

ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: October 10, 2016
Item No.: 14.a

Department Approval

City Manager Approval



Item Description: Consider Complaint Alleging Violations of the Roseville Ethics Code by City Council Members

BACKGROUND

On September 19, Brad Koland submitted two complaints alleging violations of the Roseville Ethics Code by Council Members Lisa Laliberte and Tammy McGehee. The complaints arise from the City Council denial of Mr. Koland's minor subdivision request in July 2016. The details of the alleged violations of the Roseville Ethics Code are contained in the material provided by Mr. Koland and are attached to this report.

Under the Roseville Ethics Code, allegations of violations by City Council members are referred to the City Attorney for investigation. Once the investigation is complete, the City Attorney's report is sent to the Roseville Ethics Commission for its consideration and recommendation. The City Council makes the final determination regarding the complaint.

City Attorney Gaughan has completed the investigation and has determined that there were no violations of the Roseville Ethics Code. The Roseville Ethics Commission met on October 3, 2016 to consider the City Attorney's report and concurred with the findings. The Ethics Commission unanimously recommended that the City Attorney's report be forwarded to the City Council with the finding that no violations of the Roseville Ethics Code occurred.

POLICY OBJECTIVE

The Roseville Ethics Code has been created to maintain ethical standards to guide Public Officials in the transaction of public business.

FINANCIAL IMPACTS

None

COMMISSION RECOMMENDATION

The Ethics Commission recommends that the City Council determine that there were not any violations of the Roseville Ethics Code by Council members McGehee and Laliberte with the denial of the minor subdivision request by Mr. Brad Koland.

25 **REQUESTED COUNCIL ACTION**

26 The City Council should review the complaint by Mr. Koland and the report by City Attorney Gaughan
27 and make a decision on whether there were violations of the Roseville Ethics Code as alleged.

28 Prepared by: Patrick Trudgeon, City Manager (651) 792-7021

Attachments: A: Roseville Ethics Code
B: Correspondence dated September 19 by Mr. Brad Koland alleging violations of the Roseville Ethics Code
C: Report and Findings of City Attorney Mark Gaughan regarding the alleged violations of the Roseville Ethics Code.
D: Draft Minutes of the October 3, 2016 Ethics Commission Meeting (will be provided prior to meeting).

**EXTRACT OF MINUTES OF MEETING OF THE
CITY COUNCIL OF THE CITY OF ROSEVILLE**

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Roseville, County of Ramsey, Minnesota, was held on the 14th day of July 2014, at 6:00 p.m.

The following members were present: McGehee, Willmus, Laliberte, Etten, Roe
and the following members were absent: None.

Council Member Laliberte introduced the following resolution and moved its adoption:

**RESOLUTION NO. 11163
A RESOLUTION AMENDING THE CODE OF ETHICS FOR PUBLIC
OFFICIALS IN THE CITY OF ROSEVILLE
(RESOLUTION NO 10905)**

WHEREAS, it is the Council's desire to create and maintain ethical standards that guide Public Officials in the transaction of public business; and

WHEREAS, the Council has determined the most effective way to do so is to adopt and enforce a Code of Ethics that guides the conduct of Public Officials:

NOW THEREFORE BE IT RESOLVED, by the Roseville City Council, that the following Code of Ethics is hereby adopted:

**CODE OF ETHICS FOR PUBLIC OFFICIALS IN THE CITY OF
ROSEVILLE**

Purpose

Officials in the public service must maintain the highest possible standards of ethical conduct in their transactions of public business. Such standards must be clearly defined and known to the public as well as to the Public Officials. Violations of the ethical standards in this ordinance are punishable by the City Council and are not to be deemed criminal misdemeanors of any other type of crime except as those behaviors or activities may separately be determined to be criminal under state or federal law.

Section 1. Declaration of Policy

The proper operation of democratic government requires that Public Officials be independent, impartial and responsible to the people; that government decisions and policy be made in the proper channels of the government structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government.

In recognition of these goals, there is hereby established a Code of Ethics for all Public Officials of the City of Roseville. The purpose of this Code is to establish ethical standards of conduct for all such officials by setting forth those acts or actions that are incompatible with the best interests of the City, and by directing disclosure by such officials of private financial or other interests in matters affecting the City. The provisions and purpose of this Code and such rules and regulations as may be established are in the best interests of the City of Roseville.

Recognizing that education on ethics in government is the key to having good government, this code requires that annual training be held to discuss the meaning of this code with Public Officials, and in addition such training shall involve trained experts on government ethics. The City Manager shall be the coordinator for the annual training. The training will keep the subject of ethics in government fresh in everyone's mind.
(amended 5-23-2011)

To increase the awareness and understanding of the importance of ethical considerations and behavior among the public as well as government employees, communication of the role of the ethics commission and this Code must occur at least annually in local newspapers and the Roseville website as determined by the City Manager. Additionally, this Code of Ethics shall be reviewed annually to determine if modifications are appropriate.

Section 2. Definitions of Terms

Public Official

Any person that has been elected to office, appointed to a City board or commission, or hired by the City to serve as a department head or assistant department head.

Public Officials include the following:

- a. Members of the City Council and Mayor;
- b. The department head and assistant department head of each City department;

- c. Any person that has been appointed by the Roseville City Council. This would include City commission, board, and task force members; and
- d. The City Manager.

