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April 14, 2009

Mayor Bryan K. Barnett  
City of Rochester Hills  
1000 Rochester Hills Drive  
Rochester Hills, MI 48309

**Re: *Green Space Stewardship***

Dear Mayor:

You have asked to what extent may funds generated by the City's Green Space Preservation millage be used to pay for "stewardship" of the properties the City purchases with those funds. The starting point to answer your question is the Green Space Preservation millage ballot question, known as "Proposal 2," that the voters approved at the City's September 13, 2005 primary election:

Shall the City of Rochester Hills permanently preserve natural green spaces, wildlife habitats and scenic views; protect woodlands, wetlands, rivers and streams; and expand the Clinton River Greenway and other trail corridors *by funding the purchase of land and interests in land*, and enable the City to seek matching grant funds by levying a new millage of up to 0.3 mills (\$0.30 per \$1,000 of taxable value) for ten years, 2005 through 2014, inclusive. If approved, the estimated revenue the City will collect in the first year if the millage is authorized and levied in full is \$1,020,593. [Italics added]

A plain reading of the ballot question indicates the millage is intended to provide funding for "the purchase of land and interests in land," to accomplish the green space preservation and protection objectives stated in the first part of the ballot question. The ballot question does not authorize use of the millage for any other purposes besides the purchase of land and interests in land. This is important because generally accepted rules of construction and interpretation require us to look to the specific language to determine the intent, which is presumed to have the meaning plainly expressed. Also, where the language is clear and unambiguous, it is applied as written. Lastly, Michigan law restricts use of the revenue from specific millages to the authorized purpose and does not allow the specific millage to be diverted or used for other purposes.

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Nevertheless, it is my opinion it is implicit that in addition to funding the actual purchase price of the property being acquired, the millage may be used to pay for certain other costs that are ordinarily and reasonably incidental to the purchase of the land. For instance, I think the reasonable cost of administration of the green space program and Green Space Advisory Board ("GSAB") may be funded by the green space millage, as may costs associated with survey, appraisal, environmental assessment, legal, title work and other costs related and incidental to the purchase. Likewise, I think the cost of protecting and securing the property upon purchase is both related and ordinarily and reasonably incidental to the purchase of the property and may be funded by the millage.

The means of protecting and securing the property may be termed, "stewardship," by some, but I cannot say that all forms of stewardship of the purchased properties may be funded by the millage, because stewardship is an amorphous terms without clear legal definition. Reasonable people will differ as to its meaning, with some using the term very narrowly and others describing a much broader range of activities. Therein lies the difficulty in trying to issue an opinion whether the cost of stewardship may be funded by the green space millage or not. The answer depends on what do you mean by stewardship?

Rather than struggling to develop a universally acceptable definition of stewardship, it may be more practical and to the point to try to list activities that may be acceptable uses of millage funds, and some that likely are not. Toward that end, GSAB member Gerald Carvey provided you with a list (which you have shared with me) of the following activities he believes the GSAB would like to undertake in respect to properties purchased with green space millage:

- Outline corners of property
- Remove rubbish
- Make a baseline assessment of physical features of the property
- Perform an annual visitation and inspection of the property.

I think all of those activities Mr. Carvey listed are consistent with what I say above about activities of a protection and securing nature that may, in my opinion, be fundable out of the green space millage. I will go farther and say that other activities such as removing hazards, nuisances and encroachments, installing identification and warning signs, and protecting against trespassers and vandals are activities that are ordinary and reasonable incidental to the purchase of property and may be funded out of green space millage.

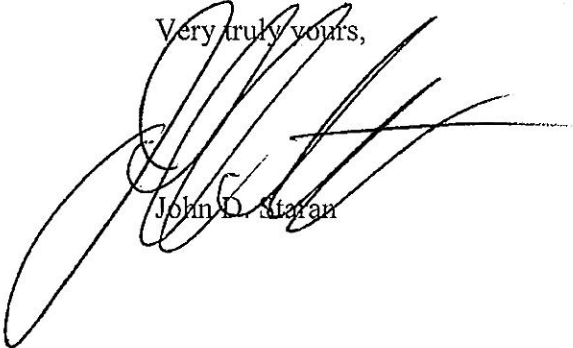
There are other possible stewardship activities, however, that I think may go beyond what is normally and reasonably incidental to the purchase of property, relate to the improvement of the property or are not directly related to the purchase of the property. Thus, I am reluctant to advise you that green space millage funds may be used to pay for them. Among these more attenuated activities, I would include educational programs; construction or installation of

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improvements, paths or amenities; alteration of the topography or landscape, hiring park rangers, and removing or planting trees and vegetation. I am not saying these activities cannot be done or are not worthwhile activities. Rather, I am cautioning you that the funds necessary to support those activities may need to come from a source other than the green space millage.

Mind you, some activities are easily categorized, whereas others present a much closer call. In the absence of a statute or case law on point, I have, to some extent, expressed my personal view as to where the line should be drawn. Reasonable people may differ on some of the closer calls. However, the point remains that aside from stewardship activities that are ordinarily and reasonably implicit in the purchase of the green space properties, the City should proceed cautiously to not use green space millage funds to support other forms of stewardship activities that may exceed the scope of the authorization of the green space preservation millage.

Very truly yours,



John D. Staran

JDS/ijd