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October 11, 2018

**VIA ELECTRONIC AND
FIRST CLASS MAIL**

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Re: The Jonathan Association
Request for City Maintenance of Mill Pond
Our File No.: 13237.0001 (General Legal Matters)

Dear City Officials:

This law firm represents The Jonathan Association (the "Association") on various matters. I am writing this letter on behalf of the Association to formally request that the City provide maintenance of the City's outlet pipe at Mill Pond pursuant to the City's obligations under the City of Chaska Local Surface Water Management Plan dated November 2015 (the "LSWMP") and pursuant to Chapter 22 of the Code of Ordinances, City of Chaska, Minnesota ("City Code").

Mill Pond is located in the upper East Creek District and has a direct tributary area of 15.2 acres. (See LSWMP Appendix B.) The City's storm water management system includes an inlet pipe that empties into Mill Pond, and an outlet pipe that drains water from Mill Pond to flow toward Lake Jonathan. (See LSWMP Appendix G, Water Resource Map 2.) The size of the Mill Pond outlet pipe is 18 inches. (See LSWMP Appendix B.)

The Association has discovered a crack in the City's outlet pipe that allows water to drain from Mill Pond below the level of the overflow pipe orifice. The decreased water depth has prevented a sub-association from installing its aerator in Mill Pond to maintain water quality. The stagnant water has created a foul odor and contributed to Mill Pond becoming a breeding ground for mosquitoes.

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A representative of the Association requested that the City repair the crack in the outlet pipe, but the City asserted that the pipe is the Association's responsibility.

The Association contacted our firm for assistance in this matter. Based upon my research and review of the relevant documents, it is clear that the City (not the Association) is required to maintain the outlet pipe at Mill Pond.

I. The City of Chaska Local Surface Water Management Plan Requires the City to Maintain the Outlet Pipe at Mill Pond.

As discussed below, the City adopted the LSWMP to comply with state statutes and regulations regarding stormwater management. The LSWMP requires the City to inspect and maintain stormwater pond outlet pipes at public expense. State law requires the City to implement the LSWMP.

A. The City is Required to Comply with the Local Surface Water Management Plan.

On November 16, 2015, the Chaska City Council adopted the LSWMP prepared by Stantec and dated November 10, 2015. See City Council Resolution No. 15-92. The LSWMP is incorporated into Chapter 22 of City Code by reference. See City Code Chapter 22, Article I, Section 03.

Section 1.2 of the LSWMP summarizes its purpose and scope as follows:

The LSWMP will serve as a comprehensive planning document to guide the City in conserving, protecting, and managing its surface water resources. The LSWMP has been created to meet statutory requirements as detailed in Minnesota Rules 8410. In addition, the LSWMP reflects the requirements of the Carver County Watershed Management Organization (CCWMO), the Lower Minnesota River Watershed District (LMRWD), and the Riley Purgatory Bluff Creek Watershed District (RPBCWD). Meeting watershed requirements ensures the City's compliance with local and regional expectations. Finally, the LSWMP addresses the Metropolitan Council's requirements for local surface water management plans.

Section 1.2 of the LSWMP specifically notes that pursuant to Minnesota statutes and rules, local surface water management plans must do certain things, including the following:

- Set forth an implementation program, including a description of official controls, inspection and maintenance, and a capital improvement plan.
- Describe official controls and the responsible unit of government in the following areas: wetlands, erosion control, shoreland, floodplain, grading, and drainage.

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Similarly, Section 3.1 of the LSWMP provides as follows:

The primary goals of Chaska's LSWMP are to bring the City into statutory compliance and to provide the City with a framework for effective stormwater management – primarily to guide development and redevelopment activities but also as a guide for identifying and implementing retrofits to the existing system. These retrofits may consist of projects such as storm sewer improvements and programs such as updated pond maintenance or water quality monitoring programs. Additionally, the LSWMP provides clear guidance on how the City intends to manage surface water in terms of both quantity and quality.

This LSWMP is an update to the 2007 Local Surface Water Management Plan. The LSWMP provides the City with a plan that meets the requirements of Minnesota Statute 103B and Rule 8410, which describe the content and requirements for local surface water management plans. The LSWMP is also intended to meet the requirements of the Metropolitan Council's Water Resources Policy Plan as well as watershed management organization requirements regarding local surface water management plans.

Minnesota Statutes section 103B.235, subdivision 4, provides as follows:

After approval of the local [water management] plan by the [watershed management] organization, the local government unit shall adopt and implement its plan within 120 days and shall amend its official controls accordingly within 180 days.

(Emphasis added.) Having adopted the LSWMP, the City is legally required to implement the same.

B. The Local Surface Water Management Plan Specifically Requires the City to Inspect and Maintain Stormwater Pipes.

Section 6.3.7 of the LSWMP provides as follows:

The storm sewer piping system constitutes a multimillion-dollar investment for the City. The City performs a comprehensive maintenance program to maximize the life of the facilities and optimize capital expenditures. The following periodic inspection and maintenance procedures are followed:

- Storm sewer piping is inspected either manually or by television to assess pipe condition. Items looked for include root damage, deteriorated joints, leaky joints, excessive spalling, and sediment buildup. The piping system is programmed for cleaning, repair, or replacement as needed to ensure the integrity of the system.

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C. The Local Surface Water Management Plan and City Code Provide Financing for Stormwater Pipe Maintenance Costs.

