



August 23, 2017

via e-mail to: roedigers@rochesterhills.org

JEFFREY T. CUTHBERTSON
Office: 248-651-9300
Fax: 248-651-9365
Mobile: 248-840-6840
345 Diversion Street, Suite 410
Rochester, MI 48307
jeff@clawplc.com

Ms. Sara Roediger, AICP
City of Rochester Hills
Director, Planning and Development
1001 Rochester Hills Dr.
Rochester Hills, MI 48309

Re: Your Mystic Park Documents Correspondence of August 1, 2017.

Admitted in:
Michigan
U.S. District Court - E.D. of MI.
The United States Supreme Court

Dear Ms. Roediger,

I represent Michigan Income Fund 2, LLC (“MIF2”), developer of Cedar Valley Apartments (“CVA”) which luxury residential apartment development is currently approved by the City of Rochester Hills (“City”) and initial work thereon is underway upon approximately 3.567 acres of vacant land known as Parcel ID No. 15-23-152-022 (the “West Parcel”).

Since the approval of CVA on the West Parcel, MIF2 has acquired the vacant land directly to its east consisting of approximately 2.07 acres of vacant land known as Parcel ID No. 15-23-152-020 (the “East Parcel”).

Following acquisition of the East Parcel, MIF2 representatives have had a number of conversations and exchanged correspondence with you and others from the City”) concerning MIF2’s rights of use in the East Parcel given a number of related factors which are discussed in further detail in this letter. We do certainly appreciate the dialog in this regard.

For the sake of brevity, I am treating your email correspondence of August 1, 2017, (“8-1-17 Email”) with its two attachments, (enclosed hereto as Exhibits “1-3”) as a short-hand summary of this discussion and the City’s interpretation of MIF2’s rights of use in the East Parcel and its interest in utilizing it in connection with: i) a temporary grading easement for CVA; (ii) private park uses which would remove invasive species; (iii) planting appropriate trees consistent with City replacement requirements; all of which will not encroach into the City Zoning Code Section 138-9.102 Natural Feature setback requirement of 25 feet of the delineated Wetland areas (all taken together the “Proposed Use”).

The 8-1-17 Email sets up three areas for discussion related to MIF2’s Proposed Use of the East Parcel, as follows: 1) whether a private conservation preservation easement exists in favor of the City and on what terms; 2) existence and application of a notice of wetlands and/or floodplain designation; and 3) the interpretation and application of the Eddington Woods Subdivision Plat.

1) Private Conservation Preservation Easement: The Notice of Conservation Preservation Easement provided in the 8-1-17 Email and attached as Exhibit “2” to this letter, along with its self-contained Exhibit “A” (as recorded at Liber 32444 Pages 341-341, Oakland County Records) legally describes and draws only Lot 19 of the Subdivision Plat as being subject to the easement, but does not set out terms of restriction in that instrument.

The East Parcel is not subject to the easement so described, which point is further evidenced by the fact that the easement language refers several times to a single “subject property” being only Lot 19. Furthermore, neither my review, nor that of First American Title Company’s search for its issuance of a title insurance commitment reveals the recordation of any private conservation preservation easement applicable to the East Parcel.

Without such an easement being established as actually conveyed and recorded, it is my opinion that “Exhibit 2” hereto does not preclude MIF2’s reasonable Proposed Use of the East Parcel.

2) Notice of Wetlands and/or Flood Plain Designation: The Notice of Wetlands and or Floodplain designation (as recorded at Liber 32444 Pages 339-340, Oakland County Records) attached as Exhibit “3” to this letter appears to have been properly conveyed and would apply to the Proposed Use. As I understand it, the Proposed Use will not encroach into the Natural Feature setback requirement of within 25 feet of the delineated Wetland areas and conforms with those requirements found in City Zoning Code Section 138-9.102. Therefore, the Proposed Use is not precluded by this instrument.

3) Subdivision Plat: The East Parcel is part of a subdivision plat named Eddington Woods as recorded in Liber 287 of Plats, Pages 21-25, Oakland County Records (“Plat”) as also attached in Exhibit “4” hereto, in which the East Parcel is dedicated as a “private park”, without further limitation language as to its dedication as such.