Anything of Value

Money, real or personal property, a permit or license, a favor, a service, forgiveness of a loan or promise of future employment. The term "Anything of Value" shall not be deemed to include:

- (1) Services to assist an official in the performance of official duties, including but not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents;
- (2) Services of insignificant monetary value;
- (3) A plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause;
- (4) A trinket or memento costing \$5 or less;
- (5) Informational material of unexceptional value;
- (6) Food or a beverage given at a reception, meal, or meeting away from the recipient's place of work by an organization before whom the recipient appears to make a speech or answer questions as part of a program; or
- (7) A contribution as defined in Minn. Stat. § 211A.01, subd. 5.

Compensation

A payment of Anything of Value to an individual in return for that individual's services of any kind.

Association

A business entity of any kind, a labor union, a club or any other group of two or more persons other than the immediate family.

Immediate Family

A reporting individual, spouse, minor children, minor stepchildren or other person residing in the same household.

Gift

The payment or receipt of Anything of Value unless consideration of greater or equal value is provided in return.

City Manager

The person that heads up the administration of the operating government of Roseville.

Section 3. Ethical Considerations

Public Officials are to serve all persons fairly and equitably without regard to their personal or financial benefit. The credibility of Roseville government hinges on the proper discharge of duties in the public interest. Public Officials must assure that the independence of their judgment and actions, without any consideration for personal gain, is preserved.

Specific ethical violations are enumerated below for the guidance of Public Officials, but these do not necessarily encompass all the possible ethical considerations that might arise.

- A. Other Offices or Employment. An elected Public Official shall not hold another incompatible office, as that term has been interpreted from time to time by statute, the courts, and by the Attorney General. Employed Public Officials shall not hold such incompatible office nor shall they engage in any regular outside employment without notice to and approval by the City Council, in the case of the City Manager, and the City Manager in the case of other employed Public Officials.

Elected and appointed Public Officials shall not hold other office or employment which compromises the performance of their elected or appointed duties without disclosure of said office or employment and self disqualification from any particular action which might be compromised by such office or employment.

- B. Use of Confidential Information. No Public Official shall use information gained as a Public Official which is not generally made available to and/or is not known to the public, to directly or indirectly gain anything of value, or for the benefit of any other person or entity; nor shall any Public Official make such information available when it would be reasonably foreseeable that a person or entity would benefit from it.
- C. Solicitation of or Receipt of Anything of Value. A Public Official shall not solicit or receive anything of value from any person or association, directly or indirectly, in consideration of some action to be taken or not to be taken in the performance of the Public Official's duties.

- D. Holding Investments. No Public Official shall hold any investment which might compromise the performance of the Public Official's duties without disclosure of said investment and self disqualification from any particular action which might be compromised by such investment, except as permitted by statute, such as Minnesota Statute 471.88.
- E. Representation of Others. A Public Official shall not represent persons or associations in dealings with the City where the persons or associations have paid or promised to pay compensation to the Public Official.
- F. Financial Interest. Where a Public Official or a member of the Public Official's immediate family has a financial interest in any matter being considered by the Public Official, such interest, if known to the Public Official, shall be disclosed by the Public Official. If the Public Official has such a financial interest or if the minor child of a Public Official has such a financial interest, the Public Official shall be disqualified from further participation in the matter.
- G. City Property. No Public Official shall use City-owned property such as vehicles, equipment, or supplies for personal convenience or profit except when such property is available to the public generally, or where such property is provided by specific City policy in the conduct of official City business.
- H. Special consideration. No Public Official shall grant any special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen.
- I. Giving Anything of Value. No elected Public Official shall give anything of value to potential voters in return for their votes, promises, or financial considerations which would be prohibited by the State Minnesota Fair Campaign Practices statute.
- J. Public Funds, etc. No Public Official shall use public funds, personnel, facilities, or equipment for private gain or political campaign activities, except as may be authorized by law.
- K. Expenses. Public Officials shall provide complete documentation to support requests for expense reimbursement. Expense reimbursement shall be made in accordance with City policy.
- L. Donations. No Public Official shall take an official action which will benefit any person or entity because of a donation of Anything of Value to the City by such person or entity.

- M. Official Action. No Public Official shall take an official action or attempt to influence any process which will benefit any person or entity where such Public Official would not have otherwise have taken such action but for the Public Official's family relationship, friendship, or business relationship with such person or entity.
- N. Compliance with Laws. Public Officials shall comply with all local ordinances and State and Federal Statutes including, but not limited to, the Criminal Code, Fair Campaign Practices Act, and laws governing the functioning of municipalities, their elected and appointed officials, and employees.
- O. Cooperation with Ethics Committee Investigations. Public Officials shall cooperate with ethics investigations and shall respond in good faith to reasonable requests for information.
- P. Resolution of Ethics Complaints. The Ethics Commission, City Attorney, or City Manager, as the case may be, shall promptly attend to all ethics complaints in the manner provided in this Code. It is expected that most complaints will be investigated as necessary and presented to the City Council for consideration within 45 days of submission of the complaint.

Section 4. Special Considerations

Situations can arise where a member of a commission, a board, or the City Council abstains from voting because of a conflict of interest, but his or her abstention becomes a vote either for or against the matter because a majority are required to pass or reject that matter. This can happen where four-fifths vote is needed to pass an issue, or the vote has to be a clear majority and a split vote does not pass or reject.

When this happens, the City Attorney must be consulted and the final vote should carry a public notice explaining what took place, and how it was resolved.

