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January 3, 2014

Mr. Keith Sawdon, Director of Finance
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, Michigan 48309

Re: City of Rochester Hills Green Space Perpetual Care Trust Agreement

Dear Mr. Sawdon:

I have enclosed a draft of the Green Space Perpetual Care Trust Agreement for your review.

With respect to the investment of the assets of this trust fund, it appears for the following reasons, to be appropriate to invest the assets pursuant to the guidelines set forth under the Public Employee Retirement System Investment Act, Michigan Public Act 314 of 1965 as amended ("PA 314").

First, as you are aware, Michigan Public Act 20 of 1943 ("PA 20") governs the investment of surplus funds of political subdivisions, including the City of Rochester Hills. PA 20 was amended by Public Act 404 of 2008 to adopt Section 7a to allow a public corporation which has a special revenue fund consisting of payments for park operation and maintenance, to invest those assets under the guidelines of PA 314. Further, the Legislative History pertaining to Section 7a indicates that the purpose of this provision is to "...expand the investment options of...political subdivisions that have special revenue funds consisting of payments for park operations and maintenance..."

My understanding of a "special revenue fund" is that it is a fund that holds assets that must be used for a specific purpose pursuant to a special millage. Information provided on the City's website provides, that,

[t]he Green Space Millage is a special, voter-approved millage, and funds derived from the millage are dedicated and restricted to the permanent preservation of green spaces and natural features in

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the City. The Green Space fund is accounted for and managed separately from other funds of the City...

As such, the money raised by the millage for Green Space, provided it is held in a special revenue fund, appears to meet the first prong of the PA 20 requirement for investing under PA 314.

In consideration of the second requirement that the assets be used for park operation and maintenance, the ballot language approved by the voters provides in part that the permissible use of the funds will include the "...the protection, care and maintenance of and to improve pedestrian accessibility to and within, green spaces and natural features owned, acquired or controlled by the City..." As we previously discussed, the definitions of a park include,


"...an area of open space provided for recreational use. It can be *in its natural* or semi-natural state, or planted, and is set aside for human enjoyment *or for the protection of wildlife or natural habitats*. It may consist of rocks, soil, water, flora and fauna and grass areas, but may also contain buildings and other artifacts such as play grounds. Many natural parks are protected by law."

Citing Wikipedia, Other on-line dictionaries offer similar definitions of a park such as "A large tract of rural land **kept in its natural state** and usually reserved for the enjoyment and recreation of visitors. Based on the voter approval of the ballot question to allow the funds collected under the Green Space millage to be used for protection, Care and maintenance of these properties, there appears to be strong legal support for investing those assets under PA 314.

If you have any additional questions, or comments, please do not hesitate to contact me.

Very truly yours,

**SULLIVAN, WARD,
ASHER & PATTON, P.C.**


Cynthia J. Billings

Enclosures

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