

**North Oaks City Council
Special Meeting Minutes
North Oaks City Council Chambers
July 27, 2020**

CALL TO ORDER

Mayor Nelson called the Special Meeting to order on July 27, 2020 at 5:35 p.m.

ROLL CALL

City Councilmembers were present in the City Council Chambers or participated **by telephone or other electronic means** pursuant to Minn. Stat. § 13D.021. Residents can view the meeting on the cable access channel and through the website portal just like other public meetings.

Present: Mayor Gregg Nelson, Councilmembers Rick Kingston, Marty Long, Kara Ries

Staff Present: Administrator Kevin Kress, Attorney Bridget Nason, Administrative Assistant Gretchen Needham

Others Present: Videographer Maureen Anderson, Officer Mike Burrell
A quorum was declared present.

PLEDGE OF ALLEGIANCE

Mayor Nelson and those present in the Council Chambers recited the Pledge of Allegiance.

APPROVAL OF AGENDA

MOTION by Kingston, seconded by Long to approve the agenda. Motion carried unanimously by roll call.

NEW BUSINESS

- a. **Review, discussion, and potential action on complaint from North Oaks Company regarding the expert recommendation presented to the City Council at the June 11, 2020 Council meeting related to development plan approval for North Oaks Developments including the Nord parcel, and related Council communications and interactions regarding the same.**

Mayor Nelson introduced the new business item, stating at the June 11, 2020 Council meeting, the Council reviewed the unanimous recommendation of the Planning Commission, the independent planning body that evaluates proposed development plans. The Commission vetted and had multiple meetings including a public hearing, obtained information on review from Staff and the developer and had unanimously approved the preliminary plan. The preliminary plan was sent to the Council at the June 11, 2020 meeting with a 120-day period in which the plan must be approved or denied, if neither happens then the plan is approved as a matter of law. A few hours prior to the meeting, Councilmember Ries introduced a letter from a professor at the University

of Minnesota, sent that to the City Administrator, and Mr. Kress distributed it to Councilmembers and that became a subject at the June 11, 2020 City Council meeting.

Administrator Kress said they received two different letters from the North Oaks Company (NOC) about the incident between Councilmember Ries and Dr. Joe Magner from the University of Minnesota. From there, Mr. Kress asked Attorney Nason to give feedback on the two letters to the Council.

Attorney Nason noted the first letter from the North Oaks Company (NOC) dated July 8, 2020 referenced the June 10, 2020 letter from Dr. Joe Magner. The letter noted a subsequent meeting that included Dr. Magner and Councilmember Ries, followed by concerns raised by the NOC regarding the timing of the introduction of the letter from Dr. Magner with respect to the planning applications. The NOC letter also reiterated that individuals need to obtain permission from the Company to enter onto property owned by the NOC unless on a dedicated trail easement. The second letter from the NOC dated July 24, 2020 reiterated some of the same concerns and outlined concerns regarding the correspondence presented to the Council regarding Dr. Magner's letter and his evaluation of the Nord development site in the East Oaks area. The NOC raised concerns regarding potential due process and trespass issues and are requesting that the City Council address the matter.

Administrator Kress shared his screen to show the letters from the NOC, starting with the July 8, 2020 letter. Mayor Nelson said at the June 11, 2020 Council meeting, Councilmember Ries presented the letter from Dr. Magner on University of Minnesota letterhead indicating that he had walked on the developer's property and his summary was included in that letter. At the Council meeting, Ms. Ries noted that she had contacted Mr. Magner at the University of Minnesota. At the June 11, 2020 Council meeting, Mayor Nelson asked Mr. Kress if there had been any contact between Staff and Dr. Magner or Councilmember Ries prior to the meeting and the introduction of the letter just before the City Council meeting.

Mayor Nelson asked if they could play the portion of the June 11, 2020 meeting where Councilmember Ries introduced the subject and the part where Councilmember Kingston asked questions regarding the source of the information.

Administrator Kress asked to play the recording of the June 11, 2020 meeting at minute 45:24, which is the start of the conversation. He noted the questions from Councilmember Kingston start around minute 101:30 and 104:15. After trying to bring up the recording, the Council was unable to get the sound to play properly and instead moved on to discussion.

Mayor Nelson said they're not here to discuss the relative merits of Dr. Magner's report, but instead to talk about the questions raised by the Company relative to misrepresentations, he noted he doesn't even think the trespass issue is particularly difficult, as they heard from Councilmember Ries that she walked the property with Dr. Magner; therefore, he doesn't think that's a controverted issue but he would like to see what Councilmember Ries actually said that

has caused the controversy. He said essentially the NOC's complaints regarded the June 11, 2020 meeting when Councilmember Ries represented the report from Dr. Magner as being that of the University of Minnesota and that the University had sent someone out to inspect the Nord parcel. Mayor Nelson stated at the June 11, 2020 meeting, Councilmember Kingston questioned the relationship between Dr. Magner and one of Councilmember Ries's supporters, a Magner living in North Oaks, and Councilmember Ries had indicated she had no idea. Mayor Nelson said the developer invited Dr. Magner to their offices to discuss his concerns, and Ms. Ries attended with Dr. Magner as an uninvited guest.

