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CITY OF ORONO

January 27, 2006

Mr. Greg Gappa
Director of Public Services
City of Orono
P.O. Box 66
Crystal Bay, MN 55323-0066

VIA FACSIMILE AND U.S. MAIL

**Re: Stephen Paidosh Residence
4300 North Shore Drive, Orono**

Dear Mr. Gappa:

I represent Stephen Paidosh and the purpose of this letter is to further discuss the issues raised in the letter from Mr. Paidosh to the Orono City Administrator and others dated October 27, 2005, and your reply letter to Mr. Paidosh of November 4, 2005.

As you know, the City of Orono is already well underway in a project which will direct upstream runoff to the City lot adjacent to the easterly boundary of the Paidosh property at 4300 North Shore Drive. We assume this project will now be completed in the spring, although we now have an additional concern that spring runoff will create further problems since there are currently no control systems in place to slow down the water that is now piped directly to the upper portion of the City lot next to the Paidosh property. Mr. Paidosh has previously expressed his concerns to you that this concentrated amount of runoff will (1) on the upper course of the water running down the City lot, possibly erode or destabilize the ground around his house foundation, possibly causing further problems to a foundation which has already settled significantly in the past, and (2) on the lower course of the water running down the City lot, probably contribute to a pre-existing flooding problem near his lakeshore, which already typically becomes unusable for some period of time following significant rainfall.

Please be advised that the situation the City of Orono is creating for Mr. Paidosh could give rise to a common law cause of action for nuisance or trespass. In this regard, we direct you and the City Attorney to *Chabot v. City of Sauk Rapids*, 422 N.W.2d 708 (Minn. 1988). In *Chabot*, the Minnesota Supreme Court recognized that:

A city can be liable for trespass or nuisance caused by such an increased flow of water or by a change in the flow of water which affected its normal and natural flow. See *Wilson v. Ramacher*, 352 N.W.2d 389, 394 (Minn. 1984).

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Id. at 713. For example, the Court noted that:

It is possible that plaintiff could have shown that . . . the city had approved a number of building permits in the immediate vicinity of the [plaintiff's] home which added additional run-off of water He could perhaps have shown by expert testimony that these permits increased the risk of damage to the plaintiff's home.

Id. at 713-714. The *Chabot* Court did not reach this particular issue since it was not properly preserved below. Nonetheless, the principle is still applicable.

In the case of the Paidosh property, the City, by its own *direct* actions, is increasing the flow of water onto the Paidosh property, thus creating an even clearer case of liability for trespass and nuisance than by merely granting building permits to third persons who in turn create a water problem. In addition, the City of Orono, through its own ordinances, recognizes the problem caused when private property owners attempt to do the very thing that Orono is now in the process of doing itself. *See* Orono Ordinance Sections 58-2(1)(e)(making it a misdemeanor for a person to increase the volume or velocity of surface water runoff leaving his property without a regulatory permit from the City) and 78-674 (prohibiting developments and uses that result in water runoff causing floods, erosion or deposits on adjacent properties).

We understand that the weir system proposed for the upper part of the City lot may or may not address Mr. Paidosh's first concern, although Mr. Paidosh has not been presented with any detailed, formal drawings of this proposed system. We request the opportunity to review such plans prior to any further construction. We also request your written opinion as the City Engineer that the water control system in this upper course will not have the adverse effect that Mr. Paidosh reasonably fears it will.

With respect to the lower course of the City lot, your letter of November 4 states that "a swale will be graded across the flatter slope grass area to keep the water on the City property. No work will be completed in the area within about 200' of the lake as this area is so flat that it is not possible to grade the area to drain any better than it does today."

We take exception to this statement. The reality is that the last 200' of the City lot is sloped so that it drains directly towards the Paidosh property (see contour map attached to your letter of November 4). In fact, the City previously allowed the adjacent property owner to increase the slope away from his house. This area could and should be re-graded so as to continue the swale right down to the water's edge. This will properly prevent any increase flow of water on the City lot from reaching the Paidosh property and increasing its existing flooding problem. If the City is concerned about too much runoff reaching the lake in this area, then the City could create other structures within the swale area (such as so-called "rain gardens" or "tree trenches") or plant other vegetation to absorb more water before it reaches the lake (so long as any such structures do not involve any ponding of water which could create a mosquito problem).¹ As an alternative, or in addition, the City could bring in extra fill for

¹*See, for example*, the types of runoff control devices which will be installed in the City of Mound's Lost Lake development, as recommended by the Minnehaha Creek Watershed District.

