KANSAS JUSTICE INSTITUTE

December 7, 2023

Sent *via* Electronic Mail Only
Ryan B. Denk
City Attorney, City of Westwood, Kansas
10 East Cambridge Circle Dr., Suite 300
Kansas City, Kansas 66103

Dear Mr. Denk,

Kansas Justice Institute (KJI) is a nonprofit, *pro bono*, public-interest litigation firm committed to upholding constitutional freedoms, protecting individual liberty, and defending against government overreach and abuse.

It has recently come to our attention that the City of Westwood sent a cease-and-desist letter on November 8, 2023,[1] involving objections to the proposed development of a public park.[2]

In our view, the City of Westwood's letter is heavy-handed, unacceptable, and antithetical to the First Amendment. Accordingly, as to those portions of the letter that implicate the First Amendment, they should be immediately—and publicly—withdrawn.[3] Further, to the extent this approach is Westwood's policy and practice, it should likewise end, immediately.

Under well-established First Amendment principles, the City of Westwood cannot credibly argue it has a valid claim for tortious interference or slander of title against those who object to the proposed development of the park.

To begin with, those individuals who object to the sale of the park are speaking on matters of public concern. After all, the speech involves a matter of "political, social, or other concern to the community," and it is "a subject of legitimate news interest." *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) (cleaned up). *E.g.,* Eric Adler, *Johnson County city threatens to sue its own residents who are fighting office complex*, Kansas City Star (December 6, 2023);[4] Juliana Garcia, *Westwood approves widely-criticized plan to demolish the city's largest park to build offices*, KCUR 89.3 (Oct. 14, 2023);[5] Sydnie Savage, *Westwood advances plan to turn city park into office space*, Fox4 (Oct. 13,

[1] Attached here as Addendum A.
[2] If you feel anything in this letter is inaccurate, or we have misunderstood the situation, please advise immediately. Please set forth the accurate facts.
[3] The First Amendment questions are a separate and distinct analysis.
[4] Available here: https://www.kansascity.com/news/politics-government/article282667853.html
[5] Available here: https://www.kcur.org/housing-development-section/2023-10-14/westwood-approves-widely-criticized-plan-to-demolish-the-citys-largest-park-to-build-offices

2023);[6] Juliana Garcia, *Westwood neighbors push back on tall, colorful Rainbow Boulevard project*, Shawnee Mission Post (Aug. 16, 2023).[7]

Speaking on matters of public concern is, of course, "at the heart of the First Amendment's protection" and "entitled to special protection." *Snyder*, 562 U.S. at 451-52 (cleaned up). That is because the First Amendment "reflects a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *Id.* at 451-52.

The First Amendment's protections are *so* robust, they apply as a defense to the very types of torts claims you have threatened to bring. *E.g., Snyder*, 562 U.S. at 450 (First Amendment defense to intentional infliction of emotional distress, intrusion upon seclusion, and civil conspiracy); *N.A.A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886, 891-92 (1982) (First Amendment defense to malicious interference with business, statutory prohibition on secondary boycotts, state anti-trust, and conspiracy); *Jefferson Cnty. Sch. Dist. No. R-1 v. Moody's Investor's Servs., Inc.*, 175 F.3d 848, 852 (10th Cir. 1999) (First Amendment defense to intentional interference with business relations, intentional interference with contract, and publication of an injurious falsehood); *Cousins v. Goodier*, 283 A.3d 1140, 1144 (Del. 2022) (First Amendment defense to defamation and tortious interference with employment agreement); *City of Keene v. Cleaveland*, 167 N.H. 731, 741 (2015) (First Amendment defense to tortious interference with contractual relationship, negligence, and conspiracy); *King v. Levin*, 184 Ill. App. 3d 557, 568 (1989) (First Amendment defense to tortious interference with prospective economic advantage).

Moreover, the City of Westwood would need to prove "actual malice," *Jefferson Cnty. Sch. Dist. No. R-1*, 175 F.3d at 852, "that is, with knowledge that [the statement] was false or with reckless disregard of whether it was false or not," *New York Times v. Sullivan*, 376 US 254, 280 (1964). The City of Westwood could not possibly meet that incredibly high burden, especially considering it is an open question of statutory interpretation whether K.S.A. § 12-1301 applies to the sale of all parkland or just to parkland purchased with a park bond or containing a deed restriction.

