

**FINAL REPORT OF INVESTIGATION  
CONCERNING MUNICIPAL PRACTICES**

Submitted to:

**THE CITY OF NORTHFIELD, MINNESOTA**

December 17, 2007

As authorized by Northfield City Council  
Resolution M2007-0153 (October 15, 2007)

Respectfully submitted by:

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## INVESTIGATION REPORT

<b>Client:</b>	City of Northfield
<b>Subject:</b>	Municipal Practices
<b>Report date:</b>	December 17, 2007
<b>Submitted by:</b>	William J. Everett Everett Law, LLC

**FINAL REPORT**

### INTRODUCTION

Attorney Clifford M. Greene contacted me on September 6, 2007. Mr. Greene inquired if I could conduct an investigation for the City of Northfield. Mr. Greene advised me the City had identified specific issues for investigation by the Office of the State Auditor. He said the Auditor had declined to exercise jurisdiction while encouraging the City to address or investigate these issues through other means.

### AUTHORITY AND APPOINTMENT

Section 3.7 of the Northfield Charter provides: "The council or an officer or officers formally authorized by the council may make investigations into the city's affairs. The council may provide for an examination or audit of the accounts of an officer or department of the city government. The council may conduct surveys or research studies of subjects of municipal concern."

At a regular meeting of the Northfield City Council on September 10, 2007, the Council passed Motion M2007-0131. The motion authorized Everett Law, LLC to undertake preliminary discussions with the Mayor, City Council and City Administrator to identify issues of concern and to determine the scope of work necessary to conduct an appropriate investigation. On October 15, 2007, the City Council reviewed the proposed scope of work and cost estimate. The Council approved Motion M2007-0153 authorizing this investigation.

### LIMITATIONS ON SCOPE

As I began this investigation, the Goodhue County Attorney's Office also began reviewing the allegations and evidence to determine whether to conduct a criminal investigation. I met periodically with representatives of the County Attorney's Office and Sheriff's Office to ensure my efforts would not impede their ability to fully investigate matters they deemed potentially criminal in nature. Communications continued throughout the course of my work. The County

Attorney's Office and Sheriff's Office asked me *not* to take action on certain issues and allegations pending the outcome of their criminal review.

During my investigation, Lee Lansing sued the City of Northfield and some of its elected and appointed officials. His lawsuit alleged violations of the Open Meeting Law and Data Practices Act. After I consulted with Attorney Greene, we *determined the facts surrounding those allegations would likely emerge through the civil litigation process and this investigation need not concurrently address them.* Lee Lansing subsequently withdrew as a plaintiff from that lawsuit.

### INVESTIGATIVE ACTIVITIES

Everett Law, LLC conducted approximately two dozen personal interviews during the course of this investigation. We interviewed the following individuals:

- o Lee Lansing (3 times)
- o Scott Davis
- o Arnie Nelson
- o Kris Vohs
- o Roger Knutson, Esq.
- o Elizabeth Wheeler
- o Paul Norby
- o Beth Closner
- o John Donnelly (*Frauenschuh*)
- o John Brookins
- o Mark Ruff (*Ehlers*)
- o Jim Pokorney
- o Jon Dennison
- o Noah Cashman
- o Al Roder (2 times)
- o Bill Gorton (*McComb Group*)
- o Kathleen McBride
- o Randy Lutz
- o Thomas Harlan, Esq.
- o Brian O'Connell
- o Scott McPhee

We contacted other individuals to obtain background information, documents, and other materials potentially relevant to the investigation.

Additional investigative activities included:

- o Reviewing agendas, minutes, City Council discussion items and video recordings of Northfield City Council meetings.
- o Analyzing a large volume of documents obtained from the City of Northfield and other individuals and entities.
- o Conducting research into records of property ownership, mortgages, transactions, etc. on file with the Rice County Recorder's office.

- o Researching and reviewing court records, filings, affidavits, and exhibits pertaining to litigation involving individuals mentioned in this report.

Everett Law, LLC devoted approximately 168 hours to investigative activities, exclusive of time spent reviewing evidence as necessary in the preparation of this report.

### **INTERPRETATION OF THE EVIDENCE**

The Northfield City Council appointed Everett Law, LLC to conduct an investigation and to prepare and submit a report that includes Findings of Fact and Conclusions. This report contains many undisputed facts. Yet in performing this work, the investigator found it necessary to consider both ambiguous and sharply conflicting evidence and to draw reasonable inferences and conclusions from the evidence as a whole. The investigator found it necessary to sometimes reject the factual contentions of one individual in favor of those put forth by another. Accordingly, in interpreting the evidence, the findings and conclusions set forth in this report to some extent constitute the investigator's opinion as to the events that transpired. Likewise, the investigator has provided opinions as to the legal or administrative significance of those events.

The impossibility of including every statement and element of evidence relative to the investigation required Everett Law, LLC to exercise judgment pertaining to the content of this report in order to provide a useable product.

Individual data subjects who deem the contents of this report inaccurate may utilize the provisions of 13.04, subdivision 5 to challenge the accuracy of the data.

### **ORGANIZATION OF REPORT**

Everett Law, LLC has provided this report and Addendum A to the Northfield City Council. The Minnesota Government Data Practices Act provides that data that has not resulted in the final disposition of a disciplinary action against employees of a government entity are "private data." See Minn. Stat. § 13.43, subd. 2. Addendum A contains private data and may be disclosed only to the data subjects and those employees or officials of the City whose job assignments reasonably require access to that data.

## OVERVIEW OF ISSUES AND FINDINGS

This overview does not provide a full account of all the evidence. Rather, the intended purpose of this overview is to orient the reader to the contents of this report by identifying the issues examined and providing a brief summary of the investigative findings and conclusions.

1. Did any City official, employee, consultant or private party exert improper influence or take improper action with regard to the site selection process for a new municipal liquor store?

*Finding:* Yes. Mayor Lansing exerted improper influence to secure a reduction in the park dedication fee for the developers of 600 Division Street and in an attempt to have the new municipal liquor store become a tenant in his son's development project.

2. Did City employees or officials act improperly regarding the *issuance* of a temporary certificate of occupancy for second floor office space at 618 Division Street South?

*Finding:* No. An outside law firm already investigated this issue on behalf of the City. The investigation concluded the City did not act erroneously in its issuance of the temporary certificate of occupancy.

3. Did City employees or officials act improperly *following the issuance* of a temporary certificate of occupancy for second floor office space at 618 Division Street South?

*Finding:* Yes. Mayor Lansing exerted improper influence regarding the temporary certificate of occupancy. He also exerted improper influence over an outside investigation conducted to examine the issuance of the temporary certificate of occupancy.

4. Whether the City violated the employee pay plan.

*Finding:* No. The evidence indicates no violation.

5. Whether the city has mismanaged the Crossings project.

*Finding:* No. The evidence indicates no mismanagement of the Crossings project.

6. Whether the City has a legal conflict of interest in the engagement or retention of the City Engineer.

*Finding:* Everett Law, LLC has not finalized this inquiry. The City Council may expect to receive a report within two to three weeks.

Additionally, a City official identified some issues the investigator determined do not warrant review. The official questioned whether the City has policies governing the use of purchasing cards and out-of-state travel. In fact, the City does have policies, which they have recently updated. The official presented generalized allegations regarding favoritism in allowing out-of-state travel, but provided no specific information that would allow investigative review. Likewise, the official presented generalized allegations that employees using city purchasing cards overspent on lunches. Again, the official provided no specific examples or information that would allow for further investigation.

## ENTITIES AND PROPERTIES DISCUSSED IN THIS REPORT

<b><i>DHJJ, Inc.</i></b>	A corporation owned by David Lansing, son of Mayor Lee Lansing. DHJJ, Inc. acquired the assets of Lansing Enterprises and now operates the business known as Lansing Hardware. (Source: Lee Lansing)
<b><i>New Division Development Company, LLC (or NDDC)</i></b>	A limited liability company formed by Randy Lutz and Beth Closner for the purpose of redeveloping the property at 618 Division Street. (Source: Randy Lutz and Beth Closner)
<b><i>The Lansing Family Trust</i></b>	A trust created by Lee Lansing and his spouse for estate planning purposes. Lee Lansing and his spouse are the only trustees. (Source: Lee Lansing)
<b><i>Six Hundred on Division, 600 Division Place</i></b>	A business entity contemplated by David Lansing and Paul Norby to develop a commercial building at that same address. They never formed the business entity. (Source: Paul Norby).
<b><i>600 Division</i></b>	Commonly known as the "Tires Plus" property. The City selected this site, owned by David and Heidi Lansing, as the preferred location for a new liquor store in March, 2007.
<b><i>618 Division</i></b>	The site of Lansing Hardware. The Lansing Family Trust sold this property to NDDC and holds a second mortgage on this property. DHJJ, Inc. leases this property for the operation of Lansing Hardware.

## INDIVIDUALS MENTIONED IN THIS REPORT

The following provides a guide to identifying and understanding the roles of individuals and entities mentioned in this report, exclusive of city officials.

<b>Beth Closner</b>	A principal in Construction Consulting Partners, Inc. She and Randy Lutz formed New Division Development Company, LLC to redevelop the property at 618 Division.
<b>Ehlers and Associates / Mark Ruff</b>	A financial consulting firm serving governmental entities. The City of Northfield has had an ongoing relationship with this firm and requested them to conduct a financial analysis of various site options as potential locations for a new municipal liquor store.
<b>Frauenschuh / John Donnelly</b>	A firm providing real estate, consulting, and other services. After the City identified 600 Division as a preferred site for the municipal liquor store, the City worked with John Donnelly and this firm to negotiate with the property owners.
<b>David Lansing</b>	The son of Mayor Lee Lansing. David Lansing owns DHJJ, Inc. In turn, DHJJ, Inc. owns Lansing Hardware. David Lansing and his wife, Heidi, also own the property at 600 Division. David Lansing worked with Paul Norby and others to create a commercial development at this site.
<b>Randy Lutz</b>	A principal in Construction Consulting Partners, Inc. He and Beth Closner formed New Division Development Company, LLC to redevelop the property at 618 Division.
<b>McComb Group / Bill Gorton</b>	Provides services that include retail site selection, market and consumer research, financial feasibility, economic impact assessments, and design and development consulting. The City requested Bill Gorton and this firm to provide services in conjunction with site selection for the proposed liquor store.
<b>Paul Norby</b>	Affiliated with First National Mortgage Sources. A self-described friend of Lee Lansing, he loaned



money to DHJJ, Inc. to assist David Lansing in purchasing 600 Division. Norby owns the property adjacent to 600 Division. He and David Lansing proposed combining their properties to create 600 on Division and/or 600 Division Place.

## ISSUE ONE

Did any City official, employee, consultant or private party exert improper influence or take improper action with regard to the site selection process for a new municipal liquor store?

### OVERVIEW

The City of Northfield operates a municipal liquor store. For several years, City officials have questioned whether the size of the current liquor store is adequate. During this time, the City has considered relocating the store to a larger location. They engaged consultants to conduct studies and city staff worked to identify potential sites.

David Lansing, son of Mayor Lee Lansing, purchased the property at 600 Division Street. Paul Norby owned property adjacent to 600 Division Street. He and David Lansing obtained approval from the Northfield City Council to combine their properties for purposes of creating a commercial development at 600 Division Street.

David Lansing and Paul Norby sought to have the Northfield Municipal Liquor Store as a tenant in the new building they proposed to construct. In March, 2006, the City identified 600 Division Street as its preferred site for a municipal liquor store. The City engaged Frauenshuh to represent it in negotiations with the owners / developers of the property. The negotiations ended without an agreement to move forward.

This investigation concludes Mayor Lee Lansing exerted improper influence to provide benefits to the developers. This investigation further concludes Mayor Lee Lansing exerted improper influence so the City's municipal liquor store would become a tenant at 600 Division Street. The fact the City did not ultimately enter into a lease or purchase agreement with the Mayor's son does not detract from the conclusion that Mayor Lansing acted inappropriately during the development and site selection process.

### FACTS

#### ***Lansing Family Trust Purchase Agreement for 600 Division Street – April 2005***

Paul Norby considers Lee Lansing a friend with whom he had coffee "every day for years." Norby indicates that Lee and David Lansing tried to "get the liquor store forever."

William R. Clifford owned the property at 600 Division Street.<sup>1</sup> According to Norby, Lee Lansing had wanted to buy that property for years. Clifford decided to sell the property in 2005.

On April 5, 2005,<sup>2</sup> the Lansing Family Trust entered into a purchase agreement with Clifford to acquire the property. Lee Lansing signed the purchase agreement as "Joseph L. Lansing, trustee, Lansing Family Trust." They agreed on a purchase price of \$300,000. (Sources: Purchase Agreement, HUD closing statement).

The HUD closing statement reflects a payment of \$9,000 in earnest money for the purchase of the property. A sworn affidavit by Lee Lansing states, "The earnest money of \$1,000 in the Purchase Agreement and the additional earnest money of \$8,000 in the HUD closing statement came from Lansing Enterprises, Inc."<sup>3</sup>

### ***Conflict of Interest Analysis, 618 Division Street – September 1, 2005***

Mayor Lansing became aware of the City's conflict of interest concerns over municipal transactions involving properties in which he had a financial interest. This notice came quite apart from the development of 600 Division Street. The Lansing Family Trust had sold the property at 618 Division Street to New Division Development Company (NDDC) in April, 2005. As disclosed by Mayor Lansing, the Lansing Family Trust stood to benefit from the successful development of 618 Division Street. NDDC approached the City with the idea of having the liquor store relocate to their property.