Administrator Kress said he sent a correspondence on July 9, 2020 after his discussion with Dr. Magner where Mr. Kress asked a series of questions. The first question asked was when and how were Mr. Magner contacted by Councilmember Ries. Mr. Magner responded he didn't recall and would have to look back. The second question was if Mr. Magner had a discussion with Councilmember Ries about Gary Magner, as a question was raised during the Council meeting whether Dr. Magner is related to him. Dr. Magner replied yes, they did discuss the matter and discussed if there was a conflict of interest. Administrator Kress then asked Dr. Magner what his relationship to Gary Magner is, and Dr. Magner replied that Gary is his cousin, they don't speak often and had not discussed any development sites. Mr. Kress asked if Dr. Magner reviewed any other development sites, Dr. Magner answered no, but he discussed Nord and Anderson Woods during his meeting with the NOC. Mr. Kress asked if he'd been in any contact with any other members of the Council, Commission or public, and Dr. Magner answered no. Mr. Kress asked for Dr. Magner's perspective regarding surface water management and presenting to the Council and Commission, and Dr. Magner replied he is willing to provide a presentation if desired and he recommended the NOC conduct testing of water tables over a one year span. This was discussed with NOC during their meeting and Mr. Don Pereira has additional discussion materials with Dr. Magner.

Mayor Nelson said he thinks the material issues raised by the NOC were 1) that Dr. Magner and Councilmember Ries represented this letter purportedly obtained over the course of 24 hours as an indication of what the University of Minnesota's position was on the matter and 2) that Councilmember Ries, according to Dr. Magner, knew of a potential conflict of interest, knew of the relationship between the Magners and intentionally did not disclose that to the Council, even upon direct questioning. Mayor Nelson noted this is very serious behavior and said frankly, he shouldn't have to be here for this kind of issue, he shouldn't be listening to it and it's ridiculous that people are hiding and game-playing.

Mayor Nelson asked Mr. Kress to explain what the ordinary process would be if a City Councilmember had a concern and wanted to bring in an additional expert on a development.

Councilmember Ries asked the Council for the opportunity to respond to the accusations against her that were provided in the letter. Mayor Nelson said yes, they would do that if there is a motion to take action, then Councilmember Ries would have the opportunity to talk as much as she wants. Councilmember Ries said she thinks in order to make a motion, it would be

reasonable to allow her to respond at this point because there are only accusations from the company and she has not been afforded the opportunity to respond. Mayor Nelson reiterated that if there was a motion made, she would have the opportunity to respond.

Administrator Kress said he thinks they should also look at the second letter with specific areas of concern and that might be helpful to address the Mayor's question of best practices. He noted these best practices are to bring things to the City Council's attention first at a meeting to gauge the Council, then typically a motion and second to bring in an expert of that level. Mr. Kress shared his screen to show the second letter dated July 24, 2020 and explained that the letter goes into a lot of different detail. He noted that everyone has read the letter and referenced the first concern at the bottom of the first page regarding Councilmember Ries contacting the U of M and the University sending someone out to the proposed Nord parcel; the second issue raised regarded when Councilmember Ries was questioned regarding the relationship between Dr. Magner and Gary Magner; the third point was based on the conversation that Councilmember Ries was aware of the family relationship. Mr. Kress said he thinks the biggest concern the NOC had was that it wasn't disclosed at the last Council meeting. Mr. Kress said from there the Council should have a discussion and he agrees that Councilmember Ries should have the opportunity to speak on her behalf.

Mayor Nelson said he agreed as well and thinks it's a good idea. He also noted that not only was the relationship not disclosed, it was intentionally not disclosed and Councilmember Ries made an affirmative misrepresentation regarding her knowledge of the situation. Mayor Nelson said he didn't know if there would be a motion and welcomed Councilmember Ries to speak.

Councilmember Ries thanked the Council for the opportunity to respond. She said the timing of the question about when she met Dr. Magner is interesting and when you look at the timeline of facts that occurred, the Council had a series of meetings where it was 48 hours from the Planning Commission meeting to the City Council meeting. She said she had questions about physical evidence in the area, wetland questions that only a hydrologist or someone with that knowledge would understand, so she contacted an expert in the field. She came across and fully disclosed this during the City Council meeting on June 11, 2020 and she also disclosed this to the NOC in the meeting that followed. She said there were 48 hours from Planning Commission approval of preliminary plans to City Council review. Councilmember Ries said she always visits sites when they have plans, and noted the PDA grants her the right to go visit sites as part of her duty and obligation as a Councilmember to get educated on the area. She said she needed information to understand what was happening with the water at the site, so she looked up University of Minnesota specialists in hydrology through a Google search and found the directory and found Dr. Magner, who has specific experience and noted his public bio says he has a PhD in Hydrology Watershed Management, a degree in Soil and Water Science and has been a registered professional hydrologist since 1988. He is a licensed geologist in soil since 1998, and his areas of interest are watershed assessment, management and policy. Councilmember Ries noted she did not contact the University of Minnesota, she contacted Dr. Magner directly. As to whether she knew of his relationship with a resident of North Oaks at that time, she did not. She

stated that came up in later discussions that Mr. Mark Houge asked Dr. Magner in a meeting after the June 11, 2020 Council meeting, where Mr. Houge asked “Do you have a relationship with Gary Magner?” She said that information is completely irrelevant to the number of degrees Dr. Magner holds and his specific areas of interest. Additionally, Dr. Magner does other work with Vadnais Lake Area Water Management Organization (VLAWMO) in North Oaks and that has never been an issue. She stated it’s only brought up against Councilmember Ries herself. She said another important point to bring up is that Mr. Houge has gone on private tours with Councilmember Kingston and Mayor Nelson. Councilmember Ries said neither she nor Councilmember Ross were invited on any tours of the area. She said in suggesting that an agreement can be had with the City that would limit their rights as Councilmembers and officials to only go and review property after proper permission is granted somewhat takes away from the due process of the application process. Specifically, the property owner would be able to control who sees the property, the day and time they see the property and control the application process. Ms. Ries said the application process cannot be controlled by the applicant. She said the PDA clearly allows City officials to tour the property and inspect the area, and the MN Statute has language around this, as well. To suggest that Councilmember Ries cannot go on the property when it’s her right and her duty as an elected official and she was there doing her due diligence to collect information and become educated on physical standing water and on water management of an area. She noted she also has the right to walk on North Oaks Home Owners’ Association (NOHOA) roads and that she and Dr. Magner stood on North Deep Lake Road and they could see the water standing and trees underwater. Those were some of the identifiers she saw that indicated to her that there were issues. She said now she has two letters against her where she was simply fulfilling her duty as a City Councilmember to become educated on an area and she finds it very interesting and odd, especially when she was not invited to tour the area by the NOC and others were.

Mayor Nelson asked Councilmember Ries if she is alleging that all of her representations to the City Council on June 11, 2020 were accurate.

Councilmember Ries replied to Mayor Nelson that she had the floor and called a Point of Order, and said she may also need to call a Point of Personal Privilege because of the interruptions she repeatedly faces during City Council meetings which are very abrupt and disruptive of the process. Continuing on after calling a Point of Order, she noted that agreements with the City Council also obstruct any right of certain members of the Council to view the property and it’s also an abuse of process.

Mayor Nelson asked what the agreement is she is talking about so he understands.

Councilmember Ries said Mr. Houge had mentioned in his letter that there is some agreement that she is not aware of with the City that only they can grant permission. She said that would be a type of predetermining a decision and would also prejudice the proceeding. To be able to invite only two members to personally tour with the NOC, have discussions about the property and not have all members present, substantially prejudices the proceedings and in a way

predetermines what happens. She said there have also been reports that Mayor Nelson played golf with Mr. Houge, which would also be an example where the Mayor Nelson would get an audience with him where other City Council members are not afforded that opportunity.

Mayor Nelson warned Councilmember Ries when she says things like that, noting it was brought up by one of her people about two years ago and in fact, that person was directed to ask that question and she acknowledged afterwards that Mayor Nelson has never played golf with Mr. Houge and she knew that. Mayor Nelson noted he still has never played golf with Mr. Houge. He wants to make sure Councilmember Ries understands what is going on here, this is a question of whether she misrepresented material facts to her City Councilmembers, it is not about the merits of Mr. Magner.

Councilmember Ries again called for another Point of Order. She said in full and transparent disclosure, they need to be working for the community and reviewing the plans, they need to disclose when they meet with the NOC, and discussions they are having with the NOC. She said following this suit and in full disclosure to the community, they have a right to know that she did nothing wrong. She said during the meeting where Dr. Magner was personally invited to the NOC, it was because the Company was excited to show him some of the projects they were working on. She noted during the discussion, the NOC said they are also setting up research in North Oaks and are excited to work with him. Councilmember Ries said she finds it very curious that there was a complaint letter filed when they were excited to work with Dr. Magner after they realized his background and all the projects he'd been working on. Dr. Magner was invited to that meeting, she believes it was on June 30, 2020, and he invited Councilmember Ries to come along. She noted it was very odd that she wasn't informed of the meeting by the NOC but they had reached out to Dr. Magner directly and invited him to do a presentation. She said Dr. Magner did attend the meeting, it wasn't that long, and during the discussion Mr. Houge rudely said that Councilmember Ries was not invited, and Dr. Magner specifically said that he invited her and he wanted her to stay. She noted that no further objection was made in the meeting and the discussion immediately continued specific to Nord, and then Dr. Magner talked about the area. She thinks it's very interesting that the information Dr. Magner specializes in and provides, general information about water management in an area and some of the things he's working on is very critical in understanding what development should be and what responsible development looks like. She stated this would mean in 40 years when they're building in North Oaks, they're not seeing trouble, they make sure they have the capital improvements at the get-go and plan accordingly. She said there are two ways you can handle this in response to the water changes: you can plan accordingly or you can react retroactively. Councilmember Ries said part of bringing in Dr. Magner was because she did not go on the tour the NOC provided and she needed to understand some of the information through a hydrologist's standpoint and knowledge. She said perhaps Dr. Magner knew of North Oaks and that is why he returned her communication and was interested, she didn't know. She stated that Dr. Magner was very grateful of Mr. Houge, who brought up and asked if he had a connection with Gary Magner. Councilmember Ries said she finds it very interesting that one name is being selected out of a

petition of 430 people. She said it was Mr. Houge who had the conversation with Dr. Magner as to whether he knew Gary Magner or not.