Furthermore, even without the "special protection" provided by the First Amendment, the City of Westwood could not possibly prove the elements of either slander of title or tortious interference. Both claims require a showing that the allegedly tortious statements lacked a reasonable justification. *See Dickens v. Snodgrass, Dunlap & Co.*, 255 Kan. 164, 168-69 (1994); *Saddlewood Downs, L.L.C. v. Holland Corp.*, 33 Kan. App. 2d 185, 196 (2004). Quite simply, asserting a good-faith argument about an open question of law (such as the interpretation of K.S.A. § 12-1301) is a sufficient justification and could not constitute slander of title or tortious interference.

Nor is the City's threatened legal action justified by the warning that some residents might petition the Courts for a writ of mandamus compelling the City to comply with § 12-1301. The

[6] Available here: https://fox4kc.com/business/westwood-advances-plan-to-turn-city-park-into-office-space/
[7] Available here: https://shawneemissionpost.com/2023/08/16/westwood-rainbow-development-209817/

First Amendment right to petition the government for a redress of grievances guarantees the right to petition the City Council itself, (such as by sending letters demanding that the City follow § 12-1301) or to petition the Courts for a writ of mandamus. *See CSMN Invs., LLC v. Cordillera Metro. Dist.*, 956 F.3d 1276 (10th Cir. 2020) (opponents of a rezoning and development plan who brought unsuccessful state-law challenges to the plan are immune from liability unless their court petition was a sham). The City of Westwood may not threaten legal action against those who have brought good-faith petitions to the City Council, or where the City is warned of future good-faith petitions to the Courts.

Put differently, it doesn't matter much at all who has the correct reading of the statute—what matters is the City of Westwood may not threaten to sue for disagreeing with its statutory analysis.

For substantially similar reasons, Westwood's letter also implicates the First Amendment Right to Free Association; Kansas Const. Bill of Rights Sections 1, 3, 11, 18, and 20; and Kansas' Anti-SLAPP statute, K.S.A. § 60-5320.

Please immediately advise whether the City of Westwood intends to pursue its purported claims for tortious interference and slander of title against opponents of the park redevelopment. We look forward to your response.

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Addendum A

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November 8, 2023

Mr. Todd Hauser
Bushyhead, LLC
315 SE Main Street
Lee's Summit, MO 64063

Re: Objection to sale of 5000 Rainbow
MVP File No. 4637.14

Mr. Hauser,

I believe that you are aware that I serve as the City Attorney for the City of Westwood, Kansas. This correspondence responds to your correspondence dated October 12 and 19, 2023 asserting an objection to the sale of City property located at 5000 Rainbow due to alleged non-compliance with K.S.A. 12-1301. Simply stated, your objection is without merit, and the City is prepared to take such legal action against you and/or your clients as may be necessary to protect its title and its contractual relationships.

I. Facts Relating to the 5000 Rainbow Property.

The four parcels upon which 5000 Rainbow is situated include Lots 1, 2 and 3, Block 1 of the Swatzell Addition, and an unplatted lot spanning the rear of these three lots to the South ("5000 Property" also includes 5010 Rainbow). The 5000 Property was conveyed in 1969 by Warranty Deed from Fred D. and Bessie Ellis to the City of Westwood. The Deed conveyed the property in fee simple absolute subject only to easements, reservations and covenants of record. There was no express dedication of the 5000 Property to any particular public purpose – i.e. park or other – within the Deed. The referenced consideration within the Deed for the conveyance was "ten dollars and other valuable consideration." As I'm sure you are aware, this is a common recitation and as discussed below does not represent the actual consideration paid for the property. As described below, this is not the actual purchase price for the property. The Deed does not purport to be a donation, nor is there any indication that the transaction was not an arms-length transaction.

The Swatzell Addition plat was filed with the Johnson County Register of Deeds on April 5, 1928 ("Swatzell Plat"). The only restrictions on the properties included within the Swatzell Plat, Block One are stated on the Plat itself. These restrictions only purported to restrict the property for a period of twenty years. None of the restrictions restricted the use of the 5000 Property to public or park use. The only dedication of public property on the Swatzell Plat is stated, "The undersigned . . . hereby dedicates the streets shown on this plat to the public use

forever." The 5000 Property was not dedicated to any public use. The unplatted lot to the South of Lots 1-3 which currently forms part of 5000 Rainbow was excepted from the platted area.