In a letter dated September 1, 2005, Northfield City Attorney Maren Swanson requested another municipal attorney, Kurt Fisher, analyze the existence of any conflicts of interest that might arise if the City considered 618 Division as a site for the liquor store. She explained in her letter:

"The new owner of the property has approached the City of Northfield to propose that the municipal liquor store be relocated to that property. The question is whether the Mayor may have a conflict of interest in any future sale, lease or contract between the property owner and the City."

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<sup>1</sup> It is unclear whether Clifford owned the property directly or owned it through a legal entity under his control. This distinction is not relevant to the issues examined in this report.

<sup>2</sup> The date of the purchase agreement is uncertain. Mayor Lansing states in his sworn affidavit the agreement was entered into between "the Lansing Family Trust and William Clifford on or about March 29, 2005." The date written on the purchase agreement indicates it was signed on April 5, 2005.

<sup>3</sup> The affidavit was obtained through a search of records on file at the Rice County courthouse.

(Source, Swanson letter to K. Fisher, Sept. 1, 2005)

Fisher wrote to Mayor Lansing on October 28, 2005. He indicated, "My opinion, based on the limited information I have and some assumptions is that there are reasons to conclude that a lease between the City of Northfield and New Division Development [for 618 Division] would violate" state law. (Source: K. Fisher letter to L. Lansing, Oct. 28, 2005)

### ***David and Heidi Lansing Purchase of 600 Division – October 2005***

The Lansing Family Trust eventually "assigned" the interest in its purchase agreement for 600 Division Street to David L. Lansing and Heidi Lansing. (Source: Lee Lansing Affidavit) David and Heidi Lansing closed on the purchase of this property on October 3, 2005. (Source: Lee Lansing Affidavit)

In a letter to the investigator dated December 7, 2006, Mayor Lansing indicated the \$9,000 in earnest money "paid to William Clifford from Lansing Enterprises, Inc. became a loan to David L. and Heidi J. Lansing." Mayor Lansing further indicated his son fully repaid the loan by November 29, 2005.

Norby owned a parcel adjacent to 600 Division Street. He operated a mortgage company from a house situated on his property. Norby indicated he "got David [Lansing] financing to purchase the site at 600 Division." David and Heidi Lansing executed a mortgage with Voyager Bank for \$248,000 to purchase the 600 Division Street property. (Source: HUD Closing Statement, mortgage document) David Lansing paid \$51,598.42 in cash at the time of closing. A sworn affidavit by David Lansing discloses the source of the cash:

- Norby loaned \$48,000 to DHJJ, Inc. to fund the purchase of 600 Division Street. The loan is evidenced by an unsigned note dated October 3, 2005.
- In turn, DHJJ loaned David Lansing \$51,598.42 to purchase the property. Of this amount, \$48,000 came from the Norby loan. The loan from DHJJ, Inc. to David Lansing is evidenced by an unsigned note dated October 3, 2005.

According to Norby, he and David Lansing began talking about joining their properties after David Lansing bought 600 Division Street.

Clifford, the former owner of the property, leased it to MSB Tires, LLC beginning in 2001. The lease expired on May 31, 2005, before David and Heidi Lansing purchased the property in October of that year. (Source: Lease document) By purchasing the property, David and Heidi Lansing became both the owners of the property and the landlords for MSB Tires. MSB Tires continued to rent space at 600 Division Street on a month-to-month basis.

### ***Mayor Lansing's Interactions with Tires Plus***

According to Scott McPhee, President of MSB Tires, he received a phone call from Mayor Lansing sometime in October, 2005. Mayor Lansing said "he bought the store," referring to the property at 600 Division Street. (McPhee Intv. at 3) Mayor Lansing indicated he'd like to meet with them [McPhee and his partner, Larry Brandt] sometime in October. (McPhee Intv. at 3)

McPhee described the October 2005 meeting with Mayor Lansing. According to him, McPhee, Larry Brandt and Jim Diamond attended on behalf of MSB Tires, also known as Tires Plus. The meeting took place "in the Mayor's office." McPhee related Mayor Lansing "showed us plans of what he was planning to do with the area. . . . and basically said we needed to find some new property and build a new store." (McPhee Intv. at 4) Mayor Lansing disclaimed that he referred to the property at 600 Division Street as "his."

*Everett:* Okay. Alright. And, and, and Lee maybe this was a slip of the tongue at the time I don't know. But they have, they have a clear recol-, recollection that your words were um that *you* were going to be redeveloping 600 Division.

*Lansing:* I would, I don't have any interest in 600 Division. You know that's, if I even had wanted to develop it that would be, it would not be my, my ah, would not be my choice.

(Lansing Intv. at 14-15)

Mayor Lansing confirms his son David did not attend the meeting with the Tires Plus representatives. (Lansing Intv. at 14) During the meeting, Mayor Lansing indicated he would work with the Tires Plus owners to assure a smooth transition. (Source: McPhee Intv. at 4; Lansing Intv. at 14)

McPhee did not know David Lansing had any involvement or association with the property at 600 Division Street. "[T]he first contact I ever had with David was a fax that I got of a letter basically saying that we have 30 days to leave the bulding." (McPhee Intv. at 5) The letter was dated March 29, 2006. (McPhee Intv. at 6) Prior to that letter, Tires Plus believed Lee Lansing owned the 600 Division Street property.

Indeed, Tires Plus wrote the monthly rent checks for the property to Lee Lansing.

<small>VOID IF THIS DOCUMENT HAS A COLORED BACKGROUND OR IS HEAVILY WRITTEN ON AND OTHERS, INCLUDING SIGNATURES, ARE NOT CLEARLY VISIBLE</small>		
<b>MSB TIRES, LLC</b> FRANCHISEE OF TIRES PLUS 8999 EGAN DR SAVAGE, MN 55378	<b>VOYAGER BANK</b> SHAKOPEE, MN 75-71452919	<b>023549</b>
	DATE	AMOUNT
<b>One Thousand Six Hundred Thirty Four Dollars AND 66 Cents</b>	11/21/2005	\$1,634.66
Pay to the Order of	VOID IF NOT CASHED IN 90 DAYS	
<b>LEE LANSING</b> 618 SOUTH DIVISION ST NORTHFIELD, MN 55057	<i>Scott D. McPhee</i>	

In addition to the November 21, 2005 check, Tires Plus also wrote the following:

- o Check 023590 to Lee Lansing for \$1634.66 on November 30, 2005
- o Check 024028 to Lee Lansing for \$1634.66 on January 1, 2006
- o Check 024366 to Lee Lansing for \$1634.66 on January 26, 2006
- o Check 024617 to Lee Lansing for \$1634.66 on February 27, 2006
- o Check 024838 to Lee Lansing for \$1634.66 on March 28, 2006

Mayor Lansing indicated he turned over the rent checks to David Lansing. (Lansing Intv. at 12; L. Lansing memo to W. Everett, Dec. 7, 2007) Lee Lansing stated he put the checks in the cash register at the hardware store. (Lansing Intv. at 12) Lee Lansing provided copies of the endorsed checks for consideration in this investigation. DHJJ, Inc. endorsed all but one of the checks. This check, dated February 27, 2006, had no personal or merchant endorsement. Instead, a bank endorsement stamped on the back of the check indicated "CREDITED TO THE ACCOUNT OF WITHIN NAMED PAYEE, LACK OF ENDORSEMENT GUARANTEED."<sup>4</sup>

Tires Plus issued a 10-99 to Lee Lansing for the 2005 rent payments. Mayor Lansing wrote to McPhee and Brandt late in 2006 indicating he felt "very confused with the 10-99 issues" and planned to have his accountant look into the matter. (L. Lansing letter, Nov. 6, 2006) Lee Lansing provided a letter to the investigator dated December 10, 2007 from the accounting firm for Tires Plus. This letter stated Tires Plus erroneously issued the 10-99 to Lee Lansing.

#### ***Redevelopment of 600 Division Street***

Mayor Lansing indicated he worked with his son and others on the redevelopment project planned for 600 Division Street. Mayor Lansing, David

<sup>4</sup> No evidence indicates Lee Lansing received the proceeds of this check.

Lansing, Norby and Ray Cox of Northfield Construction Company held meetings on a regular basis to plan the development.

*Everett:* Were [when] moving forward with the idea and the process for developing 600 what role did you play?

*Lansing:* Mentor.

*Everett:* Okay. Did you give him advice?

*Lansing:* Well it's my son. I mean we would, we would talk through things routinely.

*Everett:* Okay. Did you write letters for him?

*Lansing:* Ah. We would have ah, we would have several meetings ah – while this was all going on we would probably meet with the contractor ah with Paul and David ah and you know most of the time I would participate in those. We would have weekly or sometimes twice a week meetings. Discussing all sorts of things including the ah, including the redevelopment of, of a 600 Division. And ah David and I most generally of, oftentimes with Paul would go back and write the notes and write our, our ah recollection and our understanding of those meetings. So sure I would help David. That's just like any, any, any other father might.

*Everett:* Okay.

*Lansing:* But David the, the letters were David's. It's, it was his work and I would help him with the typing and we would work through the content and, and review them together and so on. So.

*Everett:* Okay. And did that include ah. Letters to ah the city?

*Lansing:* Well I would help David with, with letters to the city. And \_\_\_\_\_ were letters to – beg your pardon?

(Lansing Intv. at 15)

Norby related they had never done development work before and they let "Ray Cox lead the charge." He further explained:

- They originally intended to put up a general commercial building.

- o When putting up a building, you need to have it 50-70% leased to get financing.
- o He asked the bank what would happen if they had the liquor store as a tenant. He learned they would not need to have the building leased to the same extent. The bank told him to pursue the liquor store option; it would allow them to put up the building faster.
- o Up-front development costs could have been as high as \$100,000 and he is personally out about \$30,000.
- o The Lansing Family Trust is set up for David's benefit. The trust lent DHJJ, Inc. money for the up-front development costs.

When asked if he or entities under his control provided funding for upfront development costs to David Lansing, Mayor Lansing responded:

*Everett:* Okay. Well I'm, I'm just trying to give you a chance to react to what Norby said. Because Norby was very clear in saying that you fronted some of the development costs for David.

*Lansing:* That I fronted some of the development costs for David?

*Everett:* Yep.

*Lansing:* I don't think so. But I'll check that out. I don't even know what the development costs are. I mean I don't know what he's put in the building.

(Lansing Intv. at 18; see also Lansing Intv. at 15 (Mayor Lansing made no investment in development costs))

***Request for Minor Subdivision, Park Dedication Fee – March 20, 2006***

Norby and David Lansing requested City Council approval of a minor subdivision to be named Six Hundred on Division. This minor subdivision would allow them to combine their two adjacent properties into one parcel. The City placed the proposal on the Council's regular agenda for March 20, 2006. A staff memorandum discussing the minor subdivision request stated, "According to the park dedication requirements of the City's Subdivision regulations, the applicant is required to pay a park dedication fee of \$25,544.97."

Section 34-703 of the city code requires a park dedication for every "plat, replat, or subdivision of land allowing development for residential, commercial, industrial, or other uses . . . ."



Section 34-704(3) provides: "The park, trail and open space dedication requirement of the land to be subdivided for a commercial, light industrial, and/or nonresidential subdivision or development shall be five percent of the gross area included in the land to be subdivided."

Section 34-708 allows the city to accept a cash payment in lieu of land dedication.

Section 34-709 sets forth the formula for calculating the amount of cash payment in lieu of land dedication. That section provides:

*"If the city elects to accept a cash payment in lieu of land . . . the developer shall pay to the city the appraised fair market value of the land, at the time of final plat approval, that would otherwise be dedicated for park, trail and open space under section 34-704. The total amount of cash payment in lieu of land owed to the city shall be determined by taking the total number of acres owed the municipality multiplied by the per-acre appraised fair market value of the total development. \* \* \* The appraised fair market value of the land shall be determined by a qualified licensed appraiser and shall meet the uniform standards of professional appraisal practice. The appraiser shall be mutually selected by the city and the developer. The appraisal fee shall be paid by the developer."*

(Emphasis added)

Section 34-702 provides the City Council with discretion to waive or reduce the park dedication requirements.

According to Brian O'Connell, the City determined it would not require an appraisal since both properties had recently sold and the purchase prices provided a reasonable proxy of the fair market value of the total development.

Northfield Senior Planner Dan Olson documented the park dedication fee calculation for the Six Hundred on Division minor subdivision in a staff note dated March 8, 2006.

**NOTE TO FILE**

Date: March 8, 2006

From: Dan Olson, Senior Planner

Re: Park dedication calculation for Six Hundred on Division Minor Subdivision

The following is the calculation for the park dedication fees:

- According to Northfield Construction Company (Contact Person), the following is the cost paid by the property owner for the land (16,396 square feet):
  - Paul Nordby: \$210,900
  - David Lansing: \$300,000
- Total cost of land = \$510,900 (\$31.16 per square foot)
- Park dedication fee requirement for commercial properties is the value of 5% of the gross land acreage. 819.80 SF is 5% of the total gross acreage.
- Total park dedication fee to be paid is  $819.80 \times \$31.16 = \$25,544.97$

Mayor Lansing became aware of the amount of the proposed park dedication fee. (Lansing memo to Roder, Mar. 20, 2006). Mayor Lansing wrote a memo to Administrator Al Roder on March 17, 2006 discussing various items of city business, including Six Hundred on Division. Mayor Lansing wrote, "At the request of the owners, this agenda item may be removed from the Agenda." Mayor Lansing later explained the developers had no interest in having this item come before the City Council with a park dedication fee in excess of \$25,000. According to Mayor Lansing, this was a "deal breaker" for the developers. (Lansing Intv. at 24)

Before the Council met on March 20, 2006, Mayor Lansing wrote a memo to Administrator Roder protesting the proposed fee:

Memo To: Al Roder      Memo From: Lansing  
Memo Date: 3/20/2006      Memo Subject: 600 Division

I have had several calls about this Agenda item already. Unless there is something figured out quickly, I have no choice but to pull it from the Agenda. How do you want to accomplish that?