Section 5. Handling Alleged Violations of Code of Ethics

- A. Complaints alleging ethical violations by Public Officials must be submitted in written form to the City Attorney. Complaints alleging ethical violations by City employee Public Officials shall be submitted in written form to the City Manager.
- B. The City Attorney shall investigate all ethics complaints pertaining to non-employee Public Officials unless the City Attorney has a conflict, in which case outside counsel will be assigned the complaint. The City Manager will investigate complaints pertaining to employee Public Officials.

- C. If the City Attorney or City Manager determines that the subject of the complaint may have committed a crime, the City Attorney and City Manager shall refer the matter to the appropriate criminal authority.
- D. If the criminal proceeding ends with a sentencing, said sentencing shall be considered to be the final disposition of the complaint.
- E. If there has been no violation of a criminal law, the City Attorney or City Manager, as the case may be, shall issue a report that documents the results of the City Attorney's or City Manager's investigation(s).
 - 1. The report shall be sent directly to the City Council if the complaint involves an Ethics Commission member. The Council shall have the authority to dismiss any Ethics Commission member found to have violated the Ethics Code.
 - 2. The report shall be sent to the Ethics Commission if the complaint involves other Public Officials. The Ethics Commission shall have the authority to convene and issue its own report and recommendation to the City Council. Thereafter, the City Council shall take action as the Council deems appropriate.
- F. The standard for decisions regarding allegations of ethical violations covered by Section 3 of this code shall be "clear and convincing evidence." The term "clear and convincing evidence" shall mean that burden of proof as defined by Minnesota State law.
- G. In processing complaints, the City Attorney, City Manager, Ethics Commission and City Council shall process and maintain data in a manner consistent with Minn. Stat. Ch. 13, the Minnesota Data Practices Act.
- H. **A complainant may withdraw a complaint, filed under this Code at any time, in writing with the City Manager or City Attorney. Unless the City Council directs otherwise, City personnel need not take any further action in accordance with the Code after such withdrawal. Once acceptance by the City Council has been granted, the City Attorney or City Manager shall provide notice to the complainant, the subject of the complaint if appropriate, and the Ethics Commission that the withdrawal has been accepted.**

Section 6. Disclosure of Financial Interests

Not later than ninety (90) days after the date of approval of this Code, each Public Official of the City shall file as a public record, in the office of the City Manager, a statement containing the following:

1. A list naming all business enterprises known by the Public Official to be licensed by or to be doing business with the City in which the Public Official or any member of the Public Official's immediate family is connected as an employee, officer, owner, investor, creditor of, director, trustee, partner, advisor, or consultant; and
2. A list of the Public Officials and members of the Public Officials' immediate family's interests in real property located in the City or which may be competing with the interests of the City located elsewhere, other than property occupied as a personal residence.

Each person who enters upon duty after the date of this code in an office or position as to which a statement is required by this Code shall file such a statement on forms to be provided by the City not less than thirty (30) days after the date of his/her entrance on duty.

Each person who made an initial filing shall file a new Statement by January 30 of each year thereafter giving the information called for above as of the time of the new statement. If a change in financial interest or property ownership occurs between filings, a new filing shall be made within thirty (30) days of the change.

The interest of any member of the immediate family shall be considered to be an interest of a person required to file a statement by or pursuant to this Code.

This Code shall not be construed to require the filing of any information relating to any person's connection with or interest in any professional society or any charitable, religious, social, fraternal, educational, recreational, public service, civil, or political organization, or any similar organization not conducted as a business enterprise and which is not engaged in the ownership or conduct of a business enterprise.

However, if any of such organizations seeking any action or benefit come before a Roseville commission or the Council, then membership in the organization shall be a potential conflict of interest and must be reported as such to the City Manager by the Public Official in an amended disclosure statement. The other stipulations of this Code then apply.

The City Manager shall inform each person who is required to file of the time and place for filing. The City Manager shall inform the Council whenever a person who is required to file a statement fails to do so.

The motion for the adoption of the foregoing resolution was duly seconded by Council Member McGehee and upon vote being taken thereon, the following voted in favor: McGehee, Willmus, Laliberte, Etten, Roe

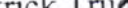
and the following voted against: none.

WHEREUPON said resolution was declared duly passed and adopted.

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

I, the undersigned, being the duly qualified City Manager of the City of Roseville, County of Ramsey, State of Minnesota, do hereby certify that I have carefully compared the attached and foregoing extract of minutes of a regular meeting of said City Council held on the 14^h day of July, with the original thereof on file in my office.

WITNESS MY HAND officially as such Manager this 14th day of July, 2014.


Patrick Trudgeon, City Manager

State of Minnesota - County of Ramsey
Signed or Attested before me on this

21st day of July, 2014

by: Patrick Trudgeon

Jim G Carr
Notary Public



September 19, 2016

Mark Gaughan
City Attorney
2660 Civic Center Drive
Roseville, MN 55113

Re: Code of Ethics violation by Council Member Laliberte for unethical actions on the denial of the minor subdivision at 1926 Gluek Lane on July 11, 2016 and July 18, 2016

Per the July 14, 2014 resolution 11163 that was introduced by Council Member Laliberte, I would like to submit to the city council, facts that Council Member Laliberte violated those very standards that she promulgated.

In accordance with the purpose of the City of Roseville ethics resolutions, "Officials in the public service must maintain the highest possible standards of ethical conduct in their transactions of public business". Section 3. Ethical Considerations, offers the following two items where I believe Council Member Laliberte violated her ethical standard of care:

- 1) That **government decisions be made in proper channels**
- 2) **N. Compliance with Laws.** Public Officials shall comply with all local ordinances.
- 3) **Other ethical considerations**, per paragraph two "...but these (violations enumerated below) do not necessarily encompass all the possible ethical considerations that might arise".