A first title report was requested by the City in 2022 to determine whether there were any restrictions as to conveyance or use of 5000 Rainbow. This title report was at City expense with an effective date of September 18, 2022. The report concludes that the City holds fee simple title to the property. The only restrictions as to use noted in the report were the restrictions discussed above on the original plat which have expired.

A second title report was issued by First American Title with a commitment date of June 23, 2023, related to both 5000 Rainbow and 5050 Rainbow (former Christian Church site). The title report again reflects that the City holds both properties in fee simple. Relative to the acts required by the City for the issuance of title insurance the report only identifies, "Furnish a proper resolution authorizing the proposed transaction and identifying the parties authorized to execute instruments necessary to close this transaction." Restrictions as to use of the property as noted on the title report identify the above referenced restrictions stated on the 1928 plat which have expired. The report additionally identifies covenants and restrictions filed in 1939, however, an examination of those restrictions reflect that they do not restrict the property located at 5000 Rainbow and only restricts use of property for 25 years. None of the covenants and restrictions purport to restrict 5000 Rainbow to any public use including park use. Nothing on the title report reflects that the 5000 Rainbow property was ever dedicated or restricted to park use. The only suggestion of a public use of the 5000 Property is the fact that the Property was purchased by the City in fee simple absolute, without restriction, in 1969.

I did attempt to track the conveyance history of the properties through deed searches on AIMS. The conveyance history of the platted lots within 5000 Rainbow reflects that the entirety of Swatzell Addition, Block One, including Lots 1-3 were conveyed as follows. In 1939 from Bertie Swatzell to John A. Swatzell (Bertie was John's sister-in-law). In 1955 from Jack (presumably John A.) C. and Edna Ann Swatzell to Ruth Hutchings. In 1957 from Frank E. and Ruth Hutchings to T.M. Tank in fee simple. In 1961 from P.M. Tank to Frank E. and Ruth Hutchings in fee simple. In 1961from Frank E. and Ruth Hutchings to Fred D. and Bessie Mae Ellis in 1961 in fee simple. In 1969 from the Ellis' to the City in fee simple. In short, prior to the City's purchase, these lots were subject to private use and development and in fact were platted for residential use.

The conveyance history of the unplatted lot is more difficult to track as AIMS seemingly groups deeds from numerous unplatted lots which are wholly unrelated to this parcel. That said, we at least know that it was conveyed from John and Bertie Swatzell in 1931 to Mike and Mary Pavlich for $1,000 and that the property was subsequently conveyed by the Ellis' in the same deed as conveyance of Lots 1-3 Swatzell Addition in 1969 to the City.

KORA requests submitted to the City in the last couple of weeks reveal the following information relative to the 5000 Rainbow property acquisition and use.

- Minutes from July 11, 1968, Meeting. Councilmember Keller presented the "possibility" of purchasing property at 50th and Rainbow. States "He introduced

representatives from Westwood Christian Church and Westwood View School. Discussion followed in view of cooperation with school and church on building a City Hall and swimming pool at this location." Goes on to state "Mr. Keller instructed Mr. Glenn Myers to check with the following cities: Mission, Fairway, Merriam and Roeland Park on cost of building, size and maintenance of swimming pool." City Attorney was directed to get an appraisal on land and property at 50th and Rainbow.

- Minutes from November 14, 1968, Meeting. Approved motion to have Mayor "sign contract when Mr. and Mrs. Fred Ellis execute the contract for sale of property located 50th and Rainbow and down payment of $5,000.00 be held in escrow at the Johnson County National Bank until a complete abstract of title has been received."
- Minutes from January 9, 1969, Meeting. Note that the City Attorney stated the abstract of title of property located at 5010 Rainbow was clear and recommended money being held in escrow be paid to Mr. and Mrs. Fred Ellis in the amount of $4,000 be paid. Approved by Council. Discussion at the meeting centered around construction of city hall.

