

CITY OF OAK GROVE – OAK GROVE, MN

VIA E-MAIL ONLY

Metropolitan Council
Committee of the Whole
c/o: Emily Getty (Emily.Getty@metc.state.mn.us)
and Bridget Toskey (Bridget.Toskey@metc.state.mn.us)
390 Robert Street North
St. Paul, MN 55101

Re: In the Matter of System Statement of the City of Oak Grove
OAH Docket Number: 5-2106-33226

Dear Committee Members:

The City of Oak Grove (“City”) asks the Metropolitan Council (“Council”) to reject the recommendation of the administrative law judge (“ALJ”) in the matter referenced above. The City requests that the Council instead modify the City’s 2015 System Statement (“Statement”) by:

- a. Changing the “diversified rural” designation for the southeast corner of the City to “rural residential”; and
- b. Deleting the following provision on page 21 of the Statement:

However, the southeast portion of Oak Grove is located within the Council’s long term wastewater service area, and as such the City’s land use plan will be expected to guide interim development within the future service area in a way so that redevelopment can occur and provide economical wastewater service to the area. Recent regional wastewater system improvements were made in East Bethel that will be utilized in the future to provide southeast Oak Grove with regional wastewater service.

The ALJ’s recommendation to deny these requests was based on the Council’s legal position that the City is barred from even asking. The Council argued that the City is seeking to “consider the need for or reasonableness of the metropolitan system plans or parts thereof” which is not allowed under Minnesota Statutes, § 473.857, subd. 2. In response, the City claimed that if it is challenging the Council’s regional wastewater plans, that challenge is premised on a lack of statutory authority for the plans as applied to the City per the Statement, not based on the reasonableness of the plans.

The statute providing for resolution of disputes over inconsistencies between a city’s comprehensive plan and the Council’s system plans contains the same statutory language. The Council takes the same position concerning that language. Thus, the Council’s position is that the legislature has completely barred any local challenge to the regional system plans regardless of whether the plans exceed the Council’s authority and no matter how adversely the plans may impact a metropolitan municipality and its residents.

The Council’s belief that the legislature has barred any municipal challenge to its system plans reflects breathtaking tone-deafness and shows it’s defiance to any elected officials questions or concerns for our residents. The City has asked Council representatives directly several times

how it may contest the Council's long range wastewater plans--- particularly how those plans misdirect the consequences of the Council's extremely bad decision to construct an East Bethel treatment plant solely for East Bethel and their needs. To place blame for justification onto Oak Grove who clearly wanted nothing to do with it back in 2008 doesn't rationalize its existence into Oak Grove now or 50 years into the future. Council representatives have no answer. The City encourages the Committee to ask staff this question and share the response, if any, with us.

Rather than continuing to claim that its regional wastewater plans are beyond review, the City requests that the Council step out from behind its imaginary wall and fairly consider Oak Grove's concerns. We believe reconciliation is possible. This does not have to be a repeat of Lake Elmo.

In fact, Oak Grove's situation is totally different from the circumstances that led to the Lake Elmo litigation. The Council demanded that Lake Elmo adopt official controls to accommodate the immediate extension of planned and available sewer facilities to permit sewer development. There was encroaching development pressure and willing developers. Lake Elmo is in relatively close proximity to downtown St. Paul and is part of the inner-ring suburban development around it. Lake Elmo is served by multiple major transportation corridors with available transit alternatives. Lake Elmo was subject to pressure for urban development and had the infrastructure necessary to support such development.

Unlike Lake Elmo, Oak Grove is truly an outer ring, bedroom community. Based on the Council's own projections outlined in the 2040 systems statement, Oak Grove will remain this way for the foreseeable and distant future. Oak Grove is far from both downtowns. There is negligible urban development nearby, and there are no major transportation facilities in or near the City and no available transit services. There is little or no demand for sewer development. There are no developers prepared to pay the millions to extend sewer facilities from HWY 65 in East Bethel to Oak Grove, not to mention the outrageous connection and monthly usage fees that would be required.

In addition to all of these differences, at the administrative hearing the Council admitted that it has done virtually nothing to study the extension of sewer to Oak Grove. The Council has not evaluated such an extension from a financial, environmental, engineering, or real estate (necessary right-of-way) perspective. The feasibility of this sewer extension is unknown. Conversely, the extension of sewer to Lake Elmo was analyzed and planned.

It is not surprising that the Council has done nothing to plan for the extension of sewer to southeast Oak Grove because one isn't needed. The Council's system plans and the Statement both confirm that the southeast corner of Oak Grove will remain unanswered until some indeterminate time after 2040. In fact, the Council's population and jobs projections this time reflect no reason to ever expect future demand for sewer in that corner of the City.

The Council has no plan to extend sewer to Oak Grove, yet the Council is bound and determined to force my City to adopt views of a regional plan, with no planning. To restrict landowner development rights now in order to accommodate the possible extension of sewer at some future, unplanned date, even though these facilities might be totally infeasible is completely unacceptable. The Council has no statutory authority to force us to accommodate hypothetical facilities that might possibly be extended someday beyond the Council's 2040 planning horizon.

Over the last 25 years Oak Grove has had a reasonable development plan based on a minimum of 2.5 acre per lot density that doesn't require or need a common collector system for development. The past development structure that we'll be following into the future allows sufficient individual sewer services while providing room for individual backup systems as needed. With all of the wetland and unbuildable area identified within the targeted properties it should be obvious that a large, high density development would be unfeasible for any significant long term investment. There are plenty of other areas outside of Oak Grove that have needs for these kinds of collector services.

The ALJ, however, suggested¹ that the City had failed to demonstrate that the Council lacks such statutory authority. The Council's own witness² testified that there is no statute giving the Council the authority claimed in this proceeding. No one testified to the contrary. The City did not prove a negative—that the statutory authority does not exist-- the Council conceded the point.

Of course, large portions of the metropolitan area do NOT have regional transportation, wastewater, or other urban facilities. Someday, long after 2040, such facilities might be constructed or extended to all corners of the metro. But the Council does not have the power to limit local development rights in all portions of the metro that lack such facilities today in order to accommodate their hypothetical potential expansion at some unplanned, unpredictable, future date. Similarly, the Council lacks statutory authority to limit subdivision in the southeast portion of Oak Grove.

If the Council actually took the time to read this, please recognize how this imposition absolutely doesn't fit the character or growth plans of anyone semiconscious of our community. We ask the Council to approve the City's requests. Forcing Oak Grove to limit its citizens' property subdivision rights now to accommodate imaginary regional facilities that may be extended sometime beyond the Council's 2040 planning horizon is ludicrous and which might be totally infeasible, is bad, no, extremely bad policy. And again, it's tone deaf.

We look forward to the Council's response.

Thank you,

Mark Korin
Mayor of Oak Grove

cc: **Representative** Kurt Daudt
Representative Tom Hackbarth
Senator Michelle Benson
Representative Peggy Scott
Anoka County Chair Rhonda Sivarajah
Anoka County Representative Matt Look

¹ This was suggested in the ALJ's memorandum but not contained in the actual findings and order for recommendation.

² Kyle Colvin.