From the minutes of the July 11 meeting, the proposed minor subdivision of 1926 Gluek Lane was denied based upon the following findings:

- A) Runoff and drainage issues in this area are extreme to say the least without more information being known about the proposed subdivision and impact to the current drainage issues; and
- B) City Code is not being met as recently amended for lots no smaller than 85' in width, making one of the proposed parcels actually an unbuildable lot, as well as not in keeping with existing and adjacent lot sizes within the character of this neighborhood.

Violation 1 – Government decisions be made in proper channels

Response: Per the testimony during the City Council meeting on July 11 of Assistant Public Works Director and City Engineer, Mr. Jesse Freihammer, he outlined the "proper channels" for consideration and approval of this subdivision. His testimony was captured in the meeting minutes as follows: "Mr. Freihammer noted staff's review and approval of those grading plans, as well as that of other jurisdictional regulating agencies, in addressing how current flooding issues are mitigated would serve to address concerns to prevent exacerbating flooding elsewhere or making it worse than currently found". As noted in the meeting minutes, "Ms. Koland referenced line 98 of the subdivision packet, the flooding in this area is due to the larger system and not residential development. At the time the projects pulls a grading permit, Ms. Koland noted there would be significant review to ensure compliance with code."

Commentary: Mr. Freihammer and his team approved this subdivision and outlined the next and proper steps that would be taken to address these drainage concerns. While I agree that the Council has the authority and duty to review and approve of proposed subdivisions, the approval by the professional staff was that the grading/water issue would be dealt with during the permit process. This is the standard process that the city follows for proposed subdivisions. This is further supported by the denial of my right to pursue any water runoff remedy as provided by the Roseville City Code section 1017.26, which allows the use of constructed facilities to address stormwater runoff. Through Councilmember Lilaberte's actions, she undermined and overruled the professional recommendations of staff and the proper process by which this situation should have been properly handled.

Violation 2 – Section 3.N. Compliance with Laws

In reference to denial finding B, there are three points of ethical violations that I would like addressed:

- 2a) City code is not being addressed as recently amended for lots no smaller than 85' in width.
- 2b) The determination that "one of the proposed parcels actually an unbuildable lot"
- 2c) The determination that this subdivision is "not in keeping with the existing and adjacent lot sizes within the character of this neighborhood"

2a) City code is not being addressed as recently amended for lots no smaller than 85' in width.

Response: See attached letter dated 7/18/16, addressed to the City Council from Brad Koland. This letter addresses many items, including this topic. At the 7/18/16 Council meeting, I summarized this letter and submitted copies to the Council and City Manager. In this letter, I specifically detailed the facts and required dimensions stipulated by Roseville City Code. This submission is in conformance with City Code. As such, the Council's statement of fact is not true. As a false statement, this action is in direct violation of the city's ethical code, as outlined in item 3.N.

Commentary: At the City Council meeting on July 11, Senior City Planner, Mr. Bryan Llyod, verified that the submission is in compliance with City Code, and affirmed that the City Staff approved the subdivision. The City Council was told by their staff, not once but twice, that the proposed lot split met city code. On July 18, I presented further facts that the proposed subdivision met city code requirements, yet Councilmember Laliberte refused my request to remedy this false statement through a motion to reconsider.

2b) The determination that "one of the proposed parcels actually an unbuildable lot".

Response: During the City Council meeting on July 11 and as noted on page 45 of the meeting minutes, Senior City Planner Llyod was noted "indicating the lot would be suitable on which to build a home".

City Code: The city code establishes standards for minimum width, length and area. The proposed subdivision exceeds the setback width requirement, exceeds the area, and meets the minimum rear lot width.

Commentary: Clearly, if this lot meets and exceeds all the dimensional requirements prescribed by the city, then this should by definition, be considered a buildable lot. If the City Council considers this an "unbuildable lot" then the City Council should change the city code. If additional proof is necessary, I can provide the reviewer of this petition with development plans that will demonstrate that a house will indeed fit well on this subdivision.

2c) The determination that this subdivision is "not in keeping with the existing and adjacent lot sizes within the character of this neighborhood"

Response: This statement is not supported by City Code, as there are no provisions for meeting specifications of adjacent lot sizes or the character of this neighborhood.

City Code: There is no provision in the City Code for specifications of adjacent lot sizes or the character of this neighborhood.

Commentary: The inference that I have from this statement is that the City Council is trying to create or enforce a building covenant. Building covenants are legal agreements that typically cover associations of homeowners. These homeowners voluntarily choose to enter a legal binding agreement with their neighbors that governs the development in which they live. There is no such agreement that I entered with my neighbors, nor with the City of Roseville. The City of Roseville has the Community Aspiration to be "safe and law-abiding". Implementing a non-existing contractual agreement is not abiding by the laws of the State of Minnesota.

Violation 3 - Other ethical considerations

In addition to the three violations noted above, 1a, 1b and 1c, I content that the Councilmember also violated another aspect of the ethical standards that govern the City's actions. Per paragraph two of the ethical resolution, consideration for this afforded by the following language: "...but these (violations enumerated below) do not necessarily encompass all the possible ethical considerations that might arise".

In reference to denial finding B, there is one point of the ethical violations that I would like addressed:

3) Using false statements to substantiate a minor subdivision denial

3) The City Council Member knowingly made a false statement in the denial of this application.