The 8-1-17 Email seems to imply that for MIF2 to make use of its property, it would need to continue to be used as a private park and with a further requirement that the private park be for the “exclusive” use of the lot owners of the Plat (see again Exhibit “1”).

However, three points affirmatively support MIF2’s Proposed Use as follows:

a) MIF2 is not departing from the private park use required by the Plat. It is, and will remain a private park, *i.e.* a park not dedicated to the public, but the Proposed Use will serve only to improve its attractiveness as private park and serve the public interest through the removal of invasive species and other nuisances.

b) Beyond the fact that MIF2 is a lot owner within the Plat with rights of use including that of permitting invitees to enter, the suggestion that the private park, as platted, is for the “exclusive” use of the lot owners of the Plat, is not supported by its facial language which does not express or attempt such a limitation over any owner of the East Parcel’s property rights, as is required by law.

Case law interpreting the relevant section of the Land Division Act (*MCL 560.101, et seq.*) found in *Martin v Beldean*, 469 Mich 541, 677 NW2d 312 (2004) and *Little v Hirschman*, 469 Mich 553, 677 NW2d 319 (2004) required and applied plats only with expressed, specific exclusion and use limitations in order to find the existence of a dedication which would properly preclude or limit those uses.

To find an “exclusive” use of the private park in favor of lot owners of the Plat and by extension bar MIF2’s invitees without legally-required, express language in the face of the Plat would, by the logic of the City’s interpretation of the Plat and the single word “private” attached to the dedication of the Plat, endanger a homeowner’s right to invite and allow visitors to enter upon their lot in the Plat. Such a conclusion is not reasonable, nor supportable as a matter of law.

c) As a telling, practical matter supporting points (a) and (b) above, the two private parks dedicated in the Plat were not organized into ownership by a homeowner’s association, which would be the lawful mechanism by which the right to exclude others from privately-owned property.

As such, it is my opinion that the Proposed Use is not precluded by the Plat, nor is replatting necessary for its purposes.

In conclusion, it is my opinion that the Proposed Use is, as has been described, not precluded by the content, nor attachments to, the 8/1/17 Email. I am glad to confer with you and the City Attorney on these points as may be needed or requested prior to the City’s September Planning Commission Meeting.

Should you have any other comments or questions, please advise.

Very truly yours,

CUTHBERTSON LAW, PLC



JEFFREY T. CUTHBERTSON
For the Firm

JTC/kcd
Enclosures

C: Client
Mr. John Staran, Esq., City Attorney

EXHIBIT “1”

From: Sara Roediger
To: [Jeffrey Cuthbertson](mailto:Jeffrey.Cuthbertson)
Subject: Fwd: Eddington Woods Mystic Park Documents
Date: Tuesday, August 1, 2017 10:04:21 AM
Attachments: [Notice Conserv Preserv Easement.pdf](#)
[Notice Wetlands Floodplain.pdf](#)

Good morning Jeff,

Per your email yesterday, here are the documents that we have. I met with John Staran, along with the Engineering and Assessing Depts. on this last week and it was confirmed that in order to do anything on this property other than use it as a private park for the Eddington Woods subdivision, it would need to be replatted.

Sara Roediger, AICP

Director
Planning and Economic Development
p. 248.841.2573 direct
p. 248.656.4660 department
f. 248.841.2576
roedigers@rochesterhills.org
planning@rochesterhills.org
www.rochesterhills.org

----- Forwarded message -----

From: Adele Swann <swanna@rochesterhills.org>
Date: Tue, Aug 1, 2017 at 9:04 AM
Subject: Eddington Woods Mystic Park Documents
To: Sara Roediger <roedigers@rochesterhills.org>

Hi Sara:

See Attached!

Adele Swann
DPS/Engineering Dept

248 841-2498
swanna@rochesterhills.org

www.rochesterhills.org

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[Sign up for Alerts with Nixle](#)

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the originator of the message. Any views expressed in this message are those of the individual sender.
#rmail#

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the originator of the message. Any views expressed in this message are those of the individual sender.

