



## FLUEGEL LAW FIRM P.A.

Donald J. Fluegel \*  
Daniel J. Fluegel  
Benjamin J. Colburn

Attorneys At Law  
999 Westview Drive, Suite 1  
Hastings, MN 55033-2432

Telephone 651-438-9777  
Facsimile 651-438-9775  
www.fluegel.com

To: Honorable Mayor and City Council  
From: Daniel J. Fluegel, City Attorney  
Date: January 29, 2020  
Re: Settlement Agreement – Greg J Homes of Hastings, Inc. vs. City of Hastings

### **Council Action Requested.**

Approve the Mediated Settlement Agreement in the lawsuit initiated by Greg J Homes of Hastings, Inc. against the City of Hastings relating to the South Oaks of Hastings 4<sup>th</sup> Addition.

### **Background Information.**

On February 6, 2017, the City approved the preliminary and final plat of South Oaks of Hastings 4<sup>th</sup> Addition by Resolution No. 02-06-17. The plat as proposed and approved provided for on-site infiltration of stormwater as required by the City's stormwater management ordinance. Subsequent to the plat approval, Greg J Homes of Hastings, Inc. as the applicant sought approval to utilize an adjacent off-site regional pond for infiltration of stormwater generated from the South Oaks of Hastings 4<sup>th</sup> Addition development. A dispute arose as to whether the developer should be allowed to utilize the regional pond for infiltration of stormwater generated from the development and if so, whether the developer should be obligated to contribute to improvement costs for the regional pond needed as a result of erosion that had occurred since the pond was constructed. The final plat of South Oaks of Hastings 4<sup>th</sup> Addition was not recorded within 1 year after final approval and based on the sunset provisions contained in the resolution approving the plat, the approval became null and void. Greg J Homes of Hastings, Inc. initiated a lawsuit on or about August 8, 2019 and the League of Minnesota Cities insurance trust appointed litigation counsel to represent the City in the lawsuit.

On January 27, 2020 City Staff together with the City's litigation counsel attended mediation with Greg J Homes of Hastings, Inc. and their attorneys in an effort to resolve the dispute. At mediation the parties reached a tentative settlement agreement, subject to approval by the Hastings City Council. The terms of the settlement are generally as follows:

- The developer shall file a new application for approval of preliminary and final plat of South Oaks of Hastings 4<sup>th</sup> Addition in compliance with all city and state regulations. This application shall be the same as the application previously approved by the City pursuant to Resolution No. 02-06-17. The developer shall pay all application and escrow fees as normally required with a plat application.
- The developer shall pay previously charged escrow fees of \$7,829.50 within 15 days of final approval of this settlement agreement by the Hastings City Council. Those escrow

fees were outstanding from the original plat application of South Oaks of Hastings 4<sup>th</sup> Addition and subsequent work by City Staff and vendors relating to the request to utilize the regional pond referenced above.

- The City will not seek to charge the developer for any pond remediation including costs or expenses of erosion problems of the pond located Northwest of Bohlken Drive, that exists as of January 27, 2020.
- It remains within the City's discretion as to the method and when and if to remediate the erosion problem of the regional pond referenced above.

Because this settlement will allow the developer to proceed with the development of the South Oaks of Hastings 4<sup>th</sup> Addition in the same manner that the developer could have proceeded with development after receiving the preliminary and final plat approval in February of 2017, which approval was not in any way conditioned upon the developer contributing to improvement of the regional pond, and the settlement provides that the developer will pay the outstanding escrow fees due to the City, City Staff and the City's litigation attorneys recommend that the City Council approve the Mediated Settlement Agreement. Assuming that the mediated settlement agreement is approved, the developer will then promptly submit its application for preliminary and final plat approval of South Oaks of Hastings 4<sup>th</sup> Addition and the planning commission and City Council will thereafter be asked to review and approve the preliminary and final plat application in the normal course. That process will include the holding of a public hearing at the planning commission level.

**Financial Impact.**

The financial impact of the Mediated Settlement Agreement will prevent the City from incurring additional costs related to the pending litigation and will provide for recovery of the previously charged escrow fees as noted above.