I can not tell you how disappointing this has become. This is a very important -- very important project for the entire Downtown. As far as I know, there has been no request for public assistance. This finished project would have probably been appraised for nearly \$4,000,000. This project would be paying a lot of taxes, employing a lot of people, creating traffic in Downtown -- Year Number One 2006!

Here is the story that I got from the developers.

On March 9, the weekly update meeting was held at Northfield Construction. The manager of the project reported that "for some reason" the City of Northfield has requested Park dedication fees of \$7,500 (7) dollars. The experience NCC manager thought that was very strange because this was a redevelopment project and the property had been paying such fees as part of the real estate taxes for 100 years! Within a few hours of the meeting's end, NCC had been called by Dan Olson to say -- "I made a mistake on the Park Dedication Fee. It will be \$24,500." Because it was such a unreasonable number, everyone thought there obviously was a mistake. As it turned out -- that amount jumped to \$25,544.97 *A number no one even knew about until the packets were distributed sometime on Friday! What are the Developers or anyone else suppose to do about it then?*

This is a MESS!

First of all, even your Staff must think that there is something unusual with the Resolution. I have never seen any reference to a dollar amount for Park Dedication for a minor subdivision before. It certainly must be something your Staff wanted to make a "public matter" -- Why would that happen if they did not think that there was something strange about the fees?

Secondly, even if there were a charge for Park Dedication (which there should not be for a lot of reasons) how in the world did Staff come up with that number? At the very most it would not have been nearly that much. Section 34-709 calls for a formula based on the "fair market value of the land". The lots were recently appraised by professional appraiser, the combined appraisal of the land was \$173,000. Five percent of that amount is \$8,650.

Had anyone even dreamed that this would have been an issue, the appraisals could have been provided. The appraisal have only recently been done. Even at that, the Staff certainly should know that the value of the land (about 17,000 square feet) would not be worth well over Half a Million Dollars. That is more that \$30/square foot! What is your Staff thinking?

*Now what is suppose to happen?*

*If the Council waves the requirement (which it should and most likely would for any other Developer according to Section 34-702) that will look very bad for the Mayor and the project. --*

*If the Staff reconsiders the amount, according to Code, the amount will drop by 2/3rds. That will look very bad for the Mayor and project.*

*If nothing changes the project will not go forward.*

*What are your ideas? This is a Staff blunder. This is not a Developer's blunder. I have no idea what to do about this mess. We better figure something out FAST.*

According to Roder: "[S]taff had interpreted the park dedication fee to be, I believe it says here \$7,500 dollars. They went back and they reviewed it, and they decided it should be \$24,500. Mayor Lansing was very upset about that. Um, he came into my office. He met with me, very agitated about it. I did receive this memo..." (Roder Intv. at 17) Roder related, "clearly there was a lot of pressure from the mayor" to reduce the fee. Roder states, however, he would have reached the same conclusion even in the absence of such pressure. (Roder Intv. at 18)

Mayor Lansing acknowledges he spoke with Roder about the park dedication fee:

*Everett:* Okay. Alright. Mr. Roder indicates Lee and I'm just gonna put this on the table --

*Lansing:* Put it on the table Bill.

*Everett:* -- and just ask you [to] respond. Mr. Roder indicates that he felt like he was under a fair amount of pressure from you to find a way to get those fees reduced. He said that there were discussions about it and ah between you and him and you were somewhat um I don't know if consistent [insistent] is the right word. But um very concerned about the issue.

*Lansing:* Well I was concerned about the issue obviously because we didn't want to see a downtown project be a not -- you known not the enthusiasm to carry that project forward. Sure. And frankly it seemed to me and not to me necessarily to me, but it seemed to others who have had more experience with that that it seemed a very awkward and unusual that these fees would have been charged to the project to start with. Let alone escalate two and three times before it came to the council. For no apparent reason.

*Everett:* Okay.

*Lansing:* So I, I thought that there was a mistake. And I thought that kind of a mistake should have been dealt with sure. I mean there has to be some justification for charging fees.

(Lansing Intv. at 27-28)

Mayor Lansing admitted he acted in his official capacity when he wrote to Roder concerning the park dedication fees:

*Everett:* Okay. Lee help me understand when you wrote to Al Roder and met with Al Roder what hat were you wearing?

*Lansing:* What hat was I wearing? I was wearing an informed mayor's hat. The same hat that I would wear for anyone else that had a complaint about their fees. Or any other thing having to do with the city. It just happened that David and Paul and I attended meetings where this question came up. Ah otherwise quite frankly I don't think any of those folks including most of the city council would have had any idea what, whether there should be fees charged or what the, what the basis of those fees would be.

(Lansing Intv. at 29)

Roder met with O'Connell after his discussions with Mayor Lansing. According to Roder, they discussed the park dedication fee: "[M]ost of it is in the interpretation. And when I interpreted the ordinance, I, I saw it differently than what community development did." (Roder Intv. at 17) "When Mr. O'Connell and I finished our discussion about the interpretation of the, the park dedication fee it was reduced significantly." (Roder Intv. at 17)

According to O'Connell: "that's one instance of several where it just seemed to me that Al [Roder] was under pressure. I mean, to cut to the chase, um, I was a little unsettled by Al's approach to things where he seemed to be conducting this business primarily at the behest of the mayor as opposed to the Council." (O'Connell Intv. at 9)

O'Connell indicated his staff used the recent purchase prices of David Lansing's property and Norby's property to establish the value for the park dedication fee formula. During his discussions with Roder, "instead of using the appraised value, or market value, Al suggested that we, that we find some other way of establishing value, which maybe was assessed value, which would have been, ya know, considerably less." (O'Connell Intv. at 13)

O'Connell expressed discomfort over the fee calculation that resulted:

BE: Or did you come to consensus?

BO: I think, I would say we came to consensus. Did I agree on having to do it? Um, it, it it was kind of like, it was, their kind of asking us to ya know, find a corner to go lounge in, so no it was not something that was pleasant to experience because it seemed like we we're trying to find a

way to give this guy a break. And in the end they didn't even pay it anyway.

(O'Connell Intv. at 16) O'Connell indicated the circumstances left a "bad taste in his mouth." (O'Connell Intv. at 31)

Mayor Lansing wrote to Roder following their discussions on the park dedication fee. Mayor Lansing directed the City Administrator to call the developers regarding the resolution of the fee issue:

Fax to Al Roder  
Fax From Lansing  
Fax Date 3/20/2006  
Number - 645-3055

Great Meeting this morning....we made a lot of progress

You will call David Lansing (645-8814) an/or Paul Norby (645-5399) concerning the fees of 600 Division Street.

612-817-9289

I would guess that you have hit upon the issue. Staff probably used the 'purchase price' of the properties. This, of course, has nearly nothing to do with the appraised value of the land. The dictate and the formulas are in the Charter.

It really does not matter to the formula if the property sold for a nickel. If it were appraised for 5M, that would be the basis.

The video recording of the March 20, 2007 City Council meeting reveals Mayor Lansing excused himself from the discussion because of the potential for a "perceived" conflict of interest. Mayor Lansing did not disclose his involvement with staff in securing a reduction in the amount of the park dedication fee.

Roder appeared before the City Council and presented information regarding the proposed minor subdivision. He informed them the park dedication fee of \$25,544.97 was "erroneous." He stated that after further discussions with staff and review of the code, the correct amount should be \$4,900. Roder indicated the issue was one of interpretation of the ordinance. He indicated the formula called for five percent of the land value, and the mistake occurred when calculations included the value of the buildings. The Council approved the minor subdivision with the \$4,900 fee.

Staff updated the March 8, 2006 file memo to reflect the Council action taken on March 20, 2006.

Update:

At the March 20, 2006 City Council meeting, the Council reduced the park dedication fee requirement to \$4,900 since the property is considered a redevelopment. Based on a value of the two parcels of land per the Rice County Assessor, the following is a value of the land (minus buildings):

- 107 6<sup>th</sup> Street West - \$49,000
- 600 Division Street - \$49,000

Total value of combined parcel is \$98,000. The value of the land is therefore \$5.98/square foot.

Multiple  $\$5.98 \times 819.8 = \$4902.40$

### ***The Ehlers Report – September 2006***

Ehlers and Associates is an independent financial advisory firm providing services to public sector clients. Roder suggested having Ehlers perform an analysis that the Council could use in reaching a decision on the liquor store. (Roder Intv. at 27) Ehlers evaluated six sites:

- 600 Division
- Q Block
- EconoFoods
- 618 Division
- Expanded W (existing site)
- Expanded W&E (existing site)

Ehlers prepared two sets of interim analysis and a third analysis on September 29, 2006. The developers of 600 Division Street were, at this time, offering the City a lease with an option to purchase the property.

The Ehlers analysis dated September 29, 2006 considered the property at 600 Division Street under two separate scenarios:

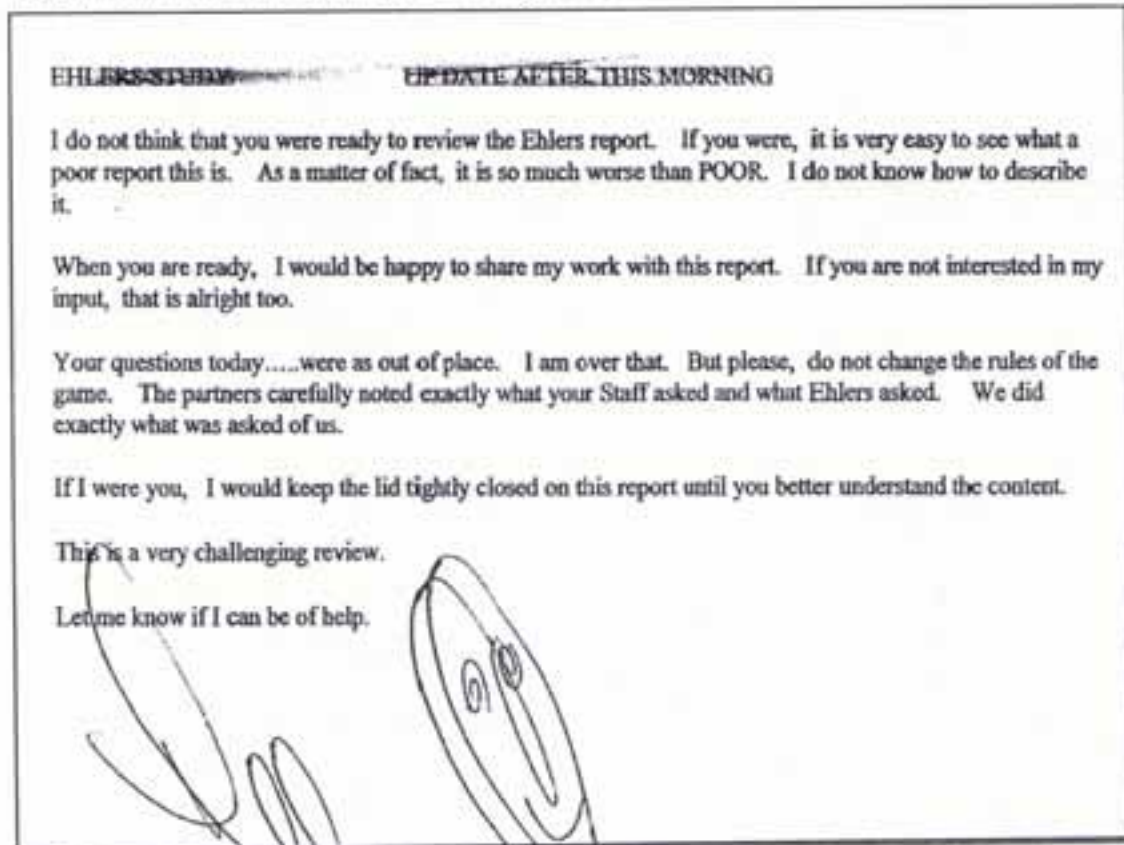
- A lease for 19,000 square feet.<sup>5</sup>
- A purchase of 10,000 square feet in the building.

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<sup>5</sup> Mayor Lansing indicates this was an error in the report because it would make no sense for the City to lease this amount of space for a 10,000 square foot liquor store

The Ehlers analysis consisted of a set of several worksheets, one for each property/option, along with a cover page summarizing the results. This page compared the various properties, but did not include the purchase option for 600 Division Street; it presented only the lease option. It ranked 600 Division Street as providing the lowest financial return of any of the considered options.

According to Roder, he and Mayor Lansing had two or three meetings about the Ehlers report. (Roder Intv. at 27). Mayor Lansing seemed "very agitated" with the report. He thought the information was skewed. They had "very heated" discussions. (Roder Intv. at 27) The following is an excerpt concerning the report from a memo by Mayor Lansing to Roder:



Notably in the memo, Mayor Lansing wrote: "The partners carefully noted exactly what your Staff asked and what Ehlers asked. *We did exactly what was asked of us.*" (Emphasis added)

According to Roder, Mayor Lansing "made him promise" not to show the report to anyone until the two of them reviewed it. "I believe the Mayor was saying very explicitly this doesn't go anywhere until I say it can." (Roder Intv. at 28-29)



Mayor Lansing admits he directed Roder not to show the Ehlers report to anyone. Mayor Lansing states he did so because of the poor quality of the report.