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the lakeshore portion of the Paidosh property, so that the City's water stays on the City's lot. All of this work should obviously be done before the City completes its current project, or access to the lakeshore for this grading will be rendered impossible or much more difficult.

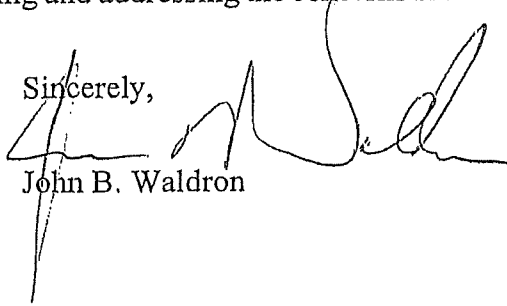
Your November 4 letter also states that the City's project "does not change the overall drainage *pattern* since this water previously reached the City property after flowing across the three Park Drive properties." (Emphasis added.) While this statement may be true in some respects, it ignores the fact that, in the course of crossing these three other properties, there was much opportunity for the water to seep into the ground, since it was crossing vegetated surfaces at a slower velocity, as opposed to now where it is being funneled across and through impervious surfaces at a much higher velocity. In addition, the water was diverted by running into other obstacles such as buildings, driveways, and other impervious surfaces. The fact remains that the construction of the new home upstream and the other neighbors' efforts to reduce the increased flowage of water onto their properties (such as a trench dug near the top of the Palm driveway) have resulted in the Paidosh property remaining saturated for longer periods of time after rainfalls. The Paidosh family has tolerated this condition over the past rainy season while their neighbors negotiated with the City to resolve the problem. They never imagined the City's solution would be too permanently and more efficiently, via the new storm sewer system, divert *all* the water in their direction. In the past, the Paidosh property only had to take the water that came from part of the Palm property (pre- trench), a large portion of the Riviere property, the City's property and the Paidosh property. Now, with the City's new project, the Paidosh property is taking water from the street and properties from four doors east.

Your letter also states that "this project is not going to substantially change the existing conditions." We submit this is also not true, for the reasons stated above. In addition, contrary to the letter, you have already admitted to Mr. Paidosh when you were on the site that his property will, in fact, receive more water after the completion of this project than before.

Given the above considerations and the potential liability to the City in continuing with this project as is, we respectfully request that the City of Orono seriously consider and discuss with Mr. Paidosh a more creative solution to the water problem in this neighborhood than the solution it is presently pursuing.

Thank you for promptly considering and addressing the concerns stated in this letter.

Sincerely,


John B. Waldron

cc: Mr. Stephen Paidosh
Ron Moorse, City Administrator



CITY of ORONO

Municipal Offices

Street Address:
2750 Kelley Parkway
Orono, MN 55356

Mailing Address:
P.O. Box 66
Crystal Bay, MN 55323-0066

November 4, 2005

Mr. Stephen Paidosh
4300 North Shore Drive
Orono MN 55364

Dear Mr. Paidosh;

This letter is in response to your October 27th letter to the City regarding the Park Drive drainage project. This project is to install curb and gutter and a catch basin and pipe to divert the water flow from Park Drive that currently flows across 1447 and 1453 Park Drive onto the platted 50' wide City Right of way between your residence and 1453 Park Drive. Water from 500' of the street and adjacent areas drains across these two properties resulting in erosion on the steep slopes and also water in the home basements. Riprap check dams will be installed on the upper steep slope gravel area of the City land which currently is eroding, and a swale will be graded across the flatter slope grass area to keep the water on the City property. No work will be completed in the area within about 200' of the lake as this area is so flat that it is not possible to grade the area to drain any better than it does today. This area is also close to the lake level, wet, and has poor soils and any grading work in this area will create more problems than are solved.

On Friday October 28th, Scott Oberaigner and I met on site with you to discuss this project. At this meeting we reviewed the approved grading plan for the new residence at 1435 Park Drive and a copy of this plan is included with this letter. This plan shows that the drainage pattern for the new house matches the existing house drainage pattern with a ridge across the front yard. Most of property drains towards the lake with part of the front yard and the driveway draining towards the street. Swales have been graded to positively drain the water towards the lake along both property lines. This property conforms to the City impervious surface and structural coverage regulations. The new house matches the existing house elevation, the new driveway elevation of 970.4 at the front of the garage compares to an existing elevation of 970.3 in this area.

