@state.mn.us) | <https://www.eqb.state.mn.us/>



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**From:** Todd Murtha <t\_murtha@yahoo.com>

**Sent:** Monday, March 2, 2026 3:45 PM

**To:** Neuschler, Catherine (She/Her/Hers) (EQB) <catherine.neuschler@state.mn.us>

**Subject:** Question on application of exemptions for EAW application, EQB legal opinion

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Dear Executive Director Neuschler,

I am a member of group of residents that has submitted a petition with 400 signatures for an EAW on a residential development in a historic wooded wetland area in Shorewood. After a long public meeting, the Shorewood City Council approved the request for an EAW based on legal advice from the City Attorney. I understand that the law firm Larkin Hoffman reached out to you for an opinion on a legal matter relating to EAW exemptions, with the goal of using your response to overturn the City Council's decision. Larkin Hoffman has now used your response as the basis for a demand that the City Council rescind its resolution, please see attached letter. I was hoping you could provide further guidance on this matter.

Do you or your office provide legal guidance or opinions on state statutes for the RGU to rely on in reaching its decision on EAW petitions? In that regard, did you authorize your email to Larkin Hoffman to be used in this way, with the intent of representing it as a legal opinion to the RGU? Or would opinions on legal matters need to be addressed to the Attorney General's office, as is normally the case with interpretations of statutes?

In this case, the development is fewer than 10 residential homes in a shoreland district. The legal question, which I assume Larkin Hoffman presented to you, is does a development of fewer than 10 units that is in a shoreland district have to comply with Minn. Stat. 4410.4600, Subp. 12(B) or can it avoid the stricter shoreland rules in that section if it complies with Subp. 12(A)? The statute is excerpted below.

Thank you for your consideration and response.

Todd Murtha

**Minn. Stat. 4410.4600**

Subp. 12. Residential development.

The following projects are exempt:

A. Construction of a sewer residential development, of:

(1) fewer than ten units in an unincorporated area;

(2) fewer than 20 units in a third or fourth class city;

(3) fewer than 40 units in a second class city; or

(4) fewer than 80 units in a first class city, no part of which is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

B. Construction of less than ten residential units located in shoreland, provided all land in the development that lies within 300 feet of the ordinary high water level of the lake or river, or edge of any wetland adjacent to the lake or river, is preserved as common open space.

C. Construction of a single residence or multiple residence with four dwelling units or fewer and accessory appurtenant structures and utilities.