Mayor Nelson said that's another misstatement and he'd like to conclude because she's going far afield, she knows that during the City Council meeting she was asked that question as well. Councilmember Ries said yes, she was.

Mayor Nelson said frankly he doesn't play golf with Mr. Houge, in fact he rarely plays golf. He said he is amazed and disappointed that Councilmember Ries did not ask the NOC for a tour of the development when she has been so vehemently opposed to it. He said she really should have her feet on the ground there before this time. He stated there was no invitation for a tour, that is something a person is supposed to do as part of their City Council job, they're supposed to tour the property with the developer so they are not trespassing. He noted she should have done that long ago and to use that as a tool to make it look like she's been disenfranchised is ridiculous, as all she needed to do was call the NOC and go out there. Mayor Nelson said she can go ahead and continue but said not to make anything else up.

Councilmember Ries said in response, she is not making anything up and reiterated she has full right to enter that property under the PUD and she has the right to do her due diligence.

Mayor Nelson questioned why she didn't visit the property two years ago.

Councilmember Ries continued and said she thinks bringing up other members of the community is irrelevant to the issue and is completely inappropriate. She stated that not one time did Mayor Nelson call her about the letters or inquire with her about it beyond the public meetings. She finds it very interesting that they are now sitting here with proceedings where the NOC filed two letters against her, demanding that the issue be addressed, when there have been other Councilmembers with complaints filed against them and very little was done, it was just a quick agenda item, check the box, move on and nothing was done.

Mayor Nelson said once again for clarity, they are referring to a July 24, 2020 letter.

Councilmember Ries said to call a special meeting to pull her out on the rug on an issue where she's done nothing wrong, she finds it very, very interesting.

Mayor Nelson said three days ago on July 24, 2020, they received a letter from the NOC and he called a special meeting because they are alleging material representations regarding a very serious matter. He said how they do their work on City Council, is in front of the TV, not behind closed doors like she did with Dr. Magner and her friends. He stated that is the difference here, and he is hearing from her statement today that she is misrepresenting things. Mayor Nelson asked if she is alleging that all of her representations to City Council at the June 11, 2020 meeting were accurate and truthful.

Councilmember Ries said she'd have to go back and review everything she said. Mayor Nelson asked if she told the truth the whole time. After a moment, he said that's what he thought and thanked her and asked if anyone else had any comments.

Councilmember Kingston said he thinks it would help if they went back to what was initially said that launched the concern. He said he has the conversation on his computer and shared his screen. The Council then listened to a portion of the City Council meeting from June 11, 2020. Councilmember Kingston said he thinks the essence is that what Councilmember Ries represented is that she contacted the University of Minnesota and they sent someone out and the individual was Dr. Joe Magner. He said one of the concerns raised is that the University didn't send anyone out, that was just misrepresentation. He noted he is concerned about Councilmember Ries is sharing that information with the community that the University of Minnesota is sanctioning a person to come out and represent the University of Minnesota on this particular issue. He said he thinks that's what came through in the first concern raised by the NOC. The second thing that came through had to do with whether or not Councilmember Ries knew that Dr. Magner had a relative named Gary Magner who signed the petition against the development. Councilmember Kingston stated that it seemed odd to have someone drop everything on a Wednesday morning, come out inspect the site and have a letter by Wednesday afternoon, stating that just isn't plausible and he doesn't know how that happens. He said he specifically asked Councilmember Ries if there was a relationship between the Gary Magner that signed the petition and she said she had no idea, and it was subsequently determined after talking with Dr. Magner that actually she did know and the two of them talked about the fact that there was a potential conflict and apparently decided that it wasn't worth bringing up. He noted that is what this whole issue is about.

Councilmember Ries thanked Councilmember Kingston for clarifying that and showing the video of the June 11, 2020 meeting, noting it's much better to address these issues live. She said to clarify on the record, she contacted Dr. Magner; He is employed at the University of Minnesota. She said she thinks they're parsing hairs here in saying she misrepresented something. She said Dr. Magner, in his own signature, signed the letter that he sent to the City, simply about the general issues that he wrote in the letter. She noted again that he signed the letter in his own name. She said they could drag her over the coals and say she misrepresented, but she has always said that she spoke with Dr. Joe Magner at the University of Minnesota. Second, she said it came out later that Dr. Magner had a relative in North Oaks. She again reiterated, maybe that is why he was interested in North Oaks, perhaps he recognized the name North Oaks, she didn't know, but noted again he does other work in North Oaks. She said it's splitting hairs. Councilmember Ries said in all of the discussions when they were talking about the land, Dr. Magner, in his professional opinion of the area, they simply talked about the hydrology and it was a very informative, very well thought-out look in 3D at the area. She said if they think that it was misrepresented they have to look at the timeline of the City Council meeting and that yes, later on it did come out that he was related to someone, and they did discuss it. She said she brought up the fact or concern of conflict of interest, and Dr. Magner said he doesn't have much contact with his cousin and he does this type of work.

Councilmember Ries said she doesn't want to get into the issue, but whether or not there is a conflict of interest, again she thinks it's splitting hairs when she was asking his hydrology opinion about standing water in an area in a 3D drainage view of the area and whether or not he knew someone who lives on the East side that he is related to or not. She stated she feels that she is being raked over the coals and accused of things that she has been truthful about. She has always disclosed that she was working with Dr. Magner, she made an effort to call Administrator Kress and talk to him about it, she made an effort to provide the letter and disclose all this during meetings. She said they're now going back second-by-second during meetings and cross-examining every single word she said and it seems like they're being a little overzealous in the approach. She said Mr. Houge gave private tours to other individuals and out of fairness to the other Councilmembers, that should've been disclosed and they all should have been privy to information. She stated private tours of a couple of Councilmembers should not be held, it should be a group effort, so everyone is privy to the conversations and receive equal amounts of information in reviewing the applications. She said yes, they are all able to go out on their own, use their eyes, look at the sites on their own time, but when you get the audience of Mr. Houge and his perspective, they should all be there to share in that perspective equally.

Councilmember Kingston told Councilmember Ries he thinks she's missing the entire point. It doesn't have anything to do with whether or not there's an actual conflict, it's about disclosure and Administrator Kress talked to Dr. Magner afterwards and he said that Councilmember Ries knew that he was related to an individual that signed the petition against the development and she did not disclose that when she was asked. He said regarding all the other things she is bringing up regarding two Councilmembers going on a tour with a Planning Commission member and another resident in the area, he said she knows that they can't have more than two Councilmembers in one spot. He stated if she wanted to go look at the Nord plot, she was welcome to do that, he didn't know that the NOC ever denied anyone the opportunity to look at it, people just have to check with them as it's their private property. He said maybe he's wrong but he doesn't know of any law that says you can go onto private property, even in the course of City Council activities. He said it's about being entirely truthful in sharing information at the Council level that the Council can depend on. He said she can go back and look at the way she introduced it, where she said the University of Minnesota sent Dr. Magner out to issue this concern and that they needed to stop everything, and he noted that is a problem.

Councilmember Ries said to clarify again, she did reach out to Dr. Magner at the University of Minnesota to answer questions that she had.

Councilmember Kingston said the University did not take Councilmember Ries's call. Councilmember Ries said that is correct, she doesn't even remember if she called him or the initial contact specifics.

Administrator Kress asked to chime in and said a better way to frame the question is how long has Councilmember Ries known Dr. Magner, because that is the one question he was not able to answer and that is the one that raised the most red flags for Mr. Kress and Mr. Houge.

Councilmember Ries said she can look back but it was right about the time of the Planning Commission meeting.

Administrator Kress asked Attorney Nason to clarify something. He said his understanding is that the privileges to go on site are typically for Staff and consultants. When it comes to Planning Commission and City Council, he knows there was information presented as part of the Planning Commission and a very lengthy well put-together PowerPoint presentation, and he would like her to speak on that. He said typically everyone that went on site did ask permission; they asked permission as Staff and consultants when they went on site and he thinks it's important to clarify that.

Attorney Nason replied that she thinks the section of the PDA being referred to is Section 19.10: Access. She said it states that the developer does grant the City, its agents, employees, officers and contractors an irrevocable license to enter on the subject property to perform all inspections deemed appropriate by the City relating to the installation or proposed installation on maintenance of any improvements by the developer. Attorney Nason said there is an access right, and it does appear to be focused on the installation of improvements and the review of those installed improvements, so it's a little bit more narrow in scope, it's not a general license for everyone. She stated that is perhaps the language that is being referred to. Attorney Nason said if it's private property, typically you do need to have permission and it's a little bit complicated because the general rule is that it's important that the Council and the Planning Commission have the same information regarding development sites. If the Planning Commission or Council wants to visit a development site as a group, they need to notice that as a special meeting and treat it as such. Otherwise, it's important that all Planning Commission and Councilmembers are working off of the same information with respect to the development sites. Ms. Nason said if someone wants to go onto private property to view a development, you do need to have the private property owner's permission unless the language in the PDA is broad enough to go farther than that. She noted again the language in the PDA is focused more on the inspection piece.

Administrator Kress asked Attorney Nason what options the City Council has given the two letters and the feedback heard tonight.

Councilmember Long asked to jump in and said that is where they need to be focused, that this isn't something that City Council created, it is an action because of two letters by the NOC. He asked if they are at risk of being sued by the NOC and what do they need to do.

Attorney Nason said she doesn't see a threat of a lawsuit, she does think there is some concern raised regarding due process by the NOC's letters. She said the Company can deal with its own situation if it believes someone is a trespasser. She said as far as Administrator Kress's question of what does the Council want to do, she noted the Council wanted more information and has had the opportunity to receive more information and clarification. She said if the Council has concerns or feels the information provided was in some fashion misleading, it has the option to

make a motion to issue some type of censure or verbal reprimand, adding that's really all the Council can do. She said if the Council chooses to make a motion, they should specify what the basis of that motion is for. Ms. Nason said the same could be brought forth in a resolution, but ultimately the Council doesn't have any ability to do much more than to ask questions and receive information.

Councilmember Ries asked Attorney Nason if the main issue was the introduction at the point of the video where she said she had contacted the University of Minnesota, could a correction record by Councilmember Ries also be provided so the record and representation is clear that she had contact Dr. Magner. She believes that the record after that does clarify that she contacted Dr. Magner at the University of Minnesota.

Attorney Nason said yes, it sounds like Councilmember Ries had offered a clarification explaining the exact context with respect to her communication to Dr. Magner. She stated there is no way to change the minutes once they are adopted, but a Councilmember could certainly offer a clarifying statement which is essentially what Ms. Nason heard Councilmember Ries saying tonight, and then the Council can take that statement and do with it what it may. She reiterated that yes, what she hears is a clarification that's been offered regarding that particular piece. With respect to the other issues and meetings, Ms. Nason said they've covered that with the developer and access to the property, but ultimately the Council could take the clarification and accept the clarification or choose to move forward as she mentioned on the other options.

Councilmember Kingston stated they're not talking about the same thing. He said they're talking about the fact that Dr. Joe Magner told our City Administrator that he and Councilmember Ries had talked about the potential conflict of interest. He said when Councilmember Ries was asked that, she specifically said she had no idea, when in fact they had talked about it before. He said it doesn't get any simpler than that and that's what the issue is.

Attorney Nason said she's not sure about the timing piece and if there are some follow-up questions people want to ask. She said she took notes that indicate there was a conversation that occurred after the Council meeting, and she didn't see in Administrator Kress's email a specific timeline, so there might still be some concerns about that timeline with respect to the relationship discussion.

Mayor Nelson thanked Ms. Nason and said he doesn't have any concern about the timeline, both Councilmember Ries and Dr. Magner avoided answering the question of when they first got together and when they discussed the conflict of interest. In his mind, that is enough of an answer right there. He said he finds two issues. One is the failure to disclose the conflict or the potential for conflict and the second is the introduction of this report at the last minute and representing it as a University of Minnesota document. Mayor Nelson said he thinks both of those are a problem but the misrepresentation relative to the potential conflict is at least as serious as the other. So there are two issues in front of them, it's not about the quality of Mr. Magner's background, whether he's an appropriate expert, etcetera, it is about the conduct of

their Councilmember and the complaint received from the NOC. He said that is what they're having an open meeting for.

Councilmember Ries said she'd be happy to look into her emails and disclose to Administrator Kress the information about timelines to show when she first contacted Mr. Magner and information they discussed. She has no problems gathering that information and having a meeting with Mr. Kress to disclose the information. She said again, to show that there is a conflict of interest, to make a statement that there is a conflict of interest, would be a legal issue, also, instead of an accusatory statement that would be raised. She reiterated she would be happy to work with Mr. Kress afterwards to gather that information, and she'd be happy to have a call with Dr. Magner to clarify the questions raised this evening. She stated she doesn't have anything to hide, she is happy to gather the information and provide it to the public.

Mayor Nelson said what is so dangerous about Councilmember Ries's behavior is that now, after this has been uncovered and after she has caused a great deal of problems, she is now willing to make an effort to disclose what actually happened and clarify the record. He said the danger was that on June 11, 2020, Councilmember Ries and Dr. Magner were fully prepared to present a situation to the City Council that would've stopped the development of a multimillion dollar project based on a twenty or thirty minute visit to the property that she'd never visited before with no scientific evaluation and based on the report of a person who may well be conflicted in this case, and she misrepresented how she got to him. He said there are all sorts of problems here and fixing it now doesn't save them from the problem they may have in the future should she try this again. He stated it's a big problem, he sees it as a huge problem, and it's very disconcerting to have a City Councilmember work outside of Staff and bring in things like this at the last minute and have the Staff and Council have to deal with it without prior information and it just doesn't make any sense for them to not be concerned. He noted he recognizes the NOC's concerns, they received the letter on July 24, 2020 and that's why they're having a meeting today.

Administrator Kress noted that Attorney Nason had a hard-stop timewise and asked if she had any final thoughts before they see the Council's perspective. Attorney Nason said no, and said she did have a hard-stop for another meeting at 6:35 p.m.

Councilmember Ries asked to make one clarifying statement, noting the letter that Dr. Magner had sent before the June 11, 2020 City Council meeting, she said the water management program should be looked at and data needs to be considered into the process. She said it wasn't anything that should particularly stop, it was more a part of the process, so she finds the statements the Mayor raised that she tried to stop a thirty million dollar project interesting. She stated the data should be collected in assessing the area and that someone brought up a point of further information that the Council may want to look at. She said it wasn't to stop a development, it was part of the consideration of the development. She wanted to clarify that the point was not to stop a thirty million dollar development and that was not the language in the letter.

Mayor Nelson said let's go back to the facts and in fact Councilmember Ries did vote against the motion to approve the preliminary plan, and asked if that was true. Councilmember Ries said she believes she did for multiple reasons. Mayor Nelson noted she didn't offer any explanation.

Administrator Kress said Attorney Nason left the Council with a couple of options. He said he thinks they've exhausted their research on the item with the minutes, the video and the discussion. He asked what the Council wants to see done with tonight's discussion.

Mayor Nelson said one thing they haven't done is replay Councilmember Ries's denial of the relationship between Dr. Magner and the resident in North Oaks and asked if they need to do that or if it's accepted.

Administrator Kress said he needs to know what they want him to do as their staff member.

Mayor Nelson asked if there was a motion.

Councilmember Kingston said he thinks they should finish it out and said that he goes back to Administrator Kress's conversation with Dr. Magner. He asked Mr. Kress if he had any indication, as he asked Dr. Magner quite blank if there is a relationship, and he mentioned that he and Councilmember Ries discussed the conflict of interest. Councilmember Kingston asked why you would do that after the meeting, saying you'd do that before, there would be no reason to bring it up and it just doesn't make any sense.

Administrator Kress said he really can't answer that. He stated the first question he asked was definitely concerning, Mr. Kress would've expected that Dr. Magner would've known that he was contacted that Wednesday before the Council meeting and developed that letter and that's not what Dr. Magner said; Dr. Magner said he wasn't able to disclose that. Mr. Kress asked how long Dr. Magner and Councilmember Ries had known each other just to get a perspective, and that wasn't discussed. Mr. Kress is still a little confused about why Dr. Magner would say they had the discussion but then it was after the fact, but that's really not for Mr. Kress to investigate as he has no way to figure that out.

Mayor Nelson noted that he and Councilmember Kingston both asked to play the recording relative to Councilmember Ries's response to Councilmember Kingston's request for information about the relationship between Dr. Magner and Gary Magner. He asked that they go to that tape around 104:15 on the recording.

Councilmember Kingston cued up the recording on his screen. While waiting for the recording, Administrator Kress said he'd like to talk a bit about bringing professional consultants in and that it is concerning to him. He said he'd rather see the Planning Commission or City Council address that at a meeting if they are going to bring someone of that level onto the playing field.

Councilmember Ries asked what the consultants would be reviewing.

Administrator Kress said it depends on what the Councilmember or Commissioner wants them to do. He said if you're going to bring someone from outside the City's consultants they need to know about it. He noted that he is careful about who he brings to a meeting and what type of presentation it is. He said he wants to have an open discussion with the Council on what their expectations are for Staff and Council.

Councilmember Kingston said he was ready to play the recording. The Council watched a portion of the recording from June 11, 2020. In the recording, Councilmember Kingston asked Councilmember Ries if the individual that came out (Dr. Magner) was a paid consultant. Councilmember Ries said it was all pro bono. Councilmember Kingston asked if Dr. Magner was related to the Magner that signed Franny's petition and lives in North Oaks. Councilmember Ries said she didn't have any idea. (End of recording.)

Councilmember Kingston said he understands that Councilmember Ries went to school with Gary Magner's daughter, and that there had been some posts on the NOHOA Facebook page. He said something just isn't adding up here and it just doesn't make sense.

Councilmember Ries said she finds it very interesting that Councilmember Kingston is literally conducting a Salem witch trial right now, looking into Facebook posts and accusing her of things. She said Dr. Magner's information was simply to educate her on area and standing water, and she had the right as Attorney Nason just stated to go out and tour the site, as officials are allowed to go and inspect the site. She said now they're trying to create a conflict of interest or some special relationship with Gary Magner who lives nowhere near Nord, and she happens to be working with someone who is related to him, and they're going into Facebook posts about communicating with people. She said this is turning into harassment and a witch hunt, noting that she would like to be afforded the opportunity to work with Administrator Kress to provide the information. She said she believes in respect for his position, if Mr. Kress thinks that there is still an issue, then they can pursue that in another meeting. Councilmember Ries said she'd be happy to disclose when she started talking to Dr. Magner, what the questions she asked were, and what the site visit entailed. She reiterated she is more than happy to work with Administrator Kress to provide the details that he thinks are necessary to find out when she started contacting Dr. Magner and what was the extent of the communication.

Councilmember Kingston said that wasn't the issue, that none of them are questioning Dr. Magner's credentials in terms of whether or not he's an expert in his field. He said the whole question is about giving people the opportunity to know if there is a conflict and let them decide...it's all about disclosure. It's as simple as that. He said there may not be a conflict, and the point is, Councilmember Ries was asked if there was a relationship and Dr. Magner told Administrator Kress that the two of them talked about the conflict of interest. He asked why would they talk about it after the meeting, it doesn't even make sense; they would talk about it before and then decide, "What do we do about it?"

Councilmember Ries said of the conversation at the June 11, 2020 meeting, Councilmember Kingston asked her the question at the meeting and she answered the question at the meeting. She said in a follow-up conversation with Dr. Magner, it does not show what he is claiming or accusing her of false information during a meeting. It simply shows that she answered Councilmember Kingston's question and later had a discussion, following up research that Councilmember Kingston had clearly done, to find out information. She said she does not know the names on that petition, she understands there are 430 names on the petition, but she does not know all the names.

Councilmember Kingston said the petition was submitted to the Council so she has a copy of it.

Councilmember Ries said she went to Administrator Kress and asked for the four paragraphs of the petition but she did not look through the names on it.

Administrator Kress said there are a couple of things he needs the Council to clarify as obviously this is not a fun discussion and he needs clarity from the Council on what the expectations are moving forward. He said his expectation of anyone that goes on site is that they should get written permission. He stated that is what was discussed in part of the PDA and that is what he would advise the Planning Commissioners to do each and every time they go on site and he would ask the Council to do the same thing. Mr. Kress noted he does the same thing when he goes on site, it's just to cover-your-bases. He said he understands that it's written in the PDA but to keep things straight, that's what should be done moving forward.

Councilmember Ries said to clarify that, she thinks when people ask for permission to go on site, it should be a group effort so that it gets communicated who is going on site, and permission is given to people so they're all afforded the opportunity to do a group discussion with the NOC. She said she believes that is how they did it twenty years ago and it might be nice to have that procedure again, that they're all together to receive the information that Mr. Houge provides the Councilmembers.