I have also attached a map with aerial photography, property lines, and 2' elevation contours for this area. The contours show that the drainage pattern is towards the northwest across the City property. This project will divert the street water from flowing across 1435, 1447, and 1435 Park Drive onto the upper portion of the City property which does not change the overall drainage pattern since this water previously reached the City property after flowing across the three Park Drive properties. The lakeshore area is very flat with a high water table because the elevation of this area is only several feet above the lake level, that this area can be wet at times is not unexpected, and this project is not going to substantially change the existing conditions.

This project will be completed using City Stormwater Utility Funds which are obtained from an annual charge to all properties on utility bills and from Stormwater Trunk Fee charges from new development projects. These funds are used to operate and maintain the City's stormwater drainage system and to complete stormwater projects to correct drainage problems. Funding for these stormwater projects is based on the following priorities.

1. Protection of existing structures from stormwater damage.
2. Prevention of erosion problems.
3. Prevention of low area flooding that does not threaten structures.

Property owners are responsible for handling stormwater drainage on their properties. However, when public street drainage is causing property damage or erosion, the City has been completing projects with Stormwater Utility Funds to direct the street drainage to more appropriate outlets. This project is a priority for City funding because the public street drainage is causing both wet basements and erosion, and it is appropriate to redirect the street drainage away from houses onto City property where erosion can be controlled and structures are not impacted by the stormwater.

Thank you for your assistance. Please contact me at 952-249-4621 or by email should you have any questions.

Sincerely;



