



August 8, 2025

VIA U.S. MAIL AND E-MAIL ([REDACTED])

Kate Guimbellot

[REDACTED]
Olathe, KS 66061

RE: Tort Claim (Damage Claim) Submission - Guimbellot
Claim No. 25-062

Dear Ms. Guimbellot,

As you know, on April 22, 2025, you submitted a Tort Claim (the “Claim”) to the City of Olathe (the “City”) related to flooding at your property located at 11236 South Race Street, Olathe, Kansas 66061 (the “Property”). The Claim alleges the flooding was caused by an “under designed and wrongly built stormwater system that runs through College Meadows,” and you assert that the City is responsible for the design and construction problems affecting the Property. The City takes all claims seriously and has thoroughly vetted the Claim, including a review of all supporting materials you provided to Stormwater Manager Rob Beilfuss, City Engineer Nate Baldwin, and the HNTB Corporation.

Based on the City’s investigation, the Claim is **denied**. While the City is sympathetic to your situation, the Claim and the underlying circumstances were not caused by the City. Additionally, please understand the City has an obligation to **all** its residents not to use tax dollars to fix a problem created by third parties not under the City’s control.

Below is a summary of the facts and allegations as the City understands them. While not required by the Kansas Tort Claims Act or the Olathe Municipal Code, as part of the City’s response to the Claim, we wanted to provide you with this information and our basis for the denial.

BACKGROUND¹

In 2007, Ronald Van Lerberg, PLK Development, Inc. (the “Developer”) began the College Meadows subdivision’s development. College Meadows was platted in multiple phases. The Property was platted by the Developer in 2014, with the home on the Property being built in December 2016 by separate third-party builder (the “Builder”). During the development of College Meadows, a development plan including Street and Storm Sewer Improvement Plans (the “Development’s Plan”) was submitted to the City. The Development’s Plan included certain pertinent information related to the **privately constructed** street and storm sewer plan for the Development. Relevant to the Claim, and consistent with the City’s obligation and protocol, City

¹ The recital of any information within this section is not an admission of liability, or confirmation of accuracy. Instead, the information contained within is merely meant to provide foundational information for later analysis and application.

staff reviewed the Development's Plan prepared and submitted by the Developer's engineer **exclusively** for general conformance with City of Olathe Design Criteria, the Olathe Municipal Code and Unified Development Ordinance (collectively, the "Code"). More specifically, the Development's Plan reflects important disclaiming language, to wit:

The City of Olathe plan review is only for general conformance with City of Olathe Design Criteria and City code. The City **is not responsible for the accuracy and adequacy of the design**, and dimensions and elevations which shall be confirmed and correlated at the job site. The City of Olathe through approval of this document assumes no responsibility other than that as stated above for the completeness and/or accuracy of this document. (emphasis added).

In this case, the Development's Plan met all City design criteria and Code provisions as presented to and reviewed by City staff, as reflected on the Development's Plan. Accordingly, and as set forth more fully below, the City bears no liability as it relates to this Claim for the Property.

From your Claim, we understand at some point during construction of your house on the Property, but prior to completion of the house, it was allegedly "discovered" by you, or someone involved in the build, that the Development's Plan had listed the lowest building opening ("LBO") elevation for the Property as 991.7 feet. Despite this, the foundation was poured with a 3 foot shortfall cut in ignoring this LBO. The City was unaware that this occurred, and there was no evidence in any City records that you ever contacted the City regarding the LBO.

Eight months later, in August 2017, the Claim states the Property flooded, and the Property's basement filled with 3 – 4 inches of water. At this point, you, or someone on your behalf, contacted the City about your concern. Despite not being involved in the construction, the City evaluated your concern and determined the cause of the flooding was in fact due to the foundation being below LBO. It is our understanding that you then coordinated with the parties involved in the Property's construction (the Builder and the Developer) to remedy the issue. To do so, a concrete company re-poured the window well with an additional 3 feet. The City is unaware of other remedial or grading measures taken nor what, if any, other remedial measures were discussed between you, your Builder, and the Developer.