Response and commentary: While not specifically outlined in the code of ethics, making knowingly false statements seems to me like an unreasonable standard for the City Council and its members to promulgate in the discharge of their duties. As outlined above, the Councilmember Laliberte was informed by the city's professional staff that the proposed subdivision met all relevant city code requirements with regards to lot width. Councilmember Laliberte also heard testimony from the City Staff stating that this lot division did meet city code requirements.

On July 18, I presented the City Council with the attached letter outlining rebutting the findings of facts that the Council Member used to substantiate the denial of this subdivision request. In that letter and during the public comment section, I informed the City Council about the erroneous facts that they used in this denial. I further asked that the Councilmembers in the majority of this denial vote motion for reconsideration, as outlined by Rosenberg's rules of order, based upon these findings. Councilmember Willmus was not in attendance at this meeting; however, Councilmembers Laliberte and McGehee were in attendance. Neither Councilmember Laliberte nor McGehee took the action that they should have to remedy this false statement. By not taking this action, they consciously chose to perpetuate the denial of this subdivision based upon a false statement. Councilmember Laiberte's response to my statement on July 18 was: "I didn't take it lightly a week ago, I don't take it lightly now". I believe that she completely understood that the false statement was in the denial and she chose not to remedy the official action.

Request for special handling of this alleged violation.

Per Section 5 of the Code of Ethics, this petition is submitted to the City Attorney. Following the City Attorney's submission, the Ethics Commission shall review the allegation.

As I believe that there is no current Ethics Commission in place, based upon my understanding of the Feb. 10, 2016 meeting, I would request that the City Attorney and City Council propose a format and independent body to hear this allegation and determine if the standard outlined in Section 5.F., has been met evidencing "clear and convincing evidence" as defined by Minnesota State Law.

Regards,



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September 19, 2016

Mark Gaughan
City Attorney
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Roseville, MN 55113

Re: Code of Ethics violation by Councilmember McGehee for unethical actions on the denial of the minor subdivision at 1926 Gluek Lane on July 11, 2016 and July 18, 2016

Per the July 14, 2014 resolution 11163 that was introduced by Councilmember McGehee and seconded by Councilmember Laliberte, I would like to submit to the city council, facts that Council Member McGehee violated those very standards.

In accordance with the purpose of the City of Roseville ethics resolutions, "Officials in the public service must maintain the highest possible standards of ethical conduct in their transactions of public business". Section 3. Ethical Considerations, offers the following two items where I believe Council Member McGehee violated her ethical standard of care:

- 1) That **Public Officials be independent and impartial**
- 2) That **government decisions be made in proper channels**
- 3) **3B. Confidential Information.** Use of information not generally made available to and/or is not known to the public
- 4) **3N. Compliance with Laws.** Public Officials shall comply with all local ordinances.
- 5) **Other ethical considerations**, per paragraph two "...but these (violations enumerated below) do not necessarily encompass all the possible ethical considerations that might arise".

From the minutes of the July 11 meeting, the proposed minor subdivision of 1926 Gluek Lane was denied based upon the following findings:

- A) Runoff and drainage issues in this area are extreme to say the least without more information being known about the proposed subdivision and impact to the current drainage issues; and
- B) City Code is not being met as recently amended for lots no smaller than 85' in width, making one of the proposed parcels actually an unbuildable lot, as well as not in keeping with existing and adjacent lot sizes within the character of this neighborhood.

Violation 1 – Public Officials be independent and impartial

In reference to denial finding B, there are three points of ethical violations that I would like addressed:

1a) Hearing on 2201 Acorn Road, water drainage issues.

1b) Hearing on 2201 Acorn Road, neighborhood character

1c to 1e, focus on Councilmember McGehee's discussion of the motion, 3:52:30 to

1c) Hearing on 1926 Gluek Lane, assertion that, I, the petitioner, do not care about the neighborhood character

1d) Hearing on 1926 Gluek Lane, assertion that, I, the petitioner of this lot subdivision needs more money and that she "personally doesn't feel that it is a valid reason to split these lots".

1e) Hearing on 1926 Gluek Lane, understanding upon purchase by neighbors not to subdivide in neighborhood

1f) Hearing on 1926 Gluek Lane, the appropriateness of building on peat

1a) Hearing on 2201 Acorn Road, water drainage issues.

Commentary: In my application for Gluek Lane, Councilmember McGehee stated that the drainage concerns in this "area" (a term yet to be defined by the City) are "are extreme, to say the least and that hydrologist should be consulted, as it is only common sense". Yet, at the very same meeting, Councilmember McGehee allowed the proposed split of 2201 Acorn to progress based upon her statement of "the builder seems to be very cognizant of the runoff issues, as is the city. And I think it has been documented and clear that this is a problem in terms of keeping the water on your own property that is a state mandate and so, that is something again that is not our sole jurisdiction". In this statement she acknowledges the City Council's role, in ensuring that the City Staff has done their due diligence and ensuring that the contractor will do their duties, along with the Rice Creek Watershed. By denying this application, she is upholding different standards for different residents based upon her personal opinion.

1b) Hearing on 2201 Acorn Road, character of neighborhood.

Council Member McGehee, stated that the proposal for this lot subdivision at 2201 is "and I think the custom homes, with any hope, will blend nicely into the neighborhood". Council Member McGehee further states that "not something to which we can object, we have our limitations and our code" (July 11 video 3:01:30). I don't see any legal way except to approve this subdivision"

Commentary: The same standards for lot size and width were met on the proposed subdivision on 1926 Gluek lane; however, unlike Councilmember McGehee's statement above on 2201, her statements on 1926 Gluek were inconsistent with her position of the Council's legal latitude. She was independent and impartial on the 2201 Acorn split, approving it even though she appeared not to like it; however, she did not exercise this same impartial, independent and legal judgement on the 1926 Gluek Lane subdivision.