Section 6.5 of the LSWMP provides as follows:

The City uses a storm sewer area charge, water quality area charge, and stormwater utility for paying for the establishment, acquisition, construction, reconstruction, repair, replacement, depreciation, enlargement, and improvement of the total surface water drainage system. The area charge varies based on land use and has been split into three tiers:

1. Single Family Residential
2. Medium Density Residential
3. High Density Residential, Commercial, and Industrial

The current area charge is summarized in Chapter 22 of the City Ordinances, Storm Drainage, included on the City website (www.chaskamn.com). The City reviews the charge rate and utility fees annually, especially as the City's maintenance and permit preparation responsibilities continue to grow.

(Emphasis added.)

City Code Chapter 22, Article 1, Section 01(A), explains the purpose and intent of the City's stormwater area charges:

For the purpose of paying for the establishment, obtainment, construction, reconstruction, repair, replacement, depreciation, enlargement and improvements of the total stormwater management system, including but not limited to the cost of collection and conveyance; it is hereby determined by the City Council of the City of Chaska that charges, in accordance with the schedules hereinafter provided, shall be paid to the City as set forth hereinafter, for every lot, piece or parcel of land connected to the municipal stormwater management system, or additional use causing additional surface water runoff, constructed upon land already connected to the system.

(Emphasis added.)

As noted in Section 6.5 of the LSWMP, maintenance of the total surface water drainage system is also funded through utility fees. City Code Chapter 22, Article 1, Section 07, provides as follows:

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Stormwater management utility is hereby established in the City of Chaska which water management plan shall be operated as a public utility pursuant to Minnesota Statutes, Section 444.075. There is hereby established a stormwater management fee which shall apply to every lot, piece or parcel of land situated in the City of Chaska and which shall be calculated and paid pursuant to the provisions as hereinafter provided.

As residents of Chaska, the members of the Association pay stormwater utility fees assessed by the City against their property. In return, the City is obligated by the LSWMP to maintain the stormwater drainage system that serves their property.

II. The Association Is Not Required to Maintain the Outlet Pipe at Mill Pond.

Historically, the City has frequently cited an Agreement dated August 6, 1968, between the City of Chaska and Jonathan Development Corporation (the "1968 Agreement") as authority for the proposition that the Association is obligated to maintain various improvements. However, as discussed below, neither the 1968 Agreement nor any recorded document requires the Association to maintain the outlet pipe at Mill Pond.

A. The 1968 Agreement Does Not Apply to Mill Pond.

The 1968 Agreement does not address the issue of responsibility for maintenance of Mill Pond or the outlet pipe. The substantive provisions of the 1968 Agreement only (and repeatedly) refer specifically to the outlots in the plat of Neighborhood One. Mill Pond is located on Outlot H, Mill Pond, which is not part of Neighborhood One.

The 1968 Agreement includes an introductory paragraph stating "the parties hereto desire to set forth certain agreements in connection with the development and maintenance of said outlots, which agreements shall be a pattern for the development of outlots in subsequent plats by Jonathan in the City of Chaska." However, that introductory language is not sufficient to make the 1968 Agreement apply to all of the common areas owned by the Association.

In fact, the Articles of Incorporation of the Association make it clear that the Association is only required to maintain a portion of the Common Areas as set forth in the 1968 Agreement and in the Declarations (which vary from one neighborhood to another). Article VI of the Articles of Incorporation refers to the 1968 Agreement "concerning the development and maintenance responsibility for a portion of the Common Areas" (emphasis added).

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B. No Recorded Document Requires the Association to Maintain the Outlet Pipe at Mill Pond.

Mill Pond is located on Outlot H, Mill Pond, Carver County, Minnesota, according to the recorded plat thereof ("Outlot H"). Outlot H is owned by the Association and is part of Carver County Parcel ID No. 303400031. I reviewed title work for Outlot H and I found no Declaration or other document that requires the Association to maintain the pond or the outlet pipe.

The Certificate of Title for Outlot H (and other land) includes a memorial for the Jonathan Standards, Covenants, Conditions and Restrictions (the "Standards.") The Standards require the Association to comply with the Common Area maintenance obligations in the "Agreement dated August 6, 1968, between the City of Chaska and Jonathan Development Corporation concerning development and maintenance responsibility for a portion of the Common Areas." (Emphasis added). Thus, the Standards confirm that the Association's maintenance obligations under the 1968 Agreement only apply to a portion of the Common Areas.

The Standards also require the Association to comply with any Common Area maintenance obligations in the Project Agreement between the developer and the United States of America dated October 8, 1970 (the "Project Agreement"). I reviewed the voluminous Project Agreement and found no maintenance obligations that are applicable to Mill Pond or the outlet pipe.

Finally, the Standards also require the Association to comply with the Common Area maintenance obligations in any and all other similar agreements between the developer and the City. I am not aware of any agreement between the developer and the City that requires the developer to maintain Mill Pond or the outlet pipe.

Conclusion

Based on the foregoing, the Association requests that the City maintain the outlet pipe at Mill Pond pursuant to the City's obligations under the LSWMP and City Code, as required by state law.

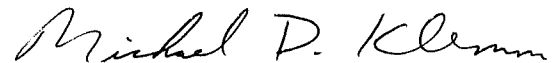
Please confirm that the City will maintain the Mill Pond outlet pipe, and provide an estimated timeline for inspection and repair of the crack in the pipe, no later than Friday, October 26, 2018. In the event that the City fails to provide the requisite inspection and repair work, or a plan for dealing with these issues, no later than October 26, 2018, I will recommend that the Association pursue further legal action against the City.

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Thank you for your attention to this matter.

Very truly yours,

HELLMUTH & JOHNSON, PLLC



Michael D. Klemm
Attorney at Law

MDK/law

cc: David G. Hellmuth, Esq.
Board of Directors – The Jonathan Association

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