In August 2021, you reported the Property flooded again with 3 – 4 inches of water in the basement. Following this incident, no remedial or grading measures were taken to the City's understanding.

In July 2022, after further conversations between you and Stormwater Manager Rob Beilfuss, the City of Olathe hired HNTB to conduct a drainage analysis and a hydrology and hydraulics analysis regarding the College Meadows subdivision. The July 2022 report confirmed "flooding has become an issue" at the Property and identified the cause to be the "combination of a non-conservative design, *discrepancies between the plans and final construction*², and the resulting

² Emphasis added.

lack of an overflow path.”³ Over a year later, in August 2023, the Builder “repaired” certain items on the Property including, among other things, the foundation, the siding, etc., but no grade changes were made to your side yard or rear yard.

In July 2024, the Property allegedly flooded again. The following month, you contracted with a private foundation company who ultimately concluded water diversion was required. This is consistent with the HNTB July 2022 report recommendations. The City is unaware of any efforts to address the issues as outlined in HNTB’s July 2022 report.

In March 2025, the City obtained *another* report from HNTB that made recommendations for a more economical option than in the July 2022 HNTB report. Copies of both HNTB reports were provided to you for review and consideration. Still, no remedial or grading measures were taken by you, the Developer, the Engineer, the Builder, and/or some other individual involved in your build.

In June 2025, David Silverstein, a retired engineer prepared a third-party report titled “Review of Flooding Issues” at the Property. This report is unstamped and does not indicate if it is intended to be an engineering analysis. The Silverstein Report details information and theories largely consistent with HNTB’s July 2022 and March 2025 Reports, but it also contains certain incorrect theories and presumptions (addressed more fully below).

The City asked HNTB to review the Silverstein Report. HNTB outlined its review of Silverstein’s report via a third report dated July 17, 2025. The July 2025 HNTB Report is attached to this letter for your review.

To date, no other remedial actions have been taken by you, the Developer, the Developer’s engineer, the Builder, or any other individual involved in the build.

THIRD-PARTY REPORTS

There are now **four** separate third-party reports related to the flooding occurring at or near the Property. In each of these reports, there is one consistency that is very clear:

The Property—as it was *actually* constructed—is not consistent with the designs or engineering documents as originally submitted.

Quite simply, the ultimate construction of your house on the Property deviated greatly from the original design that was submitted to the City for review (which, again, was limited to general conformance with City of Olathe Design Criteria and applicable City Code provisions). This resulted in an “as-built” Property that does not conform with necessary and essential requirements (such as grading, LBO, etc.).

³ Further analysis of the July 2022 Report is included below.

Importantly, the reports all agree on two key findings: (1) that the Development's Plan was **not** drawn by the City of Olathe⁴; and (2) the Property, as built, was not consistent with the design or engineering documents submitted to the City. The Silverstein Report states "the **developer** replaced the flared end section ... and recorded this on 'As-Constructed' drawings submitted in August 2015." Silverstein himself agrees the Developer, the Engineer, the Builder, and/or some other individual involved in the Property's build are actually the cause of any alleged flooding at the Property. This includes:

- Review of the design drawings and subsequent reports indicated that mistakes were made during the **design, permitting, and construction** of the storm drain system and home *by the Builder and the Developer* at 11236 S. Race Street.
- The fact that the home was **constructed** by the Builder with a LBO lower than planned contributed to the initial flooding.
- It appears that the **engineer** and **developer** included lots 51 and 52 in College Meadows 4th Plat without consideration of the long-term stormwater issues that would occur on these lots and within the College Meadows subdivision generally.
- Numerous miscalculations were made in the **development** of the storm drain system by the Developer's engineer.

Thus, as pointed out in the Silverstein Report, the "errors" and "mistakes" identified within the reports are all attributable to private, third-party entities not under the City's control.

That said, there are portions of the Silverstein Report that are incorrect.