1c) Hearing on 1926 Gluek Lane, assertion that, I, the petitioner, do not care about the neighborhood character

Commentary: I, and my family, care about this neighborhood. Councilmember's McGehee implication by our action of subdividing our lot, is that we do not care about our neighborhood. On page 45 of the minute meetings, Ms. Koland is noted as saying 'Ms. Koland agreed their neighborhood was well treed and very enjoyable, and therefore looked forward to letting someone else utilize this portion of their parcel to also enjoy the neighborhood.' In our 12 years in this neighborhood, we have helped countless neighbors remodel their homes, organized national night out get-togethers, watch neighbor's homes while on vacation, responded to fire alarms, protected children, and lent a helping hand. Beyond this, we have volunteered countless hours at our local elementary school and church in this very neighborhood. The assertion that I do not care about my neighborhood is unsubstantiated, biased, and

damaging to my reputation in this community. For Councilmember McGehee to make these accusations is dishonorable, unprofessional and is certainly not impartial.

1d) Hearing on 1926 Gluek Lane, assertion that, I, the petitioner of this lot subdivision needs more money

Commentary: The city of Roseville does not require that a reason be submitted for splitting a lot, nor did I provide one. During the Council discussion section on the lot subdivision of 1926 Gluek Lane, Councilmember McGehee stated that "people" when they need more money, split their lot. She then went on to further state that this was "not a valid reason to split these lots". For Councilmember McGehee to make these accusations is dishonorable. In her role as a public official, she used her position and office to personally attack and undermine my credibility and reputation.

1f) Hearing on 1926 Gluek Lane, the appropriateness of building on peat

Commentary: No evidence was brought forward indicating that there was peat in the lot to be split. Evidence was shared that there was peat discovered at 1895 Gluek Lane, as was testified by its homeowner. It is also important to note that a house was successfully built on at 1895 Gluek lane and has been there for many, many years. Councilmember McGehee brought forth information as it is a fact and is leveraging, with bias, that this is a significantly detrimental fact to the subdivision on this property. If in fact peat does exist, the City Code does not prohibit building on peat. This is another attempt to leverage her personal bias in lieu of being independent, impartial and following the City Code.

Violation 2 – Government decisions be made in proper channels

Response: Per the testimony during the City Council meeting on July 11 of Assistant Public Works Director and City Engineer, Mr. Jesse Freihammer, he outlined the "proper channels" for consideration and approval of this subdivision. His testimony was captured in the meeting minutes as follows: "Mr. Freihammer noted staff's review and approval of those grading plans, as well as that of other jurisdictional regulating agencies, in addressing how current flooding issues are mitigated would serve to address concerns to prevent exacerbating flooding elsewhere or making it worse than currently found". As noted in the meeting minutes, "Ms. Koland referenced line 98 of the subdivision packet, the flooding in this area is due to the larger system and not residential development. At the time the projects pulls a grading permit, Ms. Koland noted there would be significant review to ensure compliance with code."

Commentary: Mr. Freihammer and his team approved this subdivision and outlined the next and proper steps that would be taken to address these drainage concerns. While I agree that the Council has the authority and duty to review and approve of proposed subdivisions, the approval by the professional staff was that the grading/water issue would be dealt with during the permit process. This is the standard process that the city follows for proposed subdivisions. This is further supported by the denial of my right to pursue any water runoff remedy as provided by the Roseville City Code section 1017.26, which allows the use of constructed facilities to address stormwater runoff. Through Councilmember

McGehee's actions, she undermined and overruled the professional recommendations of staff and the proper process by which this situation should have been properly handled.

Violation 3 – 3B. Confidential Information. Use of information not generally made available to and/or is not known to the public

Issue: At the City Council meeting on July 18, 2016, Councilmember McGehee stated that "we have actually had homes whose basements have collapsed in that area due to water issues that we have".

Response: I would like this comment reviewed for public knowledge. I was not aware of this situation. I agree it would be relevant information to share, if it was due to a global flooding issue that impacted a house. If it was flooding due to the homeowners drainage issues, it is not relevant to this discussion.

Violation 4 – 3N. Compliance with Laws. Public Officials shall comply with all local ordinances.

In reference to denial finding B, there are three points of ethical violations that I would like addressed:

- 4a) City code is not being addressed as recently amended for lots no smaller than 85' in width.
- 4b) The determination that "one of the proposed parcels actually an unbuildable lot"
- 4c) The determination that this subdivision is "not in keeping with the existing and adjacent lot sizes within the character of this neighborhood"

4a) City code is not being addressed as recently amended for lots no smaller than 85' in width.

Response: See attached letter dated 7/18/16, addressed to the City Council from Brad Koland. This letter addresses many items, including this topic. At the 7/18/16 Council meeting, I summarized this letter and submitted copies to the Council and City Manager. In this letter, I specifically detailed the facts and required dimensions stipulated by Roseville City Code. This submission is in conformance with City Code. As such, the Council's statement of fact is not true. As a false statement, this action is in direct violation of the city's ethical code, as outlined in item 3.N.

Commentary: At the City Council meeting on July 11, Senior City Planner, Mr. Bryan Llyod, verified that the submission is in compliance with City Code, and affirmed that the City Staff approved the subdivision. The City Council was told by their staff, not once but twice, that the proposed lot split met city code. On July 18, I presented further facts that the proposed subdivision met city code requirements, yet Councilmember McGehee refused my request to remedy this false statement through a motion to reconsider.