*Everett:* Okay. Um. Did you share any thoughts about that study with Mr. Roder?

*Lansing:* Sure.

*Everett:* W, what did you share with him?

*Lansing:* I thought it was inaccurate. And um not, not correct.

*Everett:* Okay.

*Lansing:* Mm hmm.

*Everett:* Did you give him any instructions as to what he should do with the study?

*Lansing:* I thought it would be, I thought it would be ah an embarrassment in a sense. If it were, if it were not accurate and not complete and not in keeping with good business standards for it to be released. I would think that the city would not want this to be made a public document if it was not correct. And I told him to keep the lid on it until he had it, till he had it checked out. That's what I would have done.

(Lansing Intv. at 34)



Gorton indicated that Mayor Lansing was "very up front that his son owned 600 Division" and Lansing was worried about perceptions. Mayor Lansing emphasized to Gorton he wanted McComb to conduct an independent analysis. As related by Gorton, Mayor Lansing expressed concern regarding some of the inconsistencies in the Ehlers report. Gorton thought Mayor Lansing "wanted someone outside and objective to review Ehlers' report so he wouldn't be the one jumping up and down."

### ***Results of McComb study—January 2007***

The McComb report did in fact criticize the methodology used in earlier reports, including the analysis prepared by Ehlers.<sup>7</sup> The report did not *per se* recommend proceeding with 600 Division or with any other site.

Rather, the McComb Group questioned the City's basic premise that it needed a 10,000 square foot liquor store. McComb recommended developing a more thorough understanding of the market and then designing and building a new store tailored to the market. McComb cautioned that "[w]ithout careful re-evaluation of the proposed new liquor store, there is a strong likelihood that instead of providing additional revenue to the city, the new store could result in substantially reduced revenues." (Source: McComb Report at 37) It continued:

"If done properly however, the city may be able to achieve its goal of further supplementing tax and fee revenues. This may require further study:

1. To more accurately assess the area's potential and the sales that a new Northfield Liquor store could capture.
2. To generate income and expense forecasts in a more accurate and comprehensive manner to determine the total project costs that can be supported by estimated cash flows.
3. To establish realistic design criteria and economic costs associated with leasing, acquiring and developing the various site alternatives that are consistent with established financial parameters.

Once completed, the city will have determined the development strategy that would provide the best revenue contribution to best meet the needs of the community."

(Source: Report at 37-38)

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<sup>7</sup> While critical of Ehlers' methodology, Gorton wasn't critical of their work *per se*. Ehlers performed an economic analysis based on data and assumptions provided to the firm. Gorton's firm provides a different service; it conducts and uses market research to create its own data for developing an economic analysis.

In a memo to Roder, Mayor Lansing expressed disagreement with McComb's conclusion as to the necessity of more study. Mayor Lansing closed his memo by advocating 600 Division Street was the best location for the liquor store, and noted that the "600 Division Location is ready to go and could actually happen now."

#### The Conclusions and Recommendations

##### More Study /More Review

To me this is somewhat a mixed message. What it tells the reader, "that there is more work to be done" However, McComb purposely was not given all of the work already done by staff, advisors, developers and elected officials. I think that a lot of the 'blanks' have been filled in already.

To me, the message is 'do more work' -- but I think most of the work has already been done.

I believe that if the City is looking for someone else to make its decision about a new liquor store, then it will never happen. The only thing that all of this research can really provide is the information needed to make this decision --

We still have to do it?

##### The Study's Observations

Much of what we have already talked about was confirmed in this report. I would guess that should always be the case if we have really done our homework.

##### General Observations from McComb

1. There is potential for increased sales business
2. The current store is not efficient
3. The Council's goals and objectives are best served by 600 Division or EconoFoods Lot
4. There is not a great deal of difference in any of the sites
5. The Ehler's report was thought to have not been very accurate
6. The Perkins Study was thought to have been too narrow in its scope, too aggressive in identifying the trade area and market potential

It is my informed belief that the McComb group does not have a great deal of confidence in the City's ability to manage a Municipal Liquor Store to its potential.

If the Administrator believes that the management talent and tools are in place -- in the least, to accomplish most of its marketing goals and objectives -- then the City should quickly move ahead.

##### Lansing's Observations from the McComb Study

1. The information that McComb had been given would not provide a great deal of confidence in the City's ability to plan and manage a new liquor store -- I think that with the dedicated effort and expertise that should be applied to this project we could do well.
2. The City must be somewhat 'risk adverse' -- it seems best, in the short run, to be sensitive to the financial risk to the City -- there are ways in which this risk can be spread between developers, owners and operators.
3. That 600 Division is the best location for the Municipal Liquor Store given:
  - a. the Goals and Objectives of the Council
  - b. the Goals and Objectives of the Comprehensive Plan
  - c. the and Objectives of the Comprehensive Economic Development Plan

The 600 Division Location is ready to go and could actually happen now!

***Communications between Mayor Lansing and Roder***

Roder began his employment with the City on or about February 28, 2006. According to Roder, Mayor Lansing began talking to him about the liquor store almost immediately. (Roder Intv. at 12) A memo from Mayor Lansing to Roder dated March 6, 2006 stated the liquor store was a "huge issue for Northfield," and indicated that Mayor Lansing could be "of significant help to staff in getting this project on track."

The following are excerpts from Mr. Roder's interview:

"This [liquor store project] was something that had to move forward and, and there would be rewards if this moved forward, and this was going to be {inaudible} a statement that, that we were going to make in the community, but this had to be, and this was our, our statement project. This had to happen, and it had to happen soon. Beginning in March this project could never happen fast enough." (Roder Intv. at 22)

\* \* \* \* \*

"The mayor never left any doubt in my mind that, ya know, not only my, my rewards, my financial rewards in the city, and my tenure with the city, but the, ya know, my stature with the city was always going to be tied to the liquor store. And, and the success of the liquor store project." (Roder Intv. at 22)

\* \* \* \* \*

"Ah, generally in our meetings, or our conversations it had to do with um, we'd always start with a topic not related to the liquor store and during the course of our meeting we would evolve into a liquor store conversation, and ah, inevitably we would move into a conversation about either my review, or my compensation, or the city's pay plan, or where I was at on the pay plan, and um, everything, everything seemed to revolve back into that in one way or another." (Roder Intv. at 22)<sup>8</sup>

\* \* \* \* \*

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<sup>8</sup> Roder indicated documents existed to confirm Mayor Lansing had linked discussions about the liquor store to discussions about Roder's pay. A May 4, 2007 cover memo from Mayor Lansing to Roder suggested postponing a closed meeting previously scheduled to discuss the liquor store. Attachments discussed the Mayor's suggestions for the process the Council should follow in making a decision on the liquor store project. Mayor Lansing concluded with, "I could use the closed session to finish your performance review and salary examination."

"It was always couched in a way that we have to get a new liquor store. Ah, inevitably we talked about ah, at 600 Division and how it would stack up against any place else in town, ah, I had, I had a lot of coaching on why 600 Division is the best and the pro's and con's, um, as we moved into 2006, or the later part of 2006, and early 2007, um, much more so to the point where it would only make sense to lease this property and, and when I brought up the concept of the city might want to own the property. Because I'm not a big fan of municipal leasing, um, it was always about well we need to be looking at a lease because its lower risk, and there's always advantages to leasing. Um, very much I felt like it was being pigeon holed into the city is going to lease a new development at 600 Division for a period of three to five years, maybe ten years, and then buy it out at the end of the lease. Ah, there really was no interest in purchasing or ya know selling the property to the city, um, at lease purchase would be considered, but again it tied back into a lease and that really was ah, what we were being pigeon holed into very quickly." (Roder Intv. at 23)

#### ***Council selection of preferred location – March 5, 2007***

At the March 5, 2007 Council meeting, the Council selected 600 Division Street as its preferred site for a liquor store and authorized staff to begin negotiations with the owners of the property. Prior to the discussion, Mayor Lansing announced he would not participate in the discussion to avoid any appearance of a conflict of interest. (Sources: Council Minutes, video recording of meeting)

Events occurring prior to the Council meeting merit examination. The following relates a summary of events and communications leading up to the Council meeting of March 5, 2007.

***Director McBride's report:*** City Finance Director Kathleen McBride worked on reports for the City Council about the liquor store project. She learned through discussions with Roder that Mayor Lansing wanted to talk to her. According to McBride, Roder indicated he had acted as a buffer between the Mayor and staff. McBride volunteered to talk to the Mayor about the project. Roder told her "it's your report, don't change it." (Source: Kathleen McBride)

McBride described the meeting she had with Mayor Lansing. Lansing came to her office with "his numbers" and looked over her shoulder as she worked on the report. McBride had conducted research on lease payments. In the report she was preparing, McBride projected an annual lease payment of \$224,000 for 600 Division Street. Mayor Lansing told her the lease payments seemed too high. He thought they should be \$200,000. McBride replied by saying "I like my lease payment numbers." McBride thought Mayor Lansing tried to make sure that

leasing appeared as the best option for the city. Mayor Lansing let the matter drop.

***Mayor Lansing's efforts to change information going to the City Council:***

Mayor Lansing provided Roder with a series of documents on March 5, 2007 prior to the City Council meeting. The first was a letter from Lee Lansing as "Mayor" urging the Administrator, Finance Director, and Liquor Store Manager to be prepared to address any questions that might arise from the public or the Council.

The second was a memo to dated March 5, 2007, commenting on McBride's report. It states in part:

"The report does not address that 600 Division Street has provided the opportunity for the City to Purchase – Lease – Lease with Option to Purchase. (Draft Agreement has been prepared and presented) [sic] This will be an important consideration \* \* \* \* The Council needs to understand the advantages of each model. It might be that the City leases, then exercises (after 3-5 years) options for purchasing the site. Often times, this occupancy model is the best of 'all worlds'. \* \* \* \* It is likely that the Council, if it understands, would choose the model to Lease with an Option to Purchase. \* \* \* \* The property owners will work with the City to make any ownership model work."

The memo continues by identifying several points concerning real estate tax implications, depreciation, and principal bond payment.

A third set of documents Mayor Lansing provided to Roder included a comparison of the advantages and disadvantages to the City of leasing, purchasing, or leasing with an option to purchase. A fourth document contained financial projections for leasing 600 Division Street, contrasting it with City ownership of the EconoFoods site. This projection showed net cash flow from leasing 600 Division Street substantially outpaced the cash flow from owning the EconoFoods site.

Roder indicated he made it clear to Mayor Lansing in the past that any documents bearing Mayor Lansing's "fingerprints" would not go to the City Council. (Roder Intv. at 41) Roder refused to provide the March 5, 2007 documents to the Council. According to Roder, he "told the Mayor, I can't give them to the council. I don't think that's appropriate." (Roder Intv. at 42)

Roder indicated his relationship with Mayor Lansing grew more contentious after this event. His refusal to give Mayor Lansing's information to the Council "seemed to be kind of the, the last straw." (Roder Intv. at 42) Mayor Lansing became more agitated and upset with him. (Roder Intv. at 42-43)

Mayor Lansing asserts that Roder was wrong in refusing to put *his* information before the Council. Mayor Lansing maintains Roder should have changed the information going to the Council in response to the information Lansing provided. In a memo to the investigator, Mayor Lansing wrote:

"Roder knowingly provided Council with inaccurate or incomplete financial information about this project. Consulting Attorney for the City of Northfield, advised that the information had to be accurate (meaning changed)" Roder refused to do so."

(Grammatical errors in original)

While not agreeing this was a watershed moment in his relationship with Roder, Mayor Lansing acknowledged it was a very difficult time and very frustrating for him. (Lansing Intv. at 119-120)

**Justification – advice of counsel:** Mayor Lansing justified his efforts to influence the information going before the Council on March 5, 2007 based on advice he received from legal counsel. The Campbell, Knutson law firm periodically provides legal services to the City.

Mayor Lansing stated Roger Knutson of the Campbell, Knutson law firm advised him "to make sure this [sic] City Council had the right information, had accurate and complete information . . ." (Lansing Intv. at 53) Mayor Lansing furnished the investigator with a copy of the March 5, 2007 letter he faxed to Knutson, which outlined his concerns.

Mayor Lansing wrote that City staff "metered and managed" information provided to the City Council. The letter made non-specific reference to erroneous data in the Ehlers report. Mayor Lansing claimed the data intended for the Council that evening was still incorrect. He wrote: "The complicating matter in all of this is that my son owns one of the properties being considered for redevelopment." The letter continued:

"As the information has been prepared for the Council meeting tonight....there are two remaining properties up for consideration. One property is owned by my son and the other property is across the street. The properties are very similar. However, by misrepresenting data and/or providing incomplete data to the Council – of course, the property owned by my son is "just not as good"! \* \* \* \* As a matter of accounting fact – the property owned by my son is much better! Developing a new municipal liquor store on that sight meets all the Stated Goals and Objectives of the Council. This is easy to see and understand."



(Grammatical errors in original)

Knutson recalled receiving a fax from Mayor Lansing. However, Knutson had a substantially different recollection of the advice he provided. Knutson offered "no opinions" to Mayor Lansing with regard to the numbers Mayor Lansing spoke about. Knutson recalled he advised Mayor Lansing he could, in his capacity as a private citizen, speak to the Council and explain why the numbers in the staff report were wrong. Knutson advised Mayor Lansing he could:

- o Go up to the podium during the Council meeting and address the City Council.
- o Have his son go to the podium and address the City Council.
- o Act as a private citizen, but could not act as the Mayor.

