

FROM: Marshall Helmberger  
Orlyn Kringstad

TO: Gary Albertson  
Publisher  
Tower News

September 16, 2019

## RETRACTION DEMAND

Dear Mr. Albertson:

Please consider this formal notification that you have engaged in defamation against Marshall Helmberger and Orlyn Kringstad. Defamation is a civil crime, or tort, for which you can be sued. If you fail to respond appropriately per this letter you will be served with a court summons and will be required to answer these questions in the form of interrogatories under oath.

The defamation in question was contained in an article appearing under the byline of "Steve Altenburg, independent journalist" under the headline: "**TEDA loan improprieties exposed**" which you published in the Sept. 13, 2019 edition of the *Tower News*. As a publisher, you are undoubtedly aware that you have an obligation to ensure that you are not publishing false and defamatory claims by engaging in reasonable fact-checking. If you failed to verify the "fact" claims made by Mr. Altenburg, you have published this article with a reckless disregard for the truth and are equally liable under the law for this defamation.

The following claims we believe are false, or without foundation, and are therefore defamatory and must be retracted by the *Tower News* at the earliest possible date.

1) Your newspaper stated: "The State currently has an open and active investigation into the misappropriation of public funds and fraud, allegedly committed by Kringstad and Helmberger."

We believe this claim is without foundation. What evidence do you have that the state auditor is "actively" investigating this complaint? Four months after Mr. Altenburg claimed he submitted a complaint, none of the supposed targets of his allegations has been contacted by the auditor in any way. Anyone can send whatever information they wish to the state auditor at any time. The mere submission of a complaint is not evidence of an active investigation. In this case, it appears the state auditor's office has taken no action despite the months that have proceeded since Mr. Altenburg claims he filed a complaint.

WE ARE HEREBY DEMANDING THAT YOU PROVIDE EVIDENCE FROM THE STATE AUDITOR'S OFFICE THAT THIS "COMPLAINT" IS BEING "ACTIVELY" INVESTIGATED OR THAT YOU RETRACT THE CLAIM OTHERWISE.

2) Your newspaper stated: "The inconsistencies with the T.E.D.A. loan were also noted by the City's auditors who requested it be examined by the City's attorney." In fact, the loan in question was completed in 2017, which meant the auditors examined the loan during their review of the city's books in the spring of 2018. Our review of that audit includes no recommendation to forward any concerns to the city attorney. The only concern expressed was that the city (read: city clerk-treasurer) had done an inadequate job of documenting why she paid out reimbursement differently than described in the grant agreement.

After Linda Keith, working in coordination with Mr. Altenburg, raised an issue with a specific invoice that she had reimbursed as part of the loan payout, the auditor's final report on the 2018 audit recommended merely that the city seek "appropriate detailed documentation supporting the payment." It was neither Mr. Helmberger's nor Mr. Kringstad's job to ensure that invoices were adequately supported by documentation. That was entirely the clerk-treasurer's responsibility.

WE ARE HEREBY DEMANDING THAT YOU PROVIDE EVIDENCE THAT THE CITY'S AUDITOR NOTED "INCONSISTENCIES" THAT PERTAINED IN ANY WAY TO MR. HELMBERGER OR MR. KRINGSTAD'S ACTIONS VERSUS THE FAILURE OF THE CITY CLERK-TREASURER TO DO HER JOB ADEQUATELY.

3) Your newspaper stated: "The city's attorney after being informed of the entire history behind the loan then instructed Clerk/Treasurer Linda Keith to submit those concerns to the State Auditor." Tower City Attorney Andy Peterson has denied, in writing, Mr. Altenburg's claim.

WE ARE HEREBY DEMANDING THAT YOU PROVIDE EVIDENCE THAT THE CITY ATTORNEY INSTRUCTED THAT THE CLERK-TREASURER SUBMIT HER CONCERNS TO THE STATE AUDITOR, OR THAT YOU RETRACT THE CLAIM OTHERWISE.

4) Your newspaper stated: "A reimbursed invoice from the architect states that it is final payment for his interest in the Tower Harbors Shores LLC partnership, which it is illegal to use public funds to buy out partners." The architect in question, Dewey Thorbeck, has stated categorically in writing to the city on two occasions that the invoice was for architectural services and not related to a buy-out.

WE ARE HEREBY DEMANDING THAT YOU PROVIDE EVIDENCE THAT THE INVOICE IN QUESTION WAS FOR PURPOSES OF A BUY-OUT AND THAT IT WAS NOT FOR ARCHITECTURAL SERVICES AS YOUR NEWSPAPER CLAIMS, OR THAT YOU RETRACT YOUR CLAIM OTHERWISE. PLEASE PROVIDE A COPY OF THE TOWER HARBOR SHORES LLC PARTNERSHIP AGREEMENT UNDER WHICH YOUR NEWSPAPER CLAIMS A BUY-OUT WAS MADE.

5) Your newspaper stated: "Under T.E.D.A. President Marshall Helmberger, a letter was sent to the City council from T.E.D.A. recommending the City approve the loan to Kringstad, stating that the application for the loan met all the loan requirements."

It is our understanding that no such letter exists. Mr. Helmberger, along with deputy clerk-treasurer Terri Joki-Martin, did conduct an evaluation of the finances of Tower Harbor Shores and Tower Vision to determine whether they met the investment threshold required by the loan guidelines, and communicated their conclusions regarding the level of investment by the companies. The email offers no opinion on whether it meets any other requirements under the loan guidelines. It further states that any loan proceeds disbursed under the loan should only be paid out for the project as "*invoices are submitted to the city with proof of payment.*"

Prior to publishing a potentially defamatory article, any responsible publisher not motivated by malice would have reviewed such a letter to ascertain that the claims made by Mr. Altenburg were not false and potentially defamatory.

As such, WE ARE HEREBY DEMANDING THAT YOU PROVIDE THE LETTER BASED UPON WHICH YOUR NEWSPAPER CLAIMS THAT MR. HELMBERGER STATED THAT THE "APPLICATION FOR THE LOAN MET ALL THE LOAN REQUIREMENTS," OR THAT YOU RETRACT YOUR STATEMENT CLAIMING OTHERWISE.

6) Your newspaper stated: "...and the City approved the loan based on that false letter."

WE ARE HEREBY DEMANDING THAT YOU PROVIDE THE LETTER WHICH YOUR NEWSPAPER CLAIMS WAS "FALSE," AND SPECIFICALLY INDICATE WHICH PART OF IT WAS FALSE, OR RETRACT YOUR STATEMENT CLAIMING OTHERWISE.

7) Your newspaper stated: "The application did not meet any of the loan requirements." The loan guidelines approved by TEDA established eligible and ineligible uses. Eligible uses included: "Land and Building Acquisition; Land Improvements; New Building Construction; Building Renovation; Machinery Purchase and Equipment; Inventory Purchase; Design and Engineering; Project Sales and Marketing. Per the review undertaken

by the entire TEDA board, it was determined that the Tower Harbor Shores project included eligible costs for start-up alone totaling \$680,000. Those costs included architectural design and engineering as well as marketing.

**WE ARE HEREBY DEMANDING THAT YOU PROVIDE YOUR OWN ANALYSIS OF THE FINANCES OF THE TOWER HARBOR SHORES PROJECT UNDER WHICH YOU CLAIM THAT IT FAILS TO MEET “ANY OF THE LOAN REQUIREMENTS,” INCLUDING ELIGIBLE EXPENSES, OR RETRACT YOUR STATEMENT CLAIMING OTHERWISE.**

Further, the loan guidelines included a list of review criteria that TEDA can utilize as it assesses the merits of a request. Your newspaper stated that the Tower Harbor Shores request failed to comply with any of the loan guidelines, which could only be true if it complied with none of the review criteria.

**WE ARE HEREBY DEMANDING THAT YOU PROVIDE EVIDENCE THAT THE TOWER HARBOR SHORES PROJECT FAILED TO MEET REVIEW CRITERIA, SPECIFICALLY EQUITY COMMITMENT, MANAGEMENT CAPABILITY, MARKETING PLAN, ABILITY TO REPAY, LEVERAGE OF OTHER FUNDING SOURCES, JOB CREATION/RETENTION, ECONOMIC IMPACT ON AREA, OR AVAILABILITY OF FUNDS UNDER WHICH YOU CLAIM THAT IT FAILS TO MEET “ANY OF THE LOAN REQUIREMENTS,” INCLUDING THE ABOVE-CITED REVIEW CRITERIA, OR RETRACT YOUR STATEMENT CLAIMING OTHERWISE.**

8) Your newspaper stated: “Mandatory Reporting Requirements for Local Government Officials and Employees, Minnesota Statute section 609.456, subd. 1 makes it illegal for any person listed in that statute to not report fraud.”

This is a false statement, in that it purports fraud when none exists, and it misstates the law in question. First, the law makes no mention of “fraud,” but only theft, embezzlement, or unlawful use of public funds. Further, it only establishes reporting requirements for such defined infractions “by a charter commission or any person authorized to expend public funds.”

At the time that the IRRR grant proceeds were loaned to Tower Harbor Shores, neither Mr. Helmberger nor Mr. Kringstad were “authorized to expend public funds.” The only individual involved in this matter who met the criteria set forth in this law was former clerk-treasurer Linda Keith or the Tower City Council.

**WE ARE HEREBY DEMANDING THAT YOU PROVIDE EVIDENCE THAT MINN. STAT. 609.456, SUBD. 1 INCLUDES A REQUIREMENT TO FORWARD EVIDENCE PERTAINING TO “FRAUD,” AS WELL AS EVIDENCE THAT EITHER MR. HELMBERGER OR MR. KRINGSTAD WERE “AUTHORIZED TO EXPEND PUBLIC FUNDS” DURING THE PERIOD IN QUESTION.**

We have attempted to ignore the routine and derogatory sniping and innuendo that has regularly appeared in your publication under the byline of Anthony Sikora. Publishing such opinionated rants as “news” raises obvious questions about the ethical standards deployed by your publication.

But we cannot stand idly by while you falsely accuse us of wrongdoing based on “facts” which are not facts at all. Please be aware that your malice toward us, particularly toward Mr. Helmberger, is well-documented and will be highly useful in a court of law if you choose to go that direction.

Whether this ends up in court is entirely up to you. We reserve the right to identify additional defamatory statements in the future.

AS PART OF YOUR RESPONSE TO THIS LETTER, WE ARE DEMANDING THAT YOUR NEWSPAPER PUBLISH A FULL AND COMPLETE RETRACTION OF THE STATEMENTS LISTED ABOVE, ACCOMPANIED BY AN APOLOGY.

Please don't doubt our resolve in addressing this libel.

Yours Truly,



Marshall Helmberger

Publisher

Timberjay Newspapers



Orlyn Kringstad

Mayor

City of Tower