4b) The determination that "one of the proposed parcels actually an unbuildable lot".

Response: During the City Council meeting on July 11 and as noted on page 45 of the meeting minutes, Senior City Planner Llyod was noted "indicating the lot would be suitable on which to build a home".

City Code: The city code establishes standards for minimum width, length and area. The proposed subdivision exceeds the setback width requirement, exceeds the area, and meets the minimum rear lot width.

Commentary: Clearly, if this lot meets and exceeds all the dimensional requirements prescribed by the city, then this should by definition, be considered a buildable lot. If the City Council considers this an "unbuildable lot" then the City Council should change the city code. If additional proof is necessary, I can provide the reviewer of this petition with development plans that will demonstrate that a house will indeed fit well on this subdivision.

4c) The determination that this subdivision is "not in keeping with the existing and adjacent lot sizes within the character of this neighborhood"

Response: This statement is not supported by City Code, as there are no provisions for meeting specifications of adjacent lot sizes or the character of this neighborhood.

City Code: There is no provision in the City Code for specifications of adjacent lot sizes or the character of this neighborhood.

Commentary: The inference that I have from this statement is that the City Council is trying to create or enforce a building covenant. Building covenants are legal agreements that typically cover associations of homeowners. These homeowners voluntarily choose to enter a legal binding agreement with their neighbors that governs the development in which they live. There is no such agreement that I entered with my neighbors, nor with the City of Roseville. The City of Roseville has the Community Aspiration to be "safe and law-abiding". Implementing a non-existing contractual agreement is not abiding by the laws of the State of Minnesota.

Violation 5 - Other ethical considerations

In addition to the three violations noted above, I content that the Councilmember also violated another aspect of the ethical standards that govern the City's actions. Per paragraph two of the ethical resolution, consideration for this afforded by the following language: "...but these (violations enumerated below) do not necessarily encompass all the possible ethical considerations that might arise".

In reference to denial finding B, there is one point of the ethical violations that I would like addressed:

5) Using false statements to substantiate a minor subdivision denial

5) The City Councilmember knowingly made false statements in the denial of this application and during the meeting on July 11.

Response and commentary: While not specifically outlined in the code of ethics, making knowingly false statements seems to me like an unreasonable standard for the City Council and its members to promulgate in the discharge of their duties. As outlined above, the Councilmember McGehee was informed by the city's professional staff that the proposed subdivision met all relevant city code

requirements with regards to lot width. Councilmember McGehee also heard testimony from the City Staff stating that this lot division did meet city code requirements.

On July 18, I presented the City Council with the attached letter outlining rebutting the findings of facts that the Council Member used to substantiate the denial of this subdivision request. In that letter and during the public comment section, I informed the City Council about the erroneous facts that they used in this denial. I further asked that the Councilmembers in the majority of this denial vote motion for reconsideration, as outlined by Rosenberg's rules of order, based upon these findings. Councilmember Willmus was not in attendance at this meeting; however, Councilmembers Laliberte and McGehee were in attendance. Neither Councilmember Laliberte nor McGehee took the action that they should have to remedy this false statement. By not taking this action, they consciously chose to perpetuate the denial of this subdivision based upon a false statement.

Request for special handling of this alleged violation.

Per Section 5 of the Code of Ethics, this petition is submitted to the City Attorney. Following the City Attorney's submission, the Ethics Commission shall review the allegation.

As I believe that there is no current Ethics Commission in place, based upon my understanding of the Feb. 10, 2016 meeting, I would request that the City Attorney and City Council propose a format and independent body to hear this allegation and determine if the standard outlined in Section 5.F., has been met evidencing "clear and convincing evidence" as defined by Minnesota State Law.

Regards,



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REPORT OF THE CITY ATTORNEY

In re: Complaints Alleging Violations of the Ethics Code Against Council Members Laliberte and McGehee

INTRODUCTION

On September 19, 2016, resident Brad Koland hand-delivered two (2) complaints alleging unethical actions by Council Members Lisa Laliberte and Tammy McGehee. The complaints arise from the council members' denial of Mr. Koland's July 2016 application for a minor subdivision of property located at 1926 Gluek Lane. Specifically, Mr. Koland's application requested a lot split that was recommended for approval by city staff, but was initially denied by the City Council. (A subsequent minor subdivision was approved by the City Council shortly thereafter.) The Council's initial denial was supported by the following findings:

1. The existing storm water runoff and drainage issues in the area are extreme;
2. The proposal does not meet minimum requirements of the City Code for lot width; and,
3. The (additional) runoff from the residential development intended for the subdivided parcel might be injurious to other homes in the surrounding neighborhood.

Mr. Koland alleges that Council Members Laliberte and McGehee, who voted for denial of the minor subdivision application, violated the City's ethics code in the course of doing so. Because the complaints arise under the same official council action, this office provides its investigative recommendations on both complaints into one consolidated report.

Each of Mr. Koland's complaints are attached to this Report.

PROCESS

Under Section 5 of the Roseville Code of Ethics, complaints alleging ethical violations by council members must be submitted in written form to the City Attorney. The City Attorney is obligated to investigate such complaints and issue a report that documents the results of the investigation. Under Section 5.E.2., the City Attorney's report shall be sent to the Ethics Commission, which shall convene and, if it so chooses, issue its own report and recommendation to the City Council. In the alternative, the Ethics Commission may adopt the City Attorney's report and forward the same to the City Council. The City Council then shall take action as it deems appropriate.