Silverstein asserts that both the Property (Lot 52 in the College Meadows subdivision plat) and the adjacent 11244 South Race Street (Lot 51) were both designed in the subdivision plans for flooding on the property during significant storm events, and that "especially Lot 52 should not have been developed or permitted by the City of Olathe[...] given this condition." Unfortunately, as described in detail on Page 2 of the July 2025 HNTB report, while Lot 51 was graded in general conformance to the grading plans, **Lot 52 was not**. In fact, Lot 52 is graded flatter than shown on the development plans. While there has been no reported flooding of the home on Lot 51, the failure of Lot 52 to be graded in accordance with the design plans contributed to the 2017 flooding of the home through the low opening. Furthermore, the failure to implement any other mitigation measures on Lot 52 (**such as re-grading**) has led to continued stormwater problems affecting the home which are not the result of anything caused by the City.

Later, Silverstein claims the "methodologies used by both the design engineer and HNTB were too simplistic for a watershed of this size and complexity." The City disagrees. As outlined in HNTB's July 2025 Report, the Rational Method utilized for review of the design of the watersheds is the appropriate methodology.⁵ HNTB utilized Bentley's CivilStorm software

⁴ See, the June 2025 Silverstein Report ("Street and storm sewer plans for the 3rd Plat were developed in 2014 by **Gary T Spehar Engineering and Planning**..."; "The grading plan shown below was **prepared by the engineer**...") (emphases added).

⁵ And even though the City of Olathe did not design or construct the Development's Plan, the City would not be liable under any sort of negligence theory as it conformed with "generally recognized and prevailing standards" regarding its analysis of the "installation and construction of the streets and storm sewers." See generally *Williamson v. City of Hays*, 64 P.3d 364, 372 (Kan. 2003).

package and conducted a hydraulic analysis that was “significantly more in-depth than the design engineer’s calculations.” Accordingly, while the design engineer used poor methodologies, the methodologies used by HNTB to evaluate and prepare alternative solutions to fix the problems caused by the Developer’s engineer was, and remains, acceptable and are in line with industry best practices.

The Silverstein Report also claims the expansion of College Boulevard could not have been accounted for by the design engineer. This too is incorrect. As outlined in HNTB’s July 2025 Report, College Boulevard was planned for expansion **since 2001**. It is not uncommon for engineers to review plans for surrounding roadways, as well as the City of Olathe’s long-term plans, when designing things like stormwater plans. Thus, it would have been possible for the design engineer to account for the wider roadway. Regardless, any failure to do so does not equate to liability imposed upon the City simply by virtue of City staff performing its role to review the plans to confirm compliance with applicable Design Criteria and Code provisions.⁶

CONCLUSION

It is important to note that many of the incidents identified in the Claim are beyond the applicable statute of limitations. Regardless, the City inherited the privately designed and constructed stormwater system for the College Meadows subdivision for *maintenance*.

While the City remains sympathetic to the circumstances underlying the Claim, the facts outlined above demonstrate that any fault is attributable to the Developer, the Developer’s engineer, the Builder, and/or some other individual involved in your build, **not the City of Olathe**.

Accordingly, the City bears no liability as it relates to this Claim for the Property, and the Claim is hereby denied.

Respectfully,

A handwritten signature in black ink, appearing to read 'Ron Shaver', is written over a horizontal line.

Ron Shaver
City Attorney

⁶ Relevant here, “established Kansas law generally recognizes no action against governmental entities for failure to control surface waters or for any increased or accelerated flow caused by lawful improvement, especially where it is demonstrated that the public improvement caused no greater amount of damage to adjoining landowners than would have been caused without the improvement.” *Duncan v. City of Arkansas City*, 128 P.3d 417, 423 (Kan. App. 2006) (citing *Baldwin v. City of Overland Park*, 468 P.2d 168 (Kan. 1970)). And “a city has no duty to provide drainage to take care of surface waters, and ordinarily its failure to protect citizens from surface water is not actionable.” *Id.*