These minutes reflect several important facts relative to your challenge. First, there is clear evidence that the City paid fair market value for the property. The City obtained an appraisal prior to purchase. It appears that the City paid $4,000 for acquisition of the Property, which inflation adjusted to today, is not an insignificant amount of money. Without question, the property was not donated or gifted to the City. There was a negotiated sale. Second, the use of 5000 Rainbow as contemplated at the time of sale did not include use of the property as an open space park. Discussion centered around construction of a city hall and possibly a pool, neither of which uses ever materialized. Finally, the motion on November 14, 1968 required the obtaining of an abstract of title for the Property. This clearly suggests that the City intended to receive – and did receive - fee simple, clear title to the property.

II. Discussion.

A. Objection.

The objection raised by you is that sale of the 5000 Rainbow property fails to comply with K.S.A. §12-1301 which provides as follows:

> **12-1301. Land for park purposes; sales or exchanges in connection with parks; use of moneys; notice; protest; election; validation of prior sales and conveyances.** Any city may acquire by purchase, or lease or may take options upon, land within or without the limits of said city to be used as a public park for the use and benefit of the people of said city. Any city may trade or exchange any public park, public square or market square which it may own, or any portion thereof, for other land to be used for similar purposes, or may sell the same. Any such sale heretofore made is hereby confirmed, legalized and declared to be a valid sale and conveyance. Before making any such trade or exchange or sale, the city shall first

> publish notice of such proposal in the official city paper once each week for two consecutive weeks upon the same day of the week and, if within thirty (30) days from the date of the last publication there has not been filed with the city clerk of such city a protest signed by qualified electors of such city equal in number to not less than ten percent (10%) of the electors who voted at the last preceding regular city election as shown by the poll books, such city may make such sale, trade or exchange.
>
> In the event such a petition is filed with the city clerk within the time prescribed above no such sale, trade or exchange shall be made until the governing body shall be instructed so to do by a majority of all the votes cast on this proposition at a regular or special election. Any election required as herein provided shall be called and held as provided by law for bond elections.

It is worth noting that this statute was adopted within the same Act as K.S.A. §12-1302 which relates to the bonding of costs associated with the acquisition of land for park purposes. That statute requires a popular vote authorizing the land acquisition. This fact is relevant when reviewing the first sentence of K.S.A. § 12-1301 which provides that, "Any city may acquire by purchase, or lease or may take options upon, land within or without the limits of said city ***to be used as a public park*** for the use and benefit of the people of said city." (Emphasis added).

The second sentence of K.S.A. §12-1301 is the operative sentence in your objection. It provides that, "Any city may trade or exchange any public park, public square or market square which it may own, or any portion thereof, for other land to be used for similar purposes, or may sell the same." Note the difference of the verbiage in this sentence from the first sentence of the statute. The first sentence references "use" as a park. This second sentence references a "public park." Your correspondence of October 19th simply ignores this variation in the language of the statute and argues that mere use alone restricts sale of the Property despite the fact that such argument is not borne out in the actual language of the statute.

Moreover, K.S.A. §12-1301 must be read together with K.S.A. §12-1303 and §12-1304. As to K.S.A. §12-1303, that allows cities to levy a "park tax" for the purpose of maintaining "such parks" as acquired under the auspices of K.S.A. 12-1301 et seq. K.S.A. 12-1304 continues:

> City parks ***so established*** [that is, pursuant to K.S.A. 12-1301 et seq.] shall be under the control of the governing body of said cities, who shall provide for the establishing and care of the same ***out of the funds raised as aforesaid*** [that is, out of bond proceeds and/or a park tax], and shall make suitable regulations for the care and government of ***such*** parks. (Emphasis added).

In the present case, the factual record that we have from the time the 5000 Rainbow property was acquired reflects that: (1) bond proceeds weren't utilized for the acquisition; (2) the land wasn't purchased with the intent to commit it to its present use as a park; and (3) the City has never levied a "park tax" as to this property.

B. Requirement of Dedication for Park Purposes.

In order for real property to be deemed a "public park" for purposes of K.S.A. § 12-1301, such property must have either been acquired pursuant to the provisions of K.S.A. 12-1301 *et seq.* or, as provided in K.S.A. § 12-1301, the property must have otherwise been acquired by the City for "for the use and benefit of the people of said city." This quoted language is of the utmost importance because it requires that the property have been legally "dedicated" as a park. Dedication is a term of art under Kansas law. "A dedication is an offer by the owner of land to devote the property to public use, manifesting an intention that the land shall be accepted and used presently or in the future. The owner's intent to dedicate and the public's acceptance thereof are essential elements of a complete dedication." *Wagon Wheel Landowners Ass'n v. Wallace,* 17 Kan. App. 2d 395, 399 (1992). Note that this definition language for dedication essentially mirrors the language of K.S.A. § 12-1301.

Dedication may be by statute, deed or common law. *Id.* The party asserting that public land has been dedicated for public use bears the burden of proof and must show: (1) an intent by the property owner to dedicate the land for such use; and (2) acceptance by the public. *Carlson v. Burkhart,* 271 Kan. 856, 862 (Kan. 2001). Failure to prove either of the elements is fatal to the party asserting implied dedication. *Id.*

1. Statutory Dedication.

The issue of such acts as are necessary for the dedication of land for park purposes was considered in *Cooper v. City of Great Bend,* 200 Kan. 590 (1968). In that case, the Kansas Supreme Court considered the issue of whether a park in Great Bend Kansas had been dedicated for public park purposes. The Court recognized that a public park may be dedicated in two ways. First is by formal dedication. The methodology of formal dedication includes dedication on the initial land grant or dedication via plat or recognition of dedication by subsequent plat. This methodology of dedication was recognized by citation to K.S.A. § 12-401. This statute provides as follows:

> **12-401. Cities of second and third classes and towns; abstracts; form and contents of plat; approval by county or city attorney.** Before any proprietor or proprietors of any proposed city of the second or third class or of any town, or of any proposed addition to any such city or town shall record the plat of such proposed city, town or addition, he or she shall furnish to the county attorney of the county in which such proposed city or town is located, or the city attorney and governing body in case of a proposed addition, an abstract of title and the plat to the land which is to be incorporated into such city, town or addition. Such county attorney, in case of any proposed city or town, or such city attorney and governing body in case of a proposed addition, after examination duly made, shall approve or disapprove said plat. Such city attorney, and governing body in case of any proposed addition to any town or city may require the streets and alleys, therein shown, to be as wide as, and to be conterminous with, the streets and alleys, of that part of the city or town to which it adjoins.

> ***The plat shall accurately and particularly set forth and describe: First, all the parcels of ground within such city or town or addition reserved for public purposes, by their boundaries, course and extent whether they be intended for avenues, streets, lanes, alleys, commons, parks or other uses; and, second, all lots intended for sale, by numbers, and their precise length and width.*** (Emphasis added).

In addition to the *Cooper* case's recognition of the procedure through dedication by plat to a particular purpose, this recognition was also made by the Attorney General in A.G. Op. 84-83, which found that a proper statutory dedication requires a plat to designate the public "uses therein named, expressed or intended, and for no other use or purpose."

The *Cooper* case then cites to K.S.A. § 12-406 for additional authority and support. This statute states as follows:

> **12-406. Maps and plats sufficient to vest title of lands conveyed for public use in city; effect of recordation.** ***Such maps and plats of such cities and towns, and additions, made, acknowledged, certified, filed and recorded with the register, shall be a sufficient conveyance to vest the fee of such parcels of land as are therein expressed, named or intended for public uses in the city, in trust and for the uses therein named, expressed or intended, and for no other use or purpose.*** The recording of such map or plat shall not constitute a conveyance of any interest in the oil, gas and other minerals underlying the avenues, streets, lanes, alleys and other parcels therein named or intended for public uses. The provisions of this act shall apply to all maps or plats, heretofore or hereafter made, acknowledged, certified, filed and recorded with any such register. Nothing herein contained shall be construed as granting any right to enter upon the surface of such parcels of land for purposes of exploring for or the extraction of such minerals, or in any other manner to interfere with the public uses named in such maps, plats and additions. (Emphasis added).