***Justification – need for accurate information outweighs conflict***

***issues:*** The investigator questioned Mayor Lansing whether he engaged in conflicting behaviors with regard to the March 5, 2007 Council meeting. Particularly, the investigator asked Mayor Lansing why he recused himself from public participation, but still remained involved in behind-the-scenes discussions with staff intended to influence the outcome of the site selection process.

*Everett:* For the publicly. You know you're not going to be at that meeting, you're going to recuse yourself to avoid this appearance of a conflict of interest.

*Lansing:* Um hmm.

*Everett:* So that sort of implies you're gonna be taking a hands-off approach –

*Lansing:* No it does not.

*Everett:* And let the council do their job.

*Lansing:* No, that does not, in my mind that does not, that's not what it implies at all. The, the, the, the –

*Everett:* The stop –

*Lansing:* Yep.

*Everett:* So in your mind, you can go ahead and feed information into Mr. Roder behind the scenes and that's not a conflict, but if you sit at the table that's a perceived conflict?

*Lansing:* The, the responsibility for making community decisions is based on facts and accurate and timely information. When the facts are not consistent with – I mean when the, when the facts are not facts or the information is not timely or the information is not complete, that's a, that's, that's an issue and I believe that the Mayor or the city council or the finance director or anyone else has that responsibility to get accurate, complete, and total information to the council. You know you should be looking at some of these others when I said, "Al, all the council needs is all the information, 100% of the information, accurate information and in a timely manner." They're grown up, they can make their own decision but they can't make good decisions based on bad information. Now why is my information any better than Kathleen McBride's or Ehler's? Right isn't that a good question?

(Lansing Intv. 56-57)

### ***Mayor Lansing's role in negotiations with the City***

At their meeting on March 5, 2007, the City Council ultimately selected 600 Division Street as the preferred site for the new liquor store. The Council authorized staff to enter into negotiations with the property owners. The City retained Frauenshuh Companies to negotiate on its behalf. John Donnelly from Frauenshuh represented the City.

Donnelly met twice with the developers. Ray Cox, David Lansing, Paul Norby, and Mayor Lansing attended both meetings. Donnelly explained he used the first meeting to obtain an introduction to the project. In the second meeting, he analyzed the options of a condominium purchase or purchase of the entire project.

Donnelly indicated Mayor Lansing "acted as a developer" at the meetings. Mayor Lansing spoke to the details of the development, including size, parking, and "evolution" of the acquisition of 600 Division Street. Donnelly observed Mayor Lansing tried very hard to make sure the answers David Lansing or Norby provided were in accordance with his own thoughts. Donnelly provided several examples where he directed questions to David Lansing and Lee Lansing answered them on his son's behalf. Donnelly indicated "Lee was the most knowledgeable member of the developers group." Mayor Lansing explained to

Donnelly he attended the meetings as David's dad, and would abstain from City Council meetings concerning the project.

Mayor Lansing confirmed he attended the negotiation sessions. He described his role as a "mentor" to his son and Norby. (Lansing Intv. at 44) Mayor Lansing indicated he helped his son and Norby write letters to Donnelly about the project. (Lansing Intv. at 16)

Mayor Lansing indicated he discussed his role with the City Attorney. (Lansing Intv. at 44-45) City Attorney Maren Swanson wrote to Mayor Lansing on May 29, 2007. In her letter, she advised:

- "In talking with staff and council members, it appears that you may be offering information or urging that certain actions be taken or timelines be followed, and that this may be happening, at least at times, in your capacity as mayor."
- "I appreciate that you have decided to abstain from discussion and decision-making on this matter as a member of the council, because of your personal (familial, not financial) interest in the major site under consideration. Even though you do not have a financial interest in the project, I agree that the ethics ordinance requires you to abstain from discussion and voting on matters related to it."
- "[Y]ou should also abstain from trying to influence, or from appearing to try to influence, the actions of the city or the decision of the council behind the scenes, through contacts with city staff, individual council members, or consultants to the city."
- That he should "adopt a 'hands off' policy with regard to how the city handles the relocation effort."
- "Communicate with city staff and council members about the subject only at public meetings or in open (public) written communications and clearly state that you are speaking as a private person and not as mayor."
- "[M]ake it clear when you communicate with the city's property development specialist or other consultants that you are speaking as a private person and not as mayor . . . ."

#### FINDINGS OF FACT

1. Joseph Lee Lansing ("Lee Lansing") began his term of office of Mayor of the City of Northfield in January, 2005.

2. On or about April 5, 2005, Lee Lansing, acting as a trustee for the Lansing Family Trust, entered into a purchase agreement to acquire the property at 600 Division Street.
3. Lee Lansing was the sole owner of Lansing Enterprises, Inc. Lansing Enterprises paid \$9,000 in earnest money toward the purchase of the property at 600 Division Street.
4. The Lansing Family Trust assigned its interest in the purchase agreement for 600 Division Street to Mayor Lansing's son and daughter-in-law, David and Heidi Lansing.
5. David and Heidi Lansing closed on the purchase of this property in October, 2005.
6. Lee Lansing met with the Tires Plus tenants who had been leasing the space at 600 Division Street from its former owner. Mayor Lansing held the meeting in his office at City Hall in October, 2005. Mayor Lansing informed the Tires Plus tenants they would eventually need to vacate the property.
7. Lee Lansing received checks from Tires Plus for their rental of the property at 600 Division Street from November, 2005 through March 28, 2006. DHJJ, Inc. deposited all but one of these checks into its account.
8. Paul Norby learned that having the liquor store as a tenant in the building they planned to construct would be advantageous for the development project.
9. Norby and David Lansing proposed a minor subdivision that would allow them to combine the adjacent properties they owned.
10. Mayor Lansing publicly recused himself from City Council meetings dealing with his son's development project, but remained involved with City staff behind the scenes to secure advantages for and advocate for his son's development project.
11. City staff calculated the park dedication fee for the proposed minor subdivision to be \$25,544.97.
12. The proposed park dedication fee upset Mayor Lansing. Prior to the March 20, 2006 Council meeting, Mayor Lansing exerted substantial pressure on Administrator Roder to obtain a reduction in the fee.

13. At their March 20, 2006 meeting, Roder informed the City Council the \$25,544.97 fee was an error. He indicated the correct fee should be \$4,900. The Council approved the minor subdivision with a fee of \$4,900.
14. The summary page of the Ehlers analysis, delivered to the City on or about September 29, 2006, indicated the site at 600 Division Street delivered the lowest economic return of any of the sites under consideration.
15. Mayor Lansing issued verbal and written directives to Roder to make sure no one else saw the Ehlers analysis.
16. Mayor Lansing directed a new study of the liquor store site options. Mayor Lansing met in person with the firm selected to conduct the study.
17. The City Council discussed the site selection for the liquor store on March 5, 2007. Prior to the meeting, Mayor Lansing provided several documents to Roder. Mayor Lansing became upset when Roder refused to provide the documents to the City Council.
18. Mayor Lansing assisted in preparing letters and proposals on behalf of the developer, some sent to the City and others to Donnelly.
19. Mayor Lansing assumed a prominent role in conducting negotiations for the sale or lease of 600 Division Street on behalf of his son and Norby.

### **GOVERNING STANDARDS**

The Mayor, Council members, and City Administrator are "public officials" for purposes of the Northfield Code of Ethics. *Northfield City Code*, section 2-121. Section 2-126 provides: "No public official shall grant any special consideration, treatment, or advantage to any resident beyond that which is available to every resident."

Sec. 2-127 of the Code governs conflicts of interest. It provides:

(a) *Personal financial interest in sale, lease or contract with city.* Any public official who has a personal financial interest in any sale, lease, or contract with the city shall make such interest known to the city council and shall be bound by state law in determining how to resolve such a conflict of interest.

(b) *Other conflicts.* Any public official who engages in any business or transaction or has a financial or other personal interest, direct or indirect, including an interest arising from blood, adoptive, or marriage relationships or close business or personal associations, which interest is

incompatible with the proper discharge of his/her official duties in the public interest or would tend to impair his/her independence of judgment or action in the performance of official duties, shall disclose the nature of such activity or interest and shall disqualify himself/herself from discussion and voting, provided that such member shall be allowed to participate in discussion as a member of the public. Disqualification is not called for, however, if discussion and action by a public official will not affect him/her more than any other member of the same group, neighborhood, business classification, profession, or occupation.

### **CONCLUSIONS**

1. The evidence does not support the conclusion Mayor Lansing had a personal financial interest in the development known as 600 Division Street.
2. The evidence indicates Mayor Lansing had an interest arising by blood (familial interest) in the development known as 600 Division Street. This interest was incompatible with the proper discharge of his official duties in the public interest. Mayor Lansing used his position as Mayor to influence City actions and decisions pertaining to the development project known as 600 on Division Street.
3. Mayor Lansing's conduct provided special consideration, treatment, or advantage to residents [Paul Norby and his son] beyond that which is available to every resident.

### **ANALYSIS**

Much of the evidence in this matter is undisputed. Documents authored by Mayor Lansing and his own admissions confirm he engaged in many of the behaviors described in the Findings of Fact. Mayor Lansing responds to these circumstances in large part by claiming he did not have a conflict of interest or by otherwise attempting to justify his actions. Mayor Lansing's claim he did not have a conflict of interest is irreconcilable with his behaviors. He recused himself from City Council meetings whenever discussions involved his son's development project. He claims he did this to avoid a "perceived" conflict of interest. Yet while being careful to avoid a perceived conflict of interest when in the public eye, the evidence reveals he worked extensively behind the scenes to cause the new municipal liquor store to become a tenant of the building his son proposed to build.

As discussed below, the investigator rejects Mayor Lansing's justification of his behind-the-scenes involvement. The irrefutable evidence establishes Mayor Lansing exerted official influence on matters pertaining to the 600 Division Street development project. Mayor Lansing indicates he exerted influence to correct

errors, prevent inaccurate information from being made public, and tried to make sure information going before the Council was accurate. Yet these purported justifications have no bearing on the conflict of interest analysis. Mayor Lansing had an interest 600 Division Street development arising by blood. The Ethics Ordinance required him to disclose this interest. It allowed him to speak as a private person on these matters but to refrain from taking action in his capacity as Mayor. The evidence clearly demonstrates Mayor Lansing used his position as Mayor to provide advantages for his son's development project and to have it emerge as the new location for the liquor store.

### ***No Personal Financial Interest***

The evidence does not support the conclusion Mayor Lansing had a direct financial interest in any lease or contract that may have resulted between the City and the developers of 600 Division Street. It is clear Mayor Lansing had, at one time, an interest in the property itself. In his capacity as trustee for the Lansing Family Trust, Mayor Lansing entered into a purchase agreement for the property at 600 Division Street in April, 2005. He paid \$9,000 in earnest money using funds from Lansing Enterprises, Inc., a corporation he alone controlled.

By September of 2005, the City alerted Mayor Lansing to the potential for conflict of interest issues. This notice came in the form of discussions concerning not 600 Division Street, but the property at 618 Division Street. In view of the Mayor's financial interest in that property, City Attorney Swanson wrote to another municipal attorney on September 1, 2005 to inquire whether a conflict of interest would exist if the City purchased or leased 618 Division Street. Swanson provided a copy of this letter to Mayor Lansing.

Mayor Lansing assigned the interest held by the Lansing Family Trust in the purchase agreement for 600 Division Street to his son and daughter-in-law, David and Heidi Lansing. David and Heidi Lansing closed on the purchase of 600 Division Street on October 3, 2005. A careful review of the transaction discloses David Lansing's source of cash at closing originated with Paul Norby. Mayor Lansing indicated the earnest money Lansing Enterprises, Inc. paid toward the purchase of the property at 600 Division Street became a loan to David and Heidi Lansing. Mayor Lansing indicates DHJJ, Inc. fully repaid the loan in November, 2005. No evidence exists to refute that assertion.

Mayor Lansing received rent checks from the operators of Tires Plus. The last of these checks bears the date March 28, 2006. Mayor Lansing indicates, however, he turned these rent checks over to his son's business, DHJJ, Inc. Documentary evidence supports this assertion except as to one of the checks. As to the check in question, there is no evidence to support the conclusion it was deposited into an account over which Lee Lansing exercised control.

The evidence does not support the conclusion Mayor Lansing had a personal, financial interest in the 600 Division Street development project. The evidence fails to demonstrate Mayor Lansing would have enjoyed a personal, financial gain had the project gone forward.

### ***Mayor Lansing's affiliation with the development project***

Mayor Lansing allowed the operators of Tires Plus to perceive him as the owner of the property at 600 Division Street after his son purchased it. Mayor Lansing met with them in October, 2005. Mayor Lansing showed the Tires Plus operators plans to develop that site. He told Tires Plus they would eventually need to relocate their business.

Mayor Lansing accepted rent checks from Tires Plus without protest or informing them the checks should be made payable to someone else. The first time the operators of Tires Plus learned Mayor Lansing's son had an interest in the property was when they received a March 28, 2006 letter from David Lansing telling them they had to move out. This letter was dated eight days after the City had approved the minor subdivision for the proposed development project at 600 Division Street.

Mayor Lansing's interactions with the operators of Tires Plus demonstrated he had an affiliation with the development project from the same approximate time that his son purchased the property. Mayor Lansing provided no offsetting justification for why he allowed this perception to persist.