Administrator Kress said if they're going to do that, his suggestion would be to do that as part of the Council meeting with a motion and a second because that is technically a special meeting. He stated if there's a quorum of the Planning Commission or the City Council, his suggestion is if anyone goes on site, they don't say anything, but they absorb the information of the walk or whatever was said by the Company, but the questions and comments should be kept to a minimum.

Councilmember Ries said her other concern with that is that it may bias the process as some people may be afforded opportunities that others are not and she wants to point out that Mr. Houge had simply raised that there may be safety concerns on this vacant land that he would be concerned about. She said she would stress that it's the NOC's responsibility to secure the property, they should be keeping it safe when the Council does inspections. She said there is an expectation that the Council will be touring when there are applications before them. She also

stated the NOC should give written notice of unsafe conditions on the property when they occur, so the Council can stay safe when they inspect the property.

Administrator Kress said that's fine, and what he wants the Council to do is to clarify what their expectations are of anyone going on the site. He noted he's said that his expectations are written permission, that's a pretty fail-safe method of "I want to go on site with two or three members," etcetera. He said he thinks there is too much gray area in just going on the site and he just doesn't like it. He would like a different process for the Council and Planning Commission.

Mayor Nelson stated he thought they had a process and that was for a person to contact the NOC if they want to see the land and they will allow them on it. He said that's the process that everyone has followed to his knowledge, other than Councilmember Ries. He said he does not know what former Councilmember Katy Ross did, or what Councilmember Ries has done in the past, but she claimed she'd never been on the property previously, so he does not know. He said that is the rule, that is how they follow it and that is how it's done, and no, he doesn't play golf and yes, he has been on the property. He noted no, it was not with Mr. Houge to his recollection, although he probably was there somewhere along the line with Mr. Houge along the many years he's been dealing with this. He stated he remembers a trip where he looked at the property very early on with Mr. Gary Eagles, because he requested that so he would know what they were talking about. He said he's really irritated that Councilmember Ries has turned this into a question of her being excluded when in fact she's never asked to get on the property. He said that is what you're supposed to do, and that is not the issue for the day. The issue for the day is, did Councilmember Ries misrepresent things to the City Council, that's a very serious thing, and it was intended to confuse the City Council by bringing in a last minute report, which also concerns him a great deal.

Mayor Nelson then asked if there is any action the City Council wants to take, because he thinks they belabored the issue and he does not want to visit it again, but if they do need to they can.

Councilmember Kingston said he remains concerned about truthfulness here. He thinks that Mr. Kress should follow up with Dr. Magner and they need to get to the bottom of it, he doesn't think that it's reasonable to just let it go without some resolution. He noted the second thing that he is concerned about is that Councilmember Ries just misrepresented the facts and made no attempt to correct them, even when he brought it up at the June 11, 2020 meeting. Councilmember Kingston said he told her what he thought was the concern there, and she made no attempt to change that, she knew about what Mr. Kress found out from Dr. Magner around two weeks ago with no attempt to question that 'maybe it isn't quite like this.' Councilmember Kingston said it doesn't make sense, if there was something that was misstated, certainly that would've been corrected immediately. He reiterated that is what concerns him.

Councilmember Ries said as she stated on the record, she is happy to work with Mr. Kress to provide the clarification that they're seeking, and she also said no one reached out to her that this

was a concern. She said clearly they're looking at Facebook posts, they're reviewing footage, they have the minutes and the seconds of the meeting, but no one reached out to her to ask her.

Councilmember Kingston said it was all shared with her, Administrator Kress sent it out directly to all the Councilmembers, they knew what the discussion was with Dr. Magner. He said the Company did the same thing, they saw it in black and white, and she was at that meeting.

Councilmember Ries said no, what she's saying is if someone had concerns about an issue, they didn't reach out to her; no one bothered to contact her, instead it's a witch hunt set up in a special meeting.

Mayor Nelson said they could not have met more rapidly than they did, as the complaint was filed on July 24, 2020 and they are now exploring the facts. He said he thinks personally, Councilmember Ries is not telling the whole truth, but he's waiting to find out. He said if they want to table this and revisit after they talk to Dr. Magner, it would be an interesting discussion.

Administrator Kress said he is fine talking to Councilmember Ries and Dr. Magner about the situation.

MOTION by Long, seconded by Kingston to table the discussion until the August 13, 2020 City Council meeting. Motion carried by roll call with Members Long, Kingston and Nelson voting for; Member Ries abstained.

In closing, Mayor Nelson said he does not like this and does not think their City Council should have to address these kinds of issues. He stated he is very disappointed in the behavior of going outside of the Staff, presenting sudden reports right before a meeting with individuals who have a questionable relationship and a potential conflict. He said these are all things that should not happen in the City of North Oaks and he is very distressed and said at the next meeting or before, he hopes to get to the bottom of it.

ADJORNMENT

MOTION by Kingston, seconded by Long, to adjourn the Council meeting at 6:53 p.m. Motion carried unanimously by roll call.

Kevin Kress
Kevin Kress, City Administrator

Gregg Nelson
Gregg Nelson, Mayor

Date approved 8/13/2020