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September 15, 2017

Ms. Sara Roediger, Director
Planning Department
City of Rochester Hills
1000 Rochester Hills Dr.
Rochester Hills, MI 48309

Via E-Mail Only

Re: Cedar Valley Apartments

Dear Ms. Roediger:

You have asked me to comment about the August 23, 2017 letter sent to you by Attorney Jeffrey Cuthbertson on behalf of the developer for Cedar Valley Apartments. I am happy to do so, and this also affords me the opportunity to expand on, and modify to some degree, my previous discussion with you on this topic.

The issue at hand concerns whether the developer may use, in connection with the Cedar Valley project, the adjoining parcel known as Mystic Park. Mystic Park is a private park which is part of the Eddington Woods Subdivision. But, as a result of an unusual series of events (stemming from the Eddington Woods developer's failure to timely create and incorporate an Eddington Woods homeowners association and inability to later correct that oversight), Mystic Park was foreclosed by the County for unpaid assessments, purchased by a private party at public auction, and now purportedly is owned by the Cedar Valley developer. Cedar Valley's developer represents it intends to continue to use the parcel known as Mystic Park as a private park, but in connection with the Cedar Valley Apartments.

Attorney Cuthbertson addresses 3 matters in his letter, which, for the most part, I concur with, subject to my following comments:

- 1) Private Conservation Preservation Easement. Attorney Cuthbertson accurately notes the recorded Notice of Conservation Easement applies only to Lot 19 of the Eddington Woods Subdivision, and not to Mystic Park. But, I would not go so far as to say there is no conservation easement on Mystic Park. That is because the Eddington Woods plat itself depicts Mystic Park West as a private park with "Pvt. Conservation Preservation Esmt. To the City of Rochester Hills Over Entire Park." So, I think there is a conservation easement on the park. The real question is what are the restrictions and limitations of that conservation easement, and what uses does it permit and prohibit?

Attorney Cuthbertson correctly points out the conservation easement's restrictions are not spelled out on the plat nor in a separate, recorded easement document (this appears to be another omission by Eddington Woods' developer). Conservation easements are recognized in Michigan and are even defined by statute, MCL 324.2140, as "an interest in land that provides limitation on the use of land or body of water or requires or prohibits certain acts on or with respect to the land or body of water... which interest is appropriate to retaining or maintaining the land or body of water... predominantly in its natural, scenic, or open condition..." Ordinarily, the terms and conditions of a conservation easement are spelled out in a recordable document. Future research on my part would be necessary to ascertain the extent and effect of a conservation easement absent a recorded instrument spelling out its terms and conditions with particularity. But, at minimum, I would surmise that in view of the indication on the plat as a "private park" with a "Conservation Preservation" and the aforesaid state law definition, the Mystic Park parcel cannot be developed, built on or used for purposes other than open space and must be kept in a predominantly natural state. I understand the Cedar Valley developer's proposed "use" of the parcel will be consistent with that, so I don't think there is an issue there.

- 2) Notice of Wetlands and/or Flood Plain Designation. As long as the designated wetlands and floodplain and natural features setbacks are not encroached upon or used contrary to what City ordinance allows, there is not an issue.
- 3) Subdivision Plat. In my previous conversation with you, I suggested that amendment of the Eddington Woods plat may be prerequisite to the Cedar Valley developer using the Mystic Park parcel in connection with the Cedar Valley project. Attorney Cuthbertson thinks otherwise, and after further consideration, I am inclined to concur under these circumstances. I think a critical threshold consideration is that the use of the park is not changing – at least not materially. If it were proposed for development, or for a road or for a different use, or if it was being removed from the Eddington Woods plat, then I think prevailing Michigan law would require amendment or revision of the plat. As Attorney Cuthbertson explains in his letter, the Cedar Valley developer does not propose to depart from the private park use required by the Eddington Woods plat. For assurance that this will remain true, it may be appropriate for the City Planning Commission to make that a condition of site plan approval and to, perhaps, require a recordable restrictive covenant to that effect.

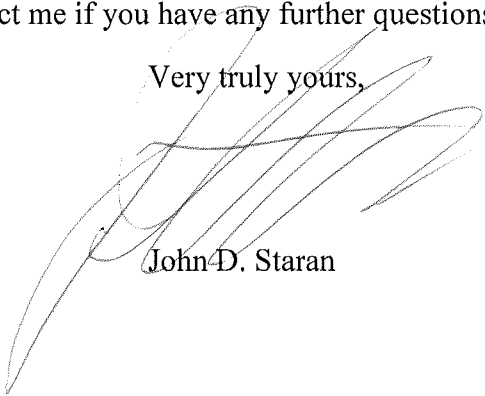
Regarding exclusivity, I do not recall saying Mystic Park must be used "exclusively" by or for Eddington Woods lot owners. I believe what I advised is that Eddington Woods lot owners may not be "excluded" from the park, as it remains part of their plat, and Michigan law recognizes that those lot owners have private rights to use those areas dedicated in the plat for their benefit. So, as long as Cedar Valley does not propose to

Ms. Sara Roediger, Director
Planning Department
City of Rochester Hills
September 15, 2017
Page 3

exclude Eddington Woods lot owners and does not propose to change the private park use of the subject parcel, I do not think there is an issue there.

I hope this adequately explains and clarifies my legal opinion on the issues surrounding the Mystic Park parcel. Please contact me if you have any further questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "John D. Staran", written over a faint circular stamp.

John D. Staran

JDS/ijd