Prior to the 1984 amendment, K.S.A. § 12-406 vested title in all statutorily dedicated land located within a city in the county while the control and use of the property rested with the city. *See* Kan. A.G. Op. 83-146. Once a public use was established by statutory dedication, the county "forever afterward" held the property in trust for the specified use. *Id.* Accordingly, a city didn't "own" public property acquired by statutory dedication and could not sell the same. *Id.*

In 1984, this construct was fundamentally altered by the passage of K.S.A. 12-406a which provides,

> **12-406a. Fees to certain land held by county transferred to city.** On the effective date of this act, the fee to any parcel of land intended for public use in cities of the first, second and third classes ***which is held in trust by the county*** is hereby transferred and conveyed to the city in which such property is located. The city shall hold the fee to such parcels of land intended for public use in the city in trust

> and for the uses therein named, expressed or intended and for no other use or purpose. (Emphasis added).

In the *Great Bend* case there was such a legal dedication of land. Therefore, the Court restricted the use of the property to park uses. In the case at bar, there was no statutory dedication on the original plat of the 5000 Rainbow property to any public use, much less the specific public use of a park. As no statutory dedication occurred, the City should be unbound by the aforementioned statutory requirements to hold the property in trust and to be used for the exclusive purpose of a park.

2. Dedication by Deed.

In addition to the statutory process for dedication, dedication can be effectuated by a deed of dedication to a local government. As you no doubt are aware, there was no such deed of dedication involving 5000 Rainbow. The deed of conveyance from the Ellis' to the City in 1969 fails to specify that the 5000 Rainbow property is to be committed to any public purpose much less restricted to the specific public purpose of a park. As expressed in A.G. Op. 84-83, the failure of a deed of conveyance to a City to express the "purpose or use for which the land is conveyed" results in the failure of the creation of a dedication by deed.

3. Common Law Dedication.

The third method of possible dedication is by common law. In evaluating whether a common law dedication occurred, it is first important to define what constitutes a dedication at common law. Although not specifically so defined in Kansas, the great weight of authority defines a common law dedication as an ***uncompensated transfer of private property to public use***. *See Mikkelsen v. Hansen,* 31 Cal. App. 5th 170 (2019) (Defining a dedication as an uncompensated transfer of an interest in private property to the public); *McNaughton v. Chartier,* 977 N.W. 2d 1 (Iowa, 2022) (The very essence of a dedication of an interest in private property to the public is that there is no compensation to the dedicator); *Nelson v. Garber,* 960 N.W. 2d 340 (S.D. 2021) (By its very nature, "dedication" is to appropriate and set apart one's private property to some public use); *EPG Assoc. v. Cascadilla School,* 194 A.D. 3d 1158 (Sup. Ct. 3rd Dist. 2021) (Dedication is essentially a gift by a private owner of real property to the public); *Becker v. Burleigh County,* 924 N.W.2d 393 (N.D. 2019); *Zito Media, L.P. v. Haggerty,* 320 F. Supp. 3d 630 (M.D. Pa. 2018) (Same); *Haven Chapel UMC v. Leebron,* 496 S.W. 3d 893 (Tx. Ct. App. 2016); *Favre v. Jourdan River Estates,* 148 So. 3d 361 (Ga. 2014) (Same). By this definition, the acquisition of the 5000 Rainbow property was not a dedication for two reasons. First, the transfer was not uncompensated. The City paid $4,000 for the property in 1969. Prior to acquisition of the property, the City obtained an appraisal. Second, the only transfer of the 5000 Property from private property to public use was in 1969. At that time, the property was not intended to be used, nor was it actually being used for open park space.

It should additionally be noted that the ownership of the 5000 Rainbow property does not have the hallmarks of a common law dedication. Statutory dedication as contrasted with common law dedication is distinguished by the fact that a statutory dedication is a conveyance of the fee title to the property whereas a common law dedication only bestows an easement to use the

property. Am. Jur. 2d, Dedication § 3. Here, there is no question that the City owns the fee simple title to the property.