### ***Interest arising by blood***

The evidence establishes Mayor Lansing had an interest in the project at 600 Division Street, arising from blood, which was incompatible with his duties as Mayor. There were two developers for the project at 600 Division Street. One was Norby. The other was Mayor Lansing's son, David. Mayor Lansing's son stood to benefit with the success of the project.

Mayor Lansing indicated he acted as an advisor and father when helping his son with the development project. Mayor Lansing's conduct demonstrates a desire to see his son achieve success motivated him to action. The evidence establishes Mayor Lansing as an active participant in helping bringing the development to fruition. He admits he attended meetings with his son, Norby, and Cox, once or twice a week, to work on the project. Mayor Lansing admits he helped prepare correspondence for "the developers" (i.e., his son and Norby), including correspondence to the City and Donnelly, concerning the project. As negotiations began with the City, Mayor Lansing took a prominent role in speaking on behalf of the developers. He attended both meetings with Donnelly, who described the Mayor as the one who was most knowledgeable about the development project.



In his reaction to the Ehlers study, Mayor Lansing wrote to Roder: "The partners carefully noted exactly what your Staff asked and what Ehlers asked. *We did exactly what was asked of us.*" (Emphasis added) Mayor Lansing's choice of words reflected reality; he was functioning as part of the team, expending considerable energy, to make the 600 Division Street development project a success. The evidence overwhelmingly demonstrates Mayor Lansing had a familial interest in the 600 Division Street development project.

### ***Exercise of official influence***

The Northfield Code of Ethics provides that when a public official has a conflict of interest, that official must disclose the interest but may participate in discussions as a member of the public. Mayor Lansing engaged in conduct that went well beyond speaking as a member of the public. He used his position as Mayor to work behind the scenes and secure advantages and favorable treatment for his son's development project.

***Reduction in park dedication fee:*** Mayor Lansing's son and Paul Norby proposed a minor subdivision to be known as Six Hundred on Division. This matter appeared on the agenda for the regular City Council meeting scheduled for March 20, 2006.

A March 8, 2006 file note by city staff established the park dedication fee for this minor subdivision at over \$25,000. The evidence demonstrates Mayor Lansing exerted influence on Roder to reduce the park dedication fee, which was in fact reduced.

City Ordinance establishes a formula for calculating the park dedication fee. "The total amount of cash payment in lieu of land owed to the city shall be determined by taking the total number of acres owed the municipality multiplied by the per-acre *appraised fair market value of the total development.*" Northfield City Code, section 34-709 (emphasis added). City staff used recent sale prices for the properties as a proxy for appraised market value in order to save the time and expense involved in an appraisal.

Mayor Lansing's memo to Roder dated March 20, 2006 protested the amount of the park dedication fee. The memo also identified political realities faced by the Mayor. Mayor Lansing expressed concern that he would "look very bad" if the Council waived the fee or if staff reconsidered the amount. Mayor Lansing wrote this was a "staff blunder." He indicated, "We better figure something out FAST."

Roder indicates Mayor Lansing spoke with him regarding the fee and the Mayor appeared "very agitated" about it. Roder indicated he felt "a lot of pressure from the Mayor" to reduce the fee. Mayor Lansing confirms he spoke to Roder about the fee. Mayor Lansing admits he thought the fee was "a mistake [that] should

have been dealt with." Brian O'Connell recalls staff being pressured by the Mayor to reduce the fee amount.

Mayor Lansing admits he acted in his capacity as Mayor when communicating with Roder about the park dedication fee.

Roder responded by suggesting the City use the "assessed value" of the land as a basis for the fee calculation. O'Connell confirmed the assessed value to be a considerably lower amount than the appraised value. At the City Council meeting on March 20, 2006, Roder stated an error had been made in calculating the park dedication fee for Six Hundred on Division. The Council approved the proposal for a minor subdivision with a reduced park dedication fee of \$4,900. Mayor Lansing recused himself from the meeting to avoid what he described as a "perceived" conflict of interest.

Mayor Lansing attempted to justify his efforts to effectuate a fee reduction by asserting the original fee calculation of over \$25,000 needed correction. The formula set forth in the Northfield ordinance appears relatively unambiguous. To the extent that the application of this formula to a particular project would be unduly burdensome, the Council is vested with discretion to waive or reduce the fee amount. The original staff calculations appeared to apply the formula correctly. However, even if the City applied the fee calculation formula incorrectly, the conflict of interest analysis would remain unchanged.

Mayor Lansing recused himself from the March 20, 2006 City Council meeting to avoid a "perceived" conflict of interest. Rather, he stepped away from his role as a member of the City Council to discuss or vote on this topic because of his son's involvement with the project. The conflict of interest was more than "perceived." Mayor Lansing's son would enjoy direct financial benefits with the successful completion of the project. Despite these circumstances, Mayor Lansing exercised considerable influence over the amount of the park dedication fee. He worked behind the scenes, outside the view of the City Council, and admittedly in his capacity as Mayor, to effectuate a reduction of more than \$20,000 in the amount of the park dedication fee. It is the investigator's opinion that this conduct violated sections 2-126 and 2-127 of the City Code.

**The Ehlers report:** Ehlers provided an analysis to the City in late September, 2006, which evaluated the financial returns associated with a number of potential sites for the new liquor store. The cover page of the report ranked 600 Division Street as providing the lowest economic return of any of the locations then being considered.

The undisputed evidence establishes Mayor Lansing's written and verbal direction to Roder concerning the report. Mayor Lansing directed Roder not to disclose the report to anyone.

Mayor Lansing attempted to justify his conduct by pointing out the report contained inaccuracies. The only inaccuracies Mayor Lansing identified, however, pertained to 600 Division Street. While the report may have contained errors, the existence of inaccuracies remains irrelevant to the conflict of interest analysis. Mayor Lansing had the option of identifying his familial relationship to the project and speaking as a member of the public to point out errors in the report. He did not do so. He instead directed the City Administrator to "keep a lid" on the report. A private citizen lacks the authority to *order* the City Administrator to bury or withhold information due to perceived inaccuracies. Mayor Lansing used his authority as an elected official to prevent unfavorable information about his son's development project from making it to the City Council or allowing it to surface in public. It is the investigator's opinion that this conduct violated section 2-127 of the City Code.

***Engaging McComb:*** Following the Ehlers report, Mayor Lansing initiated a new analysis by the McComb Group. Despite his son's interest in the project, Mayor Lansing arranged to deliver materials and discuss the work the McComb Group would perform for the City. Bill Gorton, of the McComb Group, observed that Mayor Lansing wanted a neutral, outside party to identify the flaws in the Ehlers report so the Mayor wouldn't be the one "jumping up and down."

Mayor Lansing went beyond speaking as a private citizen as permitted by the Code of Ethics. Rather, his October 3, 2006 memo to Roder directed further analysis of existing information for the Council to consider. He acted in his capacity as Mayor and represented the City of Northfield when he selected materials to present to the McComb Group, met with them and provided them with materials, and outlined the scope of work McComb would perform on the City's behalf. It is the investigator's opinion that this conduct violated section 2-127 of the City Code.

***Efforts to influence Director McBride:*** Mayor Lansing met with Finance Director Kathleen McBride as she worked on a report for the March 5, 2007 City Council meeting on site selection. Mayor Lansing suggested the lease rates McBride projected for 600 Division Street were too high. It is plausible any private developer might be granted the opportunity to meet with city staff to discuss financial projections for a development project. Mayor Lansing did not *insist* McBride alter the numbers in her report, but merely suggested it. McBride rejected his suggestion and Mayor Lansing let the matter drop. It is the investigator's opinion no violation of the Ethics Code occurred in these circumstances.

***Coaching / influencing City Administrator Roder:*** Roder's account of the events indicate Mayor Lansing mentioned the liquor store frequently during their discussions of City business. Roder indicated Mayor Lansing "coached" him along the lines of a lease being in the best interest of the City. Only the developers of 600 Division Street proposed a lease. Roder indicated Mayor

Lansing linked discussions of the liquor store to Roder's pay and successful future as a City employee. Documentary evidence supports Roder's account. Indeed, one document from Mayor Lansing to Roder suggested deferring a closed City Council meeting to consider the liquor store project. Mayor Lansing closed the memo by saying: "I could use the closed session to finish our performance review and salary examination."

The documentary evidence supports the conclusion that Mayor Lansing did in fact seek to influence Roder and the messages he would convey to the City Council. A private citizen does not have on-demand access to a city administrator, but Mayor Lansing did. Nor can a private citizen establish an actual or perceived link between a particular development project and the administrator's terms and conditions of employment. Mayor Lansing did. It is the investigator's opinion Mayor Lansing's conduct in this regard violated section 2-127 of the Code of Ethics.

***Information for the March 5, 2007 City Council meeting:*** The City Council agenda for March 5, 2007 included discussion of the site selection for the liquor store. Mayor Lansing prepared a number of documents that he gave to Roder. The documents built a stronger business case for 600 Division Street than existing staff reports reflected. Mayor Lansing wanted "his" information to go to the Council. He later complained in writing that Roder acted inappropriately by refusing to change staff input to the Council to reflect the Mayor's information.

Roder acknowledged Mayor Lansing provided some valid points for consideration in the March 5<sup>th</sup> documents, but refused to give these documents to the City Council or change the reports already prepared.

Mayor Lansing responded by explaining he acted on "legal advice" from Attorney Roger Knutson. According to Mayor Lansing, Knutson advised him to make sure the Council had complete and accurate information concerning the liquor store project. Mayor Lansing makes the unsupportable leap of translating this into an assertion that Roder should have changed staff information prepared for the Council to reflect Mayor Lansing's input.

Knutson provided a vastly different recollection of the advice he gave Mayor Lansing. Knutson indicated he told Mayor Lansing he or his son could go to the podium and address the Council to address inaccuracies in any staff information presented. Knutson related that he told Mayor Lansing he could not take any actions as Mayor on the subject because of a conflict of interest.

The investigator believes Knutson's account deserves far greater weight than Mayor Lansing's. Knutson is an experienced municipal attorney. It smacks of implausibility that an attorney with his experience would advise an elected official to use "back channels" to manipulate information intended for a governing body when a conflict of interest existed. It is far more likely that Knutson provided

Mayor Lansing with legally sound advice, that is, not to take any actions in his official capacity due to the conflict of interest.

Roder described his refusal to provide Mayor Lansing's information to the City Council as a turning point in his relationship with the Mayor. He indicated Mayor Lansing became increasingly agitated with him after his refusal. Mayor Lansing declined to describe this event as a watershed moment in his relationship with Roder. He did, however, acknowledge a great deal of frustration over the inaccurate information presented to the Council.

Mayor Lansing used his position as an elected official to insist that certain information come before the City Council. In particular, Mayor Lansing used his status as Mayor in an effort to present the Council with information casting his son's project in a much more favorable financial light. The fact that Roder refused to yield to Mayor Lansing's efforts does not mitigate the inappropriate behavior. It is the investigator's opinion that Mayor Lansing's conduct in this regard violated section 2-127 of the City Code.

## ISSUE TWO

Did City employees or officials act improperly regarding the *issuance* of a temporary certificate of occupancy ("TCO") for second floor office space at 618 Division Street South?

### **ANALYSIS AND CONCLUSION**

The question of whether the TCO was properly or improperly issued has already been examined and resolved. The City of Northfield retained the Campbell, Knutson law firm in October, 2006 to investigate the issuance of the TCO. Attorney Andrea McDowell Poehler conducted the investigation. Her investigation report began:

"This investigation is the result of a complaint received by the City from Mayor Lansing concerning the issuance of a Temporary Certificate of Occupancy ("TCO") to New Division Development Company for Unit 201, 618 South Division Street, Northfield .... Mayor Lansing believes that the TCO was erroneously issued and should be revoked."

Poehler's investigation report concluded:

"Given the Building Official's discretion under the Building Code and the Building Official's clear evaluation of the safety of the site for the proposed temporary use, it was not erroneous for the Building Official to issue the temporary certificate of occupancy for the business use."

(Source: Poehler Report, Oct. 13, 2006, p. 9) Poehler's report reflected she conducted an appropriately thorough investigation of the facts. There is no basis for questioning the quality or accuracy of her analysis or conclusions.<sup>9</sup>

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<sup>9</sup> The report may contain private personnel data. It should be reviewed by legal counsel for the City before being released to the public.

## ISSUE THREE

Did City employees or officials act improperly *following the issuance of a temporary certificate of occupancy for second floor office space at 618 Division Street South?*

### OVERVIEW

On September 21, 2006, the City of Northfield issued a Temporary Certificate of Occupancy ("TCO") permitting the occupancy of Suite 201 at 618 Division Street. Suite 201 was one of the residential condominium units developed by New Division Development Company. The effect of the TCO was to permit Randy Lutz and Beth Closner to use this space for their business.

Mayor Lansing had a personal and family interest in trying to keep Lutz and Closner from occupying 618 Division. This investigation concludes Mayor Lansing exerted improper influence with regard to the City's handling of the TCO. This investigation further concludes Mayor Lansing exerted improper influence with regard to the outside investigation that reviewed the issuance of the TCO.

### FACTS

#### ***Background concerning 618 Division***

Lutz and Closner are principals of New Division Development Company, LLC ("NDDC"). On or about April 19, 2005, NDDC purchased the property at 618 Division from the Lansing Family Trust. On or about the same date, DHJJ (David Lansing) acquired the assets of Lansing Hardware from the Lansing Family Trust. (Source: Lansing memo to Roder, Mar. 16, 2006)

The terms originally envisioned by the Lansing Family Trust and NDDC regarding 618 Division included:

- o NDDC would lease space to DHJJ for operation of the hardware store.
- o Conversion of the second floor into two residential condominium units.
- o Using proceeds from the sale of the two units for further development activities.

NDDC obtained bank financing to purchase the property at 618 Division Street. The Lansing Family Trust also carried a second mortgage from NDDC. (Source: Lansing memo to Roder, Mar. 16, 2006)

Lutz and Closner developed two residential condominiums on the second floor of the building. They could not sell these as residential units because there was no

code-compliant horizontal fire separation between the first floor hardware store and the second floor. (Source: Randy Lutz and Beth Closner)

### ***Issuance of the TCO***

Aside from their efforts to redevelop 618 Division Street, Lutz and Closner are also principals in Construction Consulting Partners, which provides construction management and other services. They were formerly located in the metro area and sought to relocate their business to Northfield. They requested a TCO from the City so they could situate their business in one of the condominium units on the second floor at 618 Division Street. The City rejected past requests for a TCO, but upon reconsideration, decided to issue the certificate. (Source: Poehler report)

### ***Litigation activities***

For reasons not pertinent to this investigation, the business relationships between the parties involved with 618 Division became contentious. Substantial litigation ensued. Parties to the litigation have included NDDC, the Lansing Family Trust, Lee Lansing, David Lansing, DHJJ, Lutz and Closner. Mayor Lansing explained that part of the overall dispute involved the question of whether NDDC had any legal right under the various agreements to occupy the premises at 618 Division Street. (Lansing Intv. at 85)

### ***Mayor Lansing's reaction to the TCO***

According to Roder, Mayor Lansing was "very agitated" when the City issued the TCO. (Roder Intv. at 53). Mayor Lansing described himself as "extremely disappointed" and "absolutely distraught" over the City's decision to issue the TCO. (Lansing Intv. at 95)

For Mayor Lansing, the issuance of the TCO complicated the ongoing legal dispute with NDDC: "Once they're in there, they're hard to get out. Now uh, uh, so that, there's no lease, they agreed in writing to pay for electricity, never paid for any electricity, not a nickel, nothing, period, zero." (Lansing Intv. at 83) According to Roder, Mayor Lansing told him "repeatedly" the City should revoke the TCO. (Roder Intv. at 54). As set forth in Poehler's report, Mayor Lansing believed the TCO should have been revoked. Mayor Lansing does not deny telling Roder to revoke the TCO:

*Everett:* No. They're similar. These are all the same thing. Did you suggest to Al Roder that he should revoke the temporary certificate of occupancy?

*Lansing:* I think that – well, not that Al Roder would do it. Somebody would do it, and the state law calls for it. It doesn't suggest



it; it says that you have to, unless you don't wanna follow state law. If it was – if it was issued – if it were issued under false, misleading, or inappropriate information, it has to be – it has to be repealed. That's not maybe; it says it has to be.

(Lansing Intv. at 96)

***Mayor Lansing's personal / family interests in 618 Division Street***

Mayor Lansing wrote memos that established the City's issuance of the TCO financially impacted his family.

The following memo from Mayor Lansing to Roder indicated Lutz and Closner were indebted to the Lansing Family Trust and David Lansing. Mayor Lansing asserted the City's issuance of the TCO allowed Lutz and Closner to "occupy a space for which they have not paid and have no right to." Mayor Lansing further asserted the City's actions could end up "making this burden even heavier" for his family.

Al,

We are out of time on this one!

I have not told you this before – I do not want it to influence anything that you may think or do.

This is public information, for the most part.

1. Lutz and Closner have been in foreclosure action since January of 2006
2. Lutz and Closner have not paid the property tax – nearly \$20,000
3. Lutz and Closner have not paid the tradesman and liens have been filed – \$100,000
4. Lutz and Closner owe David a great deal of money
5. Lutz and Closner owe Lansing Family Trust a great deal of money – \$450,000 plus
6. Lutz and Closner have been in default with their bank loan – \$910,000 plus
7. Etc.....

These people are in deep trouble and are only able to get out of trouble by making noise and causing others to be misinformed.

Now, the City of Northfield has allowed them to occupy a space for which they have not paid for and have no right to. If I had had any idea that this could have happened, I would have asked the Court for an injunction to stop this from happening. I could not do that when they were already moving in –

You see, at sometime or the other, it is very likely that these responsibilities will fall again upon the back of the Lansing Family. I am very sensitive about making this burden even heavier by the action of our own City.

Another memo by Mayor Lansing, printed below in redacted form, refers to the "618 Division fiasco." Mayor Lansing indicated the "fiasco" was the situation having resulted from the City's issuance of the TCO. (Lansing Intv. at 103) In his memo to Roder, Mayor Lansing indicated the "fiasco" cost him "many

\$1,000's of dollars – out of pocket” and had put “a great deal of strain” in the working relationship between the Mayor and City Administrator.

Memo to: Roder Private  
Memo from: Lansing  
Memo date: 12/19/2006  
Memo subjects: Various

Hi Big Boy!

Redacted

I still have not had an 'official notification' of the 618 Division fiasco! That thing costs me many 1,000's of dollars – out of pocket – I think that the entire matter put a great deal of strain between you and I. I hope – but I doubt – if it is over yet. I can not take these kinds of hits over and over again. For you, I would take a bullet to the chest – REDACTED I am taking nothing any more!

### *The Campbell, Knutson investigation*

According to Roder, Mayor Lansing seemed very agitated during one of their meetings concerning the TCO. Lansing said he “wasn't going to put up with this anymore.” Roder interpreted the remark as a signal that Mayor Lansing might sue the City. In an effort to bring calm to the situation, Roder suggested they contact Knutson for assistance in resolving the situation. (Roder Intv. at 54-55) A meeting occurred among O'Connell, Administrator Roder, Mayor Lansing and Attorney Knutson to discuss the investigation. A decision emerged that Knutson's firm would investigate the issuance of the TCO. On the day after the

meeting, Mayor Lansing wrote to Knutson. Lansing wrote in his capacity as "Mayor" to confirm the scope of the work and the understandings that had developed during the meeting.

Mr. Lee Lansing  
Mayor  
618 South Division  
Northfield, MN 55057

For Settlement Purposes Only  
Sent by Fax to 651-452-5550  
Attorney Client Privilege

Mr. Rodger Knutson  
317 Eagandale Office Center  
1380 Corporate Center Curve  
Eagan, Minnesota 55121

Dear Mr. Knutson,

As I understood from our conversation with Mr. Roder:

1. The investigation will be one specific topic at a time, but this review will be very thorough.
2. The findings will be provided to the Administrator and Mayor, along with a recommendation
3. The action plan, if one should be recommended, will be initiated by the Administrator
4. Time is of the essence

Other agreements, as I understood them to be:

1. Confidentiality will be strictly observed
2. Employees will not be at employment risk for cooperating with the investigation. However, all employees will be subject to existing work rules.
3. An action plan of corrective measures will be implemented if so warranted
4. All findings will be contained in a written report, by subject

Goals and Objectives

1. Promote good governmental practices
2. Promote even-handed application of rules and regulations
3. Prevent discrimination towards elected officials and/or city employees
4. Promote corrective actions of any situation or personal behavior that inhibits 'best practices' in local government

As I understand our work plan, the first issue will be to review recent events which resulted in the issuance of a Temporary Occupancy Certificate being issued. This subject is a good one to review. First of all, it is a recent occurrence and a very time sensitive matter. It is expected that this review will be expanded to examine a list of issues involving the redevelopment of 600 Division Street.

I understood that this investigation shall begin on 10/9-10/10 and will take about three days to complete.

What I am less clear about is corrective action, should it be warranted. Who is responsible for corrective action to be accomplished? What happens if corrective action is warranted and recommended, but nothing is done? Who is to make the decision about the correctness of any particular employee action?

There are a lot of questions and concerns that I am sure will be answered as the process is rolled out. It is a significant commitment of time and money to examine these issues. If after all of this time and effort is invested, and it does not matter anyway.... We should not even start. In my experience, there is often a significant gap between "*knowing the right thing to do and doing the right thing that needs to be done*". Again, if this process is not intended to bridge this gap and make the necessary repairs that close this gap .... *We should not even start this review.*

Respectfully,

  
Lee Lansing

Copy to City Administrator Roder

### ***Results of the investigation***

As noted above, Poehler conducted the investigation. She issued a report on October 13, 2006. The report concluded the building official did not err in issuing the TCO.

### ***Mayor Lansing's reaction to the investigation***

Mayor Lansing sent a fax to Poehler dated October 19, 2006. He stated:

"Our agreement with your firm was that you would not provide a legal conclusion or course of conduct for the City as a result of this investigation. This is an extremely important distinction. Once your scope of work has passed the investigation state, you are then being asked to judge the merits of the matter. We agreed, up front, for your investigation would not do that."

(Lansing fax to Poehler, Oct. 19, 2006 (grammatical errors in original, internal quotations omitted)) Mayor Lansing's earlier letter outlining scope and description of work, however, stated: "The findings will be provided to the Administrator and Mayor, along with a recommendation."

In response to Mayor Lansing's request, Poehler's firm issued a second report to the City dated October 25, 2006. This report omitted the conclusion that there had been no error in the issuance of the TCO.

As explained by Roder, the report was placed in a file and no further action was taken:

"It [the first report] came back to the City. The Mayor reviewed it. Ah, he sent ah, I think he sent a memo, or he called, ah, Roger Knutson's office and said this is not what we agreed to. I want the report changed. Ah, the final report came through without the final paragraph on it. Because he didn't want any findings of fact. Ah, or recommendations if you will. So that had to come off. Ah, by that time the TCO was all but expired, and so I didn't do anything with the report. I, I put it in the file so that I have it. Just, you know, pending whatever might come out of it, as far as litigation that I didn't do anything with the report."

(Roder Intv. at 57)

*Mayor Lansing's directions to Administrator Roder*

A court hearing occurred on October 24, 2006 to address legal issues related to 618 Division Street. At some date between October 24, 2006 and November 3, 2006, Mayor Lansing wrote a memo to Roder. The memo gave Roder directives on what actions the City should and should not take with regard to the TCO.

Hi AL,

I need to get this answer recorded to your office. We have talked this one to death and then some. But, if something comes up later, I have been advised to document our work carefully.

I will always believe that the issuance of this permit was wrong, in the least -- and probably a very purposefully intent to bring harm to the Mayor and his family besides. It only made it worse when you Staff lied and distorted the facts to you.

As far as you and I are concerned this subject is over. I knew it was over on September 22 at noon.

As far as how you relate to your Staff and what your expectations are of them -- I hope that this is just beginning.

As it turned out, Judge Meyer on 10/24 -- gave Lutz and Clossner a pretty big spanking -- and well they deserved it! That is never the end of it! As you well know! It is no small matter than this cost me a fortune in legal fees.

For what it matters --

As soon as the verdict is past the appeal point (11/3/2006) then David is going to serve an Eviction Notice to Lutz and Clossner. It is very unlikely that there will be a fire separation installed before the TCO is expired. I can not imagine how. Lutz and Clossner ~~\_\_\_\_\_Redacted\_\_\_\_\_~~ now the Judge has said that they have no business occupying David's space anyway. I believe that Lutz and Clossner knew this before the TCO was issued. \_\_\_\_\_

I do not know if the City of Northfield is required by rules or just general policy to notify Lutz and Clossner that the TCO will not be renewed unless the promised work is finished.

If they are not out of there before then, I think that you better start planning how you are going to do that - "red tag" / padlock the space/ etc. I bet it is going to come down to that.

I am sure that they will be begging for an extension -- they probably all ready have.

\_\_\_\_\_  
**DO NOT DO ANYTHING UNTIL THE JUDGMENT BECOMES FINAL! THIS HAPPENS IN A FEW DAYS.**  
\_\_\_\_\_

Roder confirmed he received this document from Mayor Lansing. (Roder Intv. at 55) Additionally, Roder indicated Mayor Lansing asked him several times: "How are we going to get them out of there? What is the process for removing them once the TCO expires?" (Roder Intv. at 56)

This memo gave Roder clear, unequivocal direction: "DO NOT DO ANYTHING UNTIL THE JUDGMENT BECOMES FINAL! THIS HAPPENS IN A FEW DAYS."

Mayor Lansing explained he acted in the best interests of the City by giving these directions. Mayor Lansing indicated he did not want the City to get into trouble for enforcing the expiration of the TRO (i.e., preventing Lutz and Closner from occupying the building). He claimed the City could be in trouble if it prevented Lutz and Closner from occupying the space if the civil case determined they had a right to occupy the building. (Lansing Intv. at 107-108)

Mayor Lansing ultimately admitted, however, that two conditions were necessary for Lutz and Closner to occupy the building. First, they needed a TCO issued under the building code (a determination the building could be safely occupied). Second, they needed a legal property right to the premises. (Lansing Intv. at 106) Mayor Lansing insists these issues are intertwined, and it was therefore appropriate for him to give this directive to Roder.

#### **FINDINGS OF FACT**

1. The Lansing Family Trust had a financial interest in the property at 618 Division Street as the holder of a second mortgage.
2. Agreements existed between NDDC and an entity or entities under the control of members of the Lansing family delineating NDDC's rights to occupy the premises at 618 Division Street.
3. Lee Lansing, David Lansing, and entities they controlled, were engaged in litigation with NDDC. The position of the Lansing family was that NDDC had no rights to occupy the premises at 618 Division Street.
4. The City was not a party to the litigation mentioned in Paragraph 3 of these Findings and had no stake in the outcome of that legal matter.
5. The City issued a TCO allowing Lutz and Closner temporary occupancy of a condominium unit at 618 Division for purposes of operating an office.
6. Mayor Lansing admitted being "distracted" concerning the City's decision to issue the TCO because he believed it allowed Lutz and Closner "to occupy a space for which they have not paid and have no right to."
7. The issuance of the TCO put financial and other burdens on the Lansing family.
8. Mayor Lansing complained to Roder about the issuance of the TCO and indicated it should be revoked.