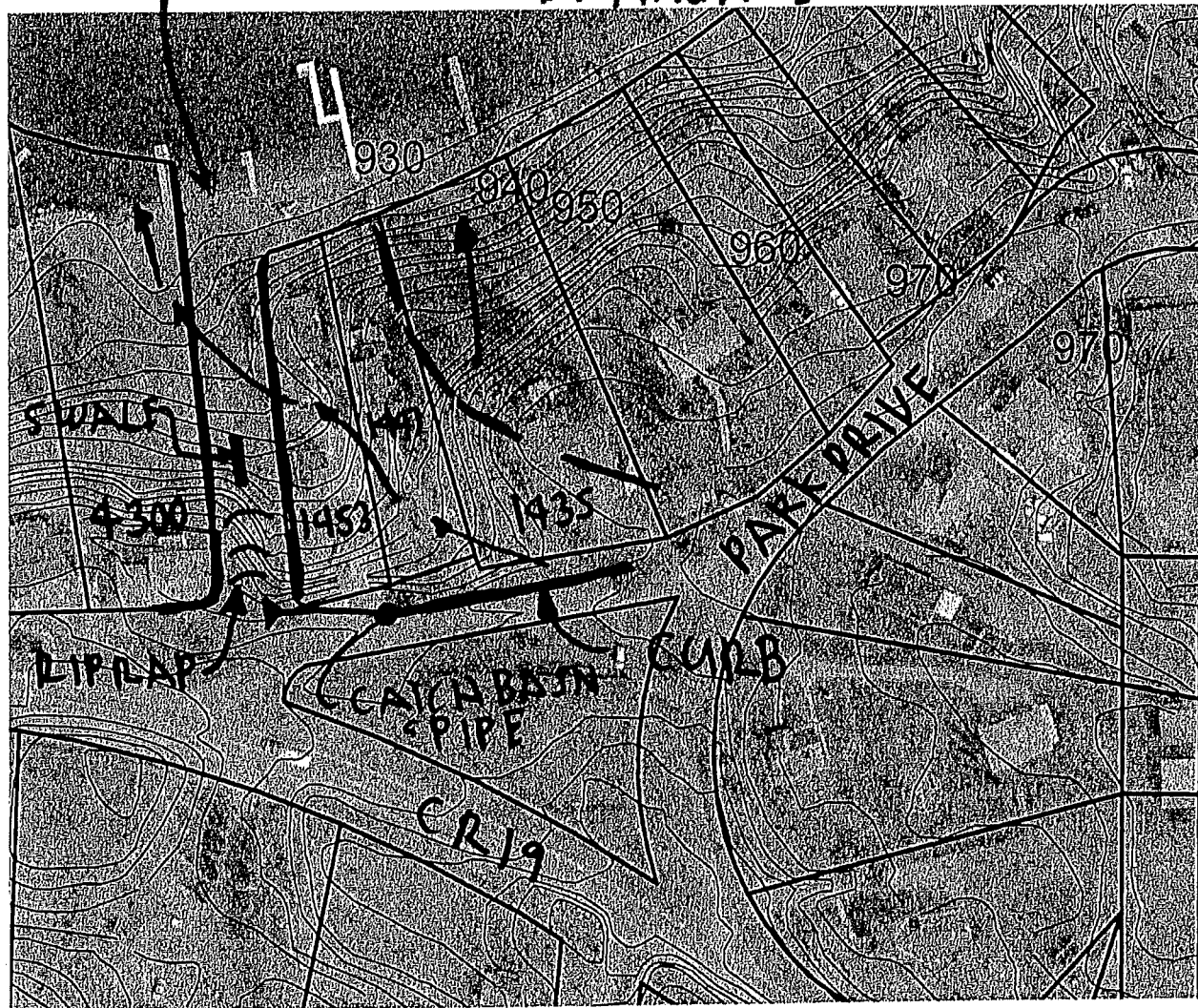
Greg Gappa
Director of Public Services

ggappa@ci.orono.mn.us

Copy: Mark Palm and Pamela Schlender, 1447 Park Drive
Timothy Riviere, 1453 Park Drive
Ron Moorse, City Administrator
Mayor Peterson and Council Members



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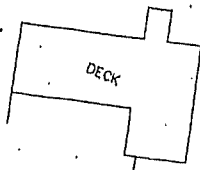
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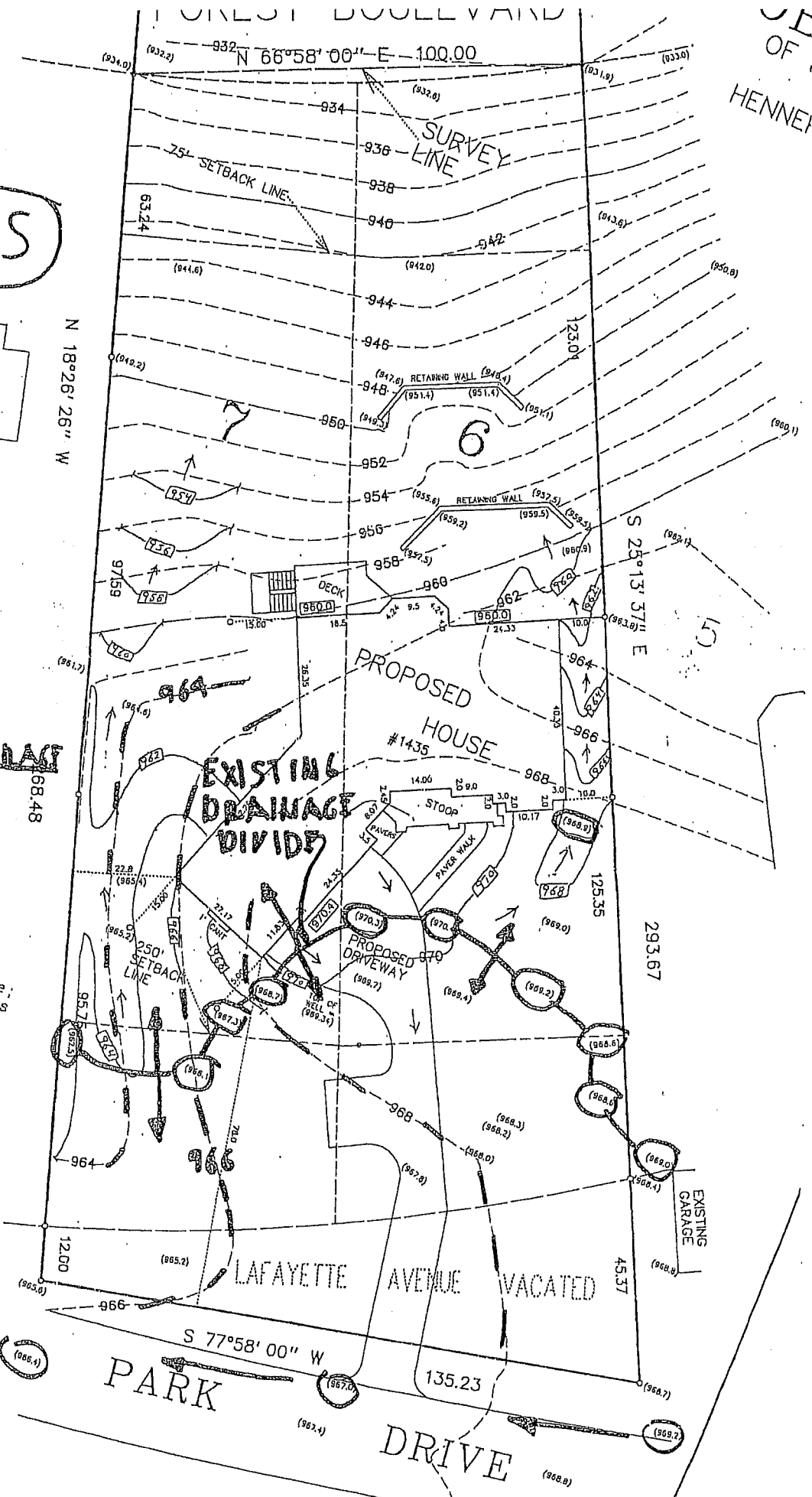
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October 27th, 2005