4. Kansas Home Rules and Statutory Powers as to Property.

The City's ownership of fee title in the absence of a statutory dedication also establishes the City's right to freely assign the property under the Home Rule Amendment to the Kansas Constitution and the attendant enactment of K.S.A. § 12-101. This statute provides as follows:

> **12-101. Corporate powers; home rule of local affairs and government.** Article 12, section 5 of the constitution of Kansas empowers cities to determine their local affairs and government by ordinance and enables the legislature to enact laws governing cities. Each city being a body corporate and politic, may among other powers —
>
> . . .
>
> ***Second.*** **Purchase or receive, by bequest or gift, and hold, real and personal property for the use of the city.**
>
> ***Third.*** **Sell and convey any real or personal estate owned by the city, and make such order respecting the same as may be deemed conducive to the interests of the city, and to provide for the improvement, regulation and government of the same.**
>
> *Fourth.* Make all contracts and do all other acts in relation to the property and concerns of the city necessary to the exercise of its corporate or administrative powers.
>
> . . .
>
> *Sixth.* Exercise such other and further powers as may be conferred by the constitution or statutes of this state. (Emphasis added).

The right to freely buy and sell real property as provided above is inconsistent with a common law dedication. As cited above, common law dedication only grants an easement to use land for the specific public purpose to which the property is committed. As the City owns fee title to the property, it constitutes a proper exercise of Home Rule and K.S.A. § 12-101 for the City to sell the 5000 Rainbow property at its discretion. Additionally, K.S.A. § 12-101 flies in the face of your argument within your October 19, 2023 correspondence that it is "how the land is used, not how the land appears in a title report." If your argument was true, then a City could never acquire land, commit it to a use and then sell it. It would be dedicated and committed forever to such public use. Clearly, the express statutory right to "Sell and convey any real or personal estate owned by the city" makes clear that your "use" argument is wholly without merit.

5. Abandonment.

Finally, under the specific facts relating to the acquisition of 5000 Rainbow, the City can vacate any use to which the property is committed. Where an absolute fee interest has been dedicated, public use of the property may cease or the land may be devoted to a different use without any impairment of the title acquired, absent fraud or bad faith at the time of the original conveyance. Am. Jur. 2d Dedication §63. Here, the City holds absolute fee title to the property and is free to convey the Property.

III. Slander of Title and Legal Claims of the City.

The last subject of this correspondence relates to the cloud on title which you and your clients have placed upon the City's ability to convey the property. As I'm certain that you are aware, the mere assertion of your objection, no matter how meritless, creates the threat of a claim or legal proceeding which impairs the title of the City. As you are aware, the City is under contract to convey 5000 Rainbow. Your objection interferes with the City's ability to meet its contractual obligations. As such, please be advised, that should you or your clients proceed further in this matter, the City reserves its rights to pursue legal claims against you and your clients for slander of title and tortious interference with the contractual relationships of the City.

Notably, you have failed to identify any of your clients. My understanding is that you have continued to do so upon direct inquiry. To the extent you refuse to identify your clients, then the City's rights and remedies would necessarily have to be exercised against you.

Your clients may or may not be Westwood residents as you state. Obviously, those who are not Westwood residents would have no legal right to vote in any election held pursuant to K.S.A. §12-1301 and accordingly have no basis or cause to object to the proposed sale on the grounds of non-compliance with K.S.A. §12-1301. Therefore, clearly such non-resident's assertion of your present objection is not in fact motivated by a desire to force an exercise of their rights as qualified electors of the City of Westwood to vote on disposition of the 5000 Property. Rather, their motive can only be the improper and illegal motive of slandering the title of the City and tortiously interfering with the City's contractual relations, all in an attempt to prevent development of the site at any and all costs. You have utterly failed to demonstrate that your clients have any legal standing to assert the objection which you raise.

The City trusts that you understand, and have advised your clients, that their actions may also result in claims from the Karbank group of companies and/or the Shawnee Mission School District. However, we assert no claims here on their behalf.

Accordingly, the City hereby demands that you and your clients immediately and formally withdraw any claims or demands related to K.S.A. §12-1301, and furthermore cease in publishing your and their continued slandering of the City's title (whether through web sites, Facebook posts, door-to-door, or electioneering, as occurred in front of City Hall yesterday, during voting hours), and cease in further tortiously interfering with the City's contractual relationships. The City expects to receive such a response from you by no later than **Wednesday, November 15, 2023**.

We hope that further action by the City will not be required in this matter, but your and your clients' refusal to comply with the terms of this letter will leave the City with no other choice. If upon receipt and review of this correspondence you have any questions or comments, please feel free to contact me.

Sincerely,

Ryan B. Denk,
City Attorney

Cc: David E. Waters, Mayor
Leslie Herring, City Administrator