9. Roder suggested having the Campell, Knutson's law firm conduct an investigation into the issuance of the TCO.
10. Mayor Lansing, acting in the capacity as Mayor, corresponded with the Campbell, Knutson law firm to document the scope of work and understandings between the City and the firm as they pertained to the investigation.
11. The Campbell, Knutson law firm completed its investigation and submitted a report to the City.
12. In its original form, the investigation report contained a conclusion. The report concluded it was not erroneous for the building official to issue the TCO to Lutz and Closner.
13. Mayor Lansing corresponded to the attorney who prepared the report. He asserted the conclusion should be removed from the report.
14. The law firm responded by removing the conclusion and resubmitting the report.
15. Mayor Lansing issued a written directive to Administrator Roder concerning the TCO. In the directive, he indicated the City should start planning how to prevent Lutz and Closner from occupying the property upon expiration of the TCO. Mayor Lansing directed Roder not to take any action on the TCO until the judgment in the civil suit between the Lansing family interests and NDDC became final.

### **GOVERNING STANDARDS**

The mayor, council members, and city administrator are "public officials" for purposes of the Northfield Code of Ethics.

Sec. 2-127 of the Code governs conflicts of interest. It provides in relevant part:

(b) *Other conflicts.* Any public official who engages in any business or transaction or has a financial or other personal interest, direct or indirect, including an interest arising from blood, adoptive, or marriage relationships or close business or personal associations, which interest is incompatible with the proper discharge of his/her official duties in the public interest or would tend to impair his/her independence of judgment or action in the performance of official duties, shall disclose the nature of such activity or interest and shall disqualify himself/herself from discussion and voting, provided that such member shall be allowed to participate in discussion as a member of the public.

Disqualification is not called for, however, if discussion and action by a public official will not affect him/her more than any other member of the same group, neighborhood, business classification, profession, or occupation.

### CONCLUSION

It is my opinion that Mayor Lansing's conduct violated Section 2-127 of the Code of Ethics.

### ANALYSIS

The Lansing Family Trust sold the property at 618 Division Street to NDDC (Lutz and Closner) and carried a second mortgage on the property. DHJJ, Inc., a corporation owned by David Lansing, had a lease agreement with NDDC. Disputes arose from their collective business dealings and litigation followed. Mayor Lansing believed Lutz and Closner owed his son David a great deal of money, owed the Lansing Family Trust a great deal of money, and indicated that Lutz and Closner were in foreclosure on the second mortgage carried by the Family Trust.

In the simplest of terms, one of the issues between the Lansings and NDDC in the litigation was whether NDDC had a legal right – under the relevant leases and agreements – to occupy the premises at 618 Division Street. The Lansings maintained they did not. The issuance of the TCO complicated the Lansings' overall to keep NDDC out of the building. As Mayor Lansing stated, "Once they're in there, they're hard to get out."

Mayor Lansing suggested to Roder the City should revoke the TCO. This would enable the Lansings, through the City's regulatory authority (the inspection and permitting process) to achieve the same outcome they sought in the court system – the "eviction" of Lutz and Closner from the building. (See undated Lansing Memo with directions to Roder ("As soon as the verdict is past the appeal point . . . then David is going to serve an Eviction Notice to Lutz and Closner."))

Mayor Lansing engaged in activities in the capacity of Mayor in circumstances where he and his family had an interest. Mayor Lansing had a right to speak as a member of the public and express concerns. After complaining about the issuance of the TCO, however, he stepped into his role as Mayor and acted as a representative of the City. He met and corresponded with the law firm that the City engaged to investigate his complaint. As Mayor, he confirmed the terms of the agreement between the City and the law firm regarding the investigation.

Mayor Lansing's believed the City should not have issued the TCO. The conclusion of Poehler's report did not support the Mayor's position. It concluded the building official who issued the TCO did not err. Mayor Lansing responded



by sending a letter to the law firm. He asserted they should not have provided a conclusion under the terms of their agreement with the City. Mayor Lansing placed himself in dual and conflicting roles. On the one hand, he lodged a complaint about a City decision. An investigation was conducted in response. On the other hand, he acted as a City representative by directing what information the law firm included in their report.

Mayor Lansing's conduct regarding the investigation report directly contradicted the City's interests. The investigator concluded the City did not act improperly. That conclusion demonstrated no wrongdoing, and no potential liability, on the part of City officials. There was value for the City in having it included in the report. Mayor Lansing abused his authority. He placed his interests above those of the City by using his position to alter the results of the investigation.

Mayor Lansing directed the City Administrator to take no action on the TCO until the judgment became final in the lawsuit involving NDDC. Mayor Lansing, his family, and entities under their control had an interest in the outcome of the lawsuit. The lawsuit did not involve the City of Northfield and the City had no stake in the outcome. Whatever the verdict in the private lawsuit, it had nothing to do with how the City should enforce the provisions of the building code. Mayor Lansing used his authority as Mayor to give the City Administrator directions on what actions the City should and should not take in a matter involving his own private and family interests.

When the interests of a public official and the City are incompatible, the Ethics Code requires the public official to refrain from using the authority of their office. However, the Ethics Code allows them to speak as members of the public. Mayor Lansing did not refrain from taking official action. He confirmed the terms and scope of work for an outside firm retained at City expense to investigate his personal complaint. He directed the law firm to remove the investigative conclusion from their report. He directed Roder to be prepared to prevent Lutz and Closner from occupying the building at 618 Division Street when the TCO expired, and delineated what actions the City should or should not take with regard to the TCO. It is the investigator's opinion that these actions by Mayor Lansing violated section 2-127 of the Code of Ethics.

## ISSUE FOUR

Mayor Lansing raised the question of whether the City violated the employee pay plan. Mayor Lansing indicated the City announced pay cuts for some employees. This upset them, and in the end, their pay was not reduced. In essence, Mayor Lansing urges that telling employees their pay would be cut when in fact it was not created needless stress and hard feelings within the City's workforce.

### ***Background***

Minnesota municipalities use pay plans to assure they have a rational and defensible system in place for making compensation decisions. According to the League of Minnesota Cities: "[t]he basic building blocks required to develop an appropriate and defensible classification and compensation plan are: 1) Job descriptions; 2) A classification hierarchy; 3) A list of comparable cities; 4) Market survey data from those cities; 5) A base pay schedule; and 6) A narrative description of the plan."<sup>10</sup>

### ***Investigation***

Human Resources Director Elizabeth Wheeler explained the City had been operating on its former pay plan for many years. This plan included provisions for merit pay, that is, extra pay provided on the basis of perceived merit or value added by an employee. The City worked on, and adopted, a modernized pay plan in 2006 or 2007. This new pay plan did not include merit pay. Rather, it was based on market pay.<sup>11</sup>

When applied to the existing workforce, Wheeler explained, the new pay plan provided lower compensation for a number of city employees. To address this issue, the City announced it would reduce the pay of those who were found to be overcompensated. This decision was implemented.

Later, according to Wheeler, the City began union negotiations. The unions would not agree to reductions in pay. Instead, the City and the unions agreed to freeze the wages of those employees who were found to be overpaid under the new pay plan. They agreed wages would remain frozen until such time as the pay plan provided for an increase.

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<sup>10</sup> Source: League of Minnesota Cities Model Classification and Compensation Plan Framework for Smaller Cities ([www.lmnc.org/hr/manual/compensation/ModelCompensationPlan.pdf](http://www.lmnc.org/hr/manual/compensation/ModelCompensationPlan.pdf), retrieved Dec. 10, 2007).

<sup>11</sup> "Market pay" is defined as "the compensation paid for a specific job, including information about bonuses and benefits, that is determined by a continual analysis of the competitive job market." ([http://humanresources.about.com/od/salaryresearch/Salary\\_Research\\_Salary\\_Comparison\\_Salary\\_Tools\\_Salary\\_Information.htm](http://humanresources.about.com/od/salaryresearch/Salary_Research_Salary_Comparison_Salary_Tools_Salary_Information.htm), retrieved December 10, 2007).

Wheeler explained that following union negotiations, the City provided back pay to non-union employees whose pay had been cut. The rationale for doing so was to ensure that non-union employees were treated at least as well as their union counterparts. Wheeler indicated one city employee may have resigned before the City issued checks for back pay.

Roder provided a summary of the events that accords with the information provided by Wheeler:

AR: \* \* \* \* These employees that, that initially took pay cuts, were non union or management staff, that ah, fell outside of the [new pay] system. I also informed the council that we were treating all employees fairly and equitably in the application of the pay plan. Union employees, I don't have the right to take the money away, outside of negotiations. \* \* \* \* Through union negotiations, the union negotiated successfully to have the people that fell outside of the pay plan frozen, there would be no cost of living adjustment, no inflationary adjustment, step increases, what have you. Until the ah, system caught up with them. At the time that the union set up their contract with that provision built in, all of the non union employees that had pay cuts, had their salaries reinstated, and frozen. The same, treated the same as what we did the union employees.

(Roder Intv. at 7-8)

### **ANALYSIS**

The City has an obligation to treat its employees fairly and an obligation to its citizens to be wise stewards of public resources. The adoption of the new pay plan by all appearances was an effort to meet these obligations. Reducing the wages of members of the workforce would be, by its very nature, an action that produced stress and discontentment for those impacted. There is no evidence, however, to suggest the City violated the employee pay plan. There is no evidence to indicate the City implemented the plan in any manner that was unfair, underhanded, or inappropriate. Rather, the evidence supports the conclusion the City went about implementing the new plan in a reasonable and businesslike manner.

## ISSUE FIVE

Whether the City has mismanaged the Crossing project.

### ***Background***

The "Crossings Project" in Northfield is a "TIF" or "Tax Increment Financing" project. Tax increment financing (TIF) is a method of financing real estate development costs. TIF is commonly used to encourage developers to construct buildings or other private improvements. TIF uses the additional property taxes paid as a result of development to pay for part of the development costs.

In simplest of terms, the City of Northfield has a financial investment in the Crossings Project. Mayor Lansing contends the City has "mismanaged" this project. He contends that the project is in default and the City Council has refused to deal appropriately with the issue.

### **FACTS**

The City of Northfield and the developers of the Crossings Project are parties to an agreement. The agreement provides for a three-phase development of the Crossings Project. The agreement establishes timelines for commencement and completion of each phase.

The actual development of the Crossings Project is not keeping pace with the development agreement. Some who were interviewed suggested the slump in the residential housing market may be contributing to this outcome. There is also an unresolved issue with land transfers from the Department of Transportation that may be necessary to future phases of the project. A restaurant was contemplated for the development. Work on the restaurant was to begin in April, 2006 and to be completed by December 31, 2007. Commencement of work on the restaurant has yet to begin.

This issue was previously presented to the Office of the State Auditor, Legal/Special Investigations Division ("OSA"). By letter dated July 20, 2007, the OSA informed the City:

The Legal/Special Investigations Division of the Office of the State Auditor received concerns about the development project. Specifically, concerns were raised that timetables, as set forth in the Contract for Private Development by and Between City of Northfield and Mendota Homes, Inc., dated as of December 30, 2005, had not been met.

The Legal/Special Investigations Division did not conduct a review of this development project. Rather, we determined that the

concerns that were raised should be addressed by the City Council and City staff, working with the City Attorney. We also suggested that the City might benefit from legal advice provided by the City's development/public finance counsel. You mentioned in our telephone conversation that the City is working with its development/public finance counsel on this project.

(Letter from N. Bode to Kathleen McBride, Jul. 20, 2007)

Mayor Lansing presented several questions to staff about the Crossings Project. A September 18, 2007 memorandum from staff reflects that substantial work and effort was dedicated to thoroughly addressing Mayor Lansing's questions.

### **CONCLUSION**

There are no facts to be discovered or factual disputes to be resolved with regard to the Crossings Project. There is simply nothing to investigate.

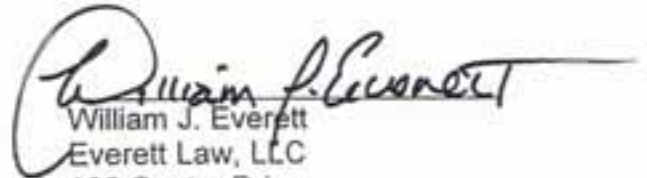
By comparing actual progress on the project with the schedule set forth in the development agreement, it is evident that the project is not proceeding within the timeframes initially anticipated and agreed upon. The question that emerges is how the City should respond to this new reality. This investigation reaches a conclusion very similar to that of the Office of the State Auditor: The question as to how the City should respond is one committed to the sound discretion of the City Council as a whole. The evidence indicates that City staff and other members of the City Council do not embrace Mayor Lansing's concerns to the same degree he does. This indicates differences of opinion on how matters should be handled. It is not evidence of mismanagement.

## STATEMENT OF SUBMISSION

This report is submitted to the City of Northfield, Minnesota. The Northfield City Council, acting as a whole or through a duly authorized representative, may contact the undersigned if there are issues requiring clarification or further information. The content of this report will not be altered or modified, except as may be required pursuant to the provisions of Minn. Stat. § 13.04, subd. 5, but additional or clarifying information will be provided upon request.

Dated: 12-17-2007

Respectfully submitted,



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