The standard for decisions regarding allegations of ethical violations shall be "clear and convincing evidence," which means that the evidence presented is highly and substantially more likely to be true than not.

ETHICAL CONSIDERATIONS

Section 3 of the Ethics Code sets forth 16 enumerated ethical violations, which prohibits actions ranging from holding incompatible public offices to solicitation of gifts to use of public funds. While this list is non-exhaustive, all ethical considerations under the code are governed by the following premise:

“Public Officials are to serve all persons fairly and equitably **without regard to their personal or financial benefit**. The credibility of Roseville government hinges on the proper discharge of duties in the **public interest**. Public Officials must assure that the independence of their judgment and actions, **without any consideration for personal gain**, is preserved.” (Emphasis added)

Therefore, ethical violations arise when a Public Official’s actions are motivated by personal gain over the public’s interests.

COMPLAINT ALLEGATIONS

With respect to Council Member Laliberte, Mr. Koland alleges three (3) bases for ethical violations:

1. That Council Member Laliberte failed to follow proper channels of government. Presumably, this allegation arises from the Ethics Code’s preamble contained in Section 1 (“Declaration of Policy”), which states in part:

“The proper operation of democratic government request that Public Officials be independent, impartial and responsible to the people; that government decisions and policy be made in the proper channels of the government structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government.”

Specifically, Mr. Koland complains that Council Member Laliberte did not accede to city staff’s conclusion that storm water run-off and discharge concerns could be mitigated through a subsequent grading permit review process. Even though this allegation does not allege an actual violation contained in Section 3, Mr. Koland believes this constitutes an Ethics Code violation nonetheless.

2. That Council Member Laliberte failed to act in compliance with laws under Section 3.N. of the Ethics Code. Specifically, Mr. Koland complains that Laliberte should have agreed with city staff that the proposed new lot (which was of irregular shape) complied with city code’s 85-foot lot width requirement. Also, Mr. Koland complains that Laliberte

opined that the proposed lot would be unbuildable and would not maintain the neighborhood's characteristic lot sizes.

3. That Council Member Laliberte failure to agree with city staff's factual conclusions resulted in her "making knowingly false statements" regarding the application. Even though such an allegation does not implicate a specific consideration under Section 3 of the Ethics Code, Mr. Koland complains that Laliberte purported false statements violate the code due to Section 3 not providing an exhaustive list of ethical considerations.

With respect to Council Member McGehee, Mr. Koland alleges five (5) bases for ethical violations:

1. That Council Member McGehee failed to be independent and impartial. As with allegation #1 toward Council Member Laliberte, this accusation also appears to rely on the preamble declared in the Code's "Declaration of Policy." Specifically, Mr. Koland complains that McGehee's approval for a minor subdivision in a different neighborhood that also experiences storm water run-off and drainage issues displayed a lack of independence and impartiality. Further, Mr. Koland complains that McGehee's opinions regarding the appropriateness of the subdivision in the Gluek Lane neighborhood and Mr. Koland's motives for seeking a subdivision also displayed a lack of independence and impartiality.
2. That Council Member McGehee failed to follow proper channels by, like Council Member Laliberte, not acceding to city staff's factual conclusions.
3. That Council Member McGehee improperly used confidential information in violation of Section 3.B. This section states:

"No Public Official shall use information gained as a Public Official which is not generally made available to and/or is not known to the public, to directly or indirectly gain anything of value, or for the benefit of any other person or entity; nor shall a Public Official make such information available when it would be reasonably foreseeable that a person or entity would benefit from it."

Specifically, Mr. Koland complains that this violation arises from McGehee's statement that "we have actually had homes whose basements have collapsed in that area due to water issues that we have." (Quote taken from Mr. Koland's complaint.) There is no further explanation as to how this comment contained confidential information.

4. That Council Member McGehee failed to act in compliance with laws under Section 3.N, on the same grounds contained in allegation #2 toward Council Member Laliberte.
5. That, identical to allegation #3 toward Council Member Laliberte, Council Member McGehee's failure to agree with city staff's factual conclusions resulted in her "making knowingly false statements."

ANALYSIS

As demonstrated above, the City's Ethics Code is premised upon the admonition that Public Official conduct themselves without placing their personal benefit or gain above the City's best interests. In each of the complaints here, there is no allegation or even suggestion that Council Members Laliberte and McGehee conducted themselves in a manner that placed their own personal benefit or gain above the City's best interests. Rather, the entirety of Mr. Koland's complaints allege that Council Members Laliberte and McGehee applied their own independent knowledge and opinion to the application at hand, and founded their denial of the minor subdivision application upon concern for the best interests of the City (or, at least, Mr. Koland's neighborhood as a whole).

Without any allegation that a Public Official was motivated by personal benefit or gain in the conduct of his or her official duties, it is not feasible to conclude that the evidence establishes by a clear and convincing standard that violations of the Ethics Code exist. As such, this office concludes that no such violations have been clearly and convincingly established—or even actually alleged—in the present complaints.

RECOMMENDATION

This office recommends that the City Council find that no violations of the Ethics Code have been established by Mr. Koland's complaints against Council Members Laliberte and McGehee.

Respectfully submitted,

ERICKSON, BELL, BECKMAN & QUINN, P.A.

175 176	Dated _____ _____ _____	177 178 179	By: <u>/S/ Mark F. Gaughan</u> Mark F. Gaughan City Attorney
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