**Attachments.**

Mediated Settlement Agreement.

DAN/ksk

MEDIATED SETTLEMENT AGREEMENT

CONTROVERSY: HOMES INC. v. HASTINGS

Following a mediation in the above entitled controversy before Mediator John W. Borg, on 1/27, 2020, the parties agree to settle as follows:

1. Pursuant to the requirements of the Minnesota Civil Mediation Act, the Mediated Settlement Agreement is a binding and enforceable agreement. Under this Act, the Mediator further advises the parties that: (a) he has no duty to protect their interests or provide them with information about their legal rights; (b) signing a mediated settlement agreement may adversely affect their legal rights; and (c) they should consult an attorney before signing the Mediated Settlement Agreement if they are uncertain of their rights.

2. The Agreement to Mediate is incorporated by reference.

3. This Mediated Settlement Agreement contains the entire agreement between the parties, which is binding and enforceable.

4. The parties shall dismiss the lawsuit entitled Homes Inc  
v. Hastings, Court File No of filed  
("the Lawsuit"), including all claims and counterclaims, with prejudice and without an award of costs to either party. The parties release each other from any and all claims, including but not limited to any claims made, or which could have been made in the Lawsuit.

5. The Mediated Settlement Agreement and its terms shall not be deemed to be an admission of liability for any claims asserted in the Lawsuit, and any such liability is expressly denied by the parties.

~~6. This Mediated Settlement Agreement and its terms are confidential and shall not be disclosed directly or indirectly to any third party except to accounting, financial, or legal advisors, who shall be bound by this same confidentiality obligation. If disclosure is required by law, notice of such disclosure shall be provided to all parties and the Mediator in advance of this disclosure. Furthermore, any disclosure shall be pursuant to whatever restrictions on further disclosure may be available.~~

7. The enforcement of this settlement is not dependent on the preparation of formal documents, stipulations and/or releases. The parties and counsel shall use their best efforts to concur as to the detail of such formal documentation, and

agree that should any formal documentation detail be the subject of dispute, the Mediator shall serve as a binding arbitrator to resolve such dispute and determine such dispute documentation detail based on his determination of what is consistent with the intent and spirit of the negotiations and/or what is fair and equitable under the circumstances. This Mediated Settlement Agreement shall not be construed against any party by reason of that party being the drafter of the Mediated Settlement Agreement.

8. The material and essential terms of the settlement are:

A. Homes shall file a new application for approval of preliminary and final plat of South Oaks, 4<sup>th</sup> addition of Hastings, in compliance with all city and state regulations;

This application shall be ~~consistent~~ <sup>same as</sup> with the application previously approved by Hastings by resolution 02-06-17. Homes shall pay all application and escrow fees.

B. Homes shall pay <sup>previously charged</sup> ~~past due~~ escrow fees of \$7829.50, within 15 days

~~of~~ of final approval by Hastings city council.

C. City will not charge Homes for ~~past~~

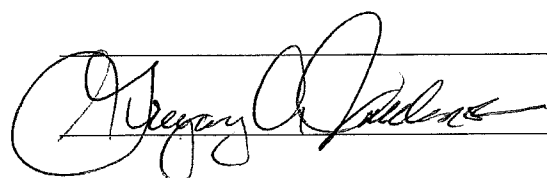
~~NO of Botten~~ pond remediation costs/expenses of erosion problem of the pond

of this agreement.

NW of Bohlman Dr, that exists  
as of 1/27/20.

D. It is within the city's discretion as  
to the method and ~~timing~~ when and if,  
to remediate the erosion problem  
of the pond in P.C.

E. This agreement is not  
effective ~~as~~ as to  
the city until approved by  
C.C. The agreement will  
be presented to C.C. at  
its 2/3/20 meeting  
for consideration. Home  
may not revoke its  
agreement <sup>within</sup> before 2/4/20,  
if the C.C. does not  
approve it.

 Gregory A. Jablonska

Don-1151-Ltel-

Dan Dietrich