City Administrator, Mayor and Council
City of Orono
2750 Kelly Parkway, P.O. Box 66
Crystal Bay, MN 55323

Dear Mr. Moorse,

In light of my recent phone conversation with Greg Gappa on Tuesday, October 25th here is a letter documenting my concerns of the proposed plans by the City of Orono to increase the watershed of Park Drive to city property adjacent to 4300 North Shore Drive and 1453 Park Drive.

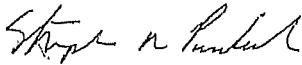
My initial issue is why the city taxpayer should incur the cost of the city modifications when the problem initiated from the construction of the new home at 1435 Park Drive. Why doesn't the city pursue more aggressive alterations to the new home's landscaping at the new homeowner's expense to eliminate or greatly reduce the problem before spending taxpayer money to alter water flow onto the city's and my property? Potential solutions could be tying in the street side downspouts and adding a driveway grate into an underground drainage system to discharge the water to the back side of the new home. A swale could be formed to divert run off from the front yard to the back of the home between the properties of 1435 and 1447 I effectively used this technique at a former residence of mine on the lake and it was very effective and low cost to implement.

I am sympathetic to the wet basement issues of the residences located at 1447 & 1453 Park Drive which is the direct result of the landscaping issues related to the construction of the new home at 1435 Park Drive. I am also concerned about the proposed city plan to divert additional water flow to city property which is adjacent to my property. A large portion of both properties are at the same level. From observing the flow of water during major or frequent rain storms the city property and a portion of my property does not completely drain into the lake but pools up within 10 to 30 feet from the lake. I feel it is unfair to render longer periods of my property unusable by diverting additional watershed to that area of the combined properties. Not until the pooling water evaporates are we able to mow the grass without damaging the sod or use my property for recreational activities. Any implementation of the city's plan to curb and divert additional water onto the city property adjacent to my property should include a swale within city's property to ensure the water continues to the lake. A more esthetically pleasing alternative would be to provide a minor re-grade of a portion of the city property and my property to ensure that the water does not pool up but continues into the lake (Reference Chapter 78 "Zoning Regulations", Article 4, Section 78 "Drainage").

Again, I feel the city has a fiduciary responsibility to ensure that the property causing the problem has exhausted all reasonable solutions before the taxpayer and the local adjacent properties owners are burden by city's proposed solution. The problem should be resolved at the source of the problem at 1435 Park Drive. The proposed solution by the city should only be implemented once the fiduciary responsibility has been met. In my opinion the city has not met this responsibility as of October 27, 2005. I would like a written response within seven business days of October 27th, 2005 from the City of Orono with the assurance that the city will address any hardship that occurs to my property if the city goes ahead with its plan to divert more watershed to its property between 1453 Park Drive and my property at 4300 North Shore Drive.

I can be reached at (W) 763-494-5433 and (H) 952-472-4217. My residences is at 4300 North Shore Drive Orono, MN 55364.

Regards,



Stephen Paidosh

Cc: Mark Palm
Tim Riviere
Greg Gappa