



City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 2/2/2021

DEPARTMENT: Legal

STAFF CONTACT: Ron Shaver / Chris Grunewald

SUBJECT: Resolution No. 21-1013 authorizing indemnification and defense for the City Manager in the matter of *Cedar Creek Development Company, LLC; 30th Plat of Cedar Creek, LLC; CCV (Tract 3), LLC; CCV (Tract 13D), LLC; CCV (Tract 13E) v. City of Olathe, et al.*

ITEM DESCRIPTION:

Consideration of Resolution No. 21-1013 authorizing indemnification and defense for the City Manager in the matter of *Cedar Creek Development Company, LLC; 30th Plat of Cedar Creek, LLC; CCV (Tract 3), LLC; CCV (Tract 13D), LLC; CCV (Tract 13E) v. City of Olathe, et al.*

SUMMARY:

Plaintiffs are developers of residential areas within the Cedar Creek neighborhood who have re-filed this Johnson County District Court lawsuit which was previously dismissed without prejudice on October 26, 2020. They filed this new civil action in Johnson County District Court against the City of Olathe, the City Manager J. Michael Wilkes, Infrastructure Department Director Mary Jaeger, Assistant City Engineer Nathan Baldwin, and the Board of Zoning Appeals ("BZA"). This new lawsuit once again concerns two plats and building permits for lots on those two plats, and it also challenges the December 16, 2020 BZA decision rejecting Plaintiff's appeal of City staffs' refusal to issue building permits.

K.S.A. 75-6116 (Attachment A) requires cities to defend and indemnify officers and employees from personal liability in lawsuits based on actions which were within the scope of the duties of an officer's or employee's position with the City.

Section 3.60.130 of the Olathe Municipal Code (Attachment B) designates the City Manager to determine the eligibility of a current or former employee for indemnification and defense.

Historically, in situations where a lawsuit has included the City Manager as a defendant, the City Council has adopted a resolution authorizing the City Manager's indemnification and defense. For the current lawsuit, Staff recommends that City Council adopt the proposed resolution authorizing the indemnification and defense of the City Manager (Attachment C).

FINANCIAL IMPACT:

Unknown. The City's insurer has been provided the lawsuit and is determining coverage.

ACTION NEEDED:

Approval Resolution No. 21-1013 authorizing indemnification and defense for the City Manager in the matter of *Cedar Creek Development Company, LLC; 30th Plat of Cedar Creek, LLC; CCV (Tract 3), LLC; CCV (Tract 13D), LLC; CCV (Tract 13E) v. City of Olathe, et al.*

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ATTACHMENT(S):

A: K.S.A. 75-6116

B: OMC 3.60.130

C: Resolution 21-1013 Authorizing Indemnification and Defense