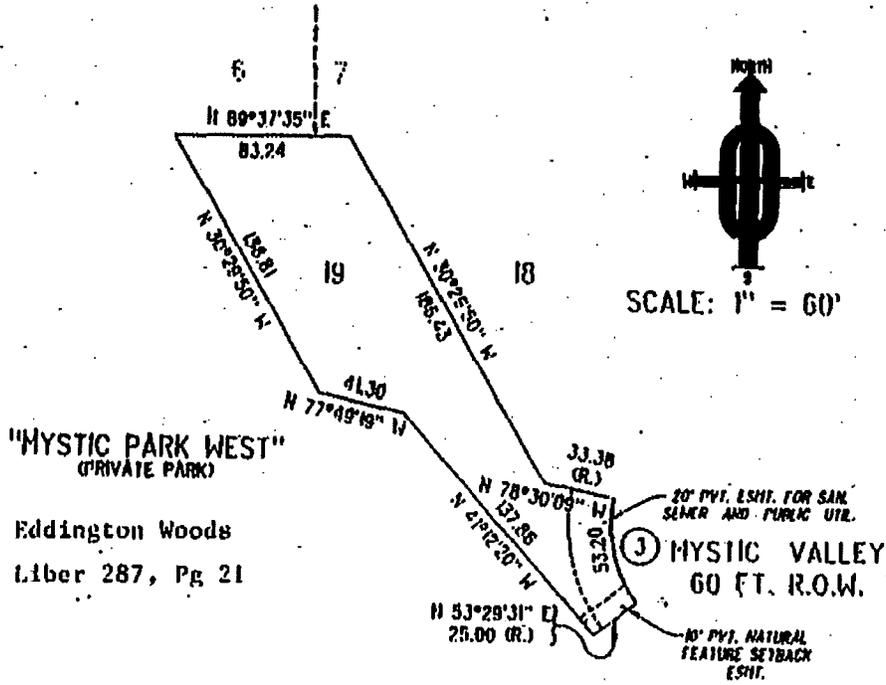
#rhmail#

EXHIBIT “2”

LIBER 32444 PG 342

EXHIBIT "A"

"YORKTOWNE COMMONS SUB"
(LIBER 206, PAGES 13 THRU 19)



"MYSTIC PARK WEST"
(PRIVATE PARK)

Eddington Woods
Liber 287, Pg 21



SCALE: 1" = 60'

20' PVT. ESH. FOR SAN
SEWER AND PUBLIC UTIL.

3 MYSTIC VALLEY
60 FT. R.O.W.

10' PVT. NATURAL
FEATURE SETBACK
ESH.

APPROVED

[Signature]

ROCHESTER HILLS
ENGINEERING DEPT.

CR-12-3

CURVE DATA

NO.	RADIUS	ARC	DELTA	CHORD	CHORD BEARING
3	63.50	53.20	48°00'19"	51.66	N 12°30'18" W

PRIVATE NATURAL FEATURE SETBACK EASEMENT
"EDDINGTON WOODS"
"LOT 19"

LEGAL DESCRIPTION:

"LOT 19" - "EDDINGTON WOODS"
Part of the N.W. 1/4 of Sec. 23, T.3N., R.1E.,
City of Rochester Hills, Oakland County, Michigan.
(LIBER , PAGES THRU)

DB-02-6322-A
SHEET 1 OF 1

28702 | 15. 73. 152. 019

EXHIBIT “3”

RECEIVED
JAN 26 2004
G.W. Caddell Register of Deeds
Oakland County, MI

RECEIVED
MAY 06 2003
G.W. Caddell Register of Deeds
Oakland County, MI

LIBER 32444 PG 339

126855
LIBER 32444 PAGE 339
\$15.00 MISC RECORDING
14.00 REINSTATEMENT
03/11/2004 07:38:55 A.M. RECEIPT: 20794
PAID RECORDED - OAKLAND COUNTY
G.WILLIAM CADDELL, CLERK/REGISTER OF DEEDS

NOTICE OF WETLANDS AND/OR FLOODPLAIN DESIGNATION

G & V Properties, L.L.C., a Michigan limited liability company, 2665 S. Rochester Road, Rochester Hills, Michigan 48307, as Developer of Eddington Woods Subdivision, hereby gives notice that the property described in Exhibit A attached hereto, contains areas designated as a wetland, a private easement for preservation of natural features as required by the ordinances of the City of Rochester Hills.

Exempt from Transfer Tax under MCLA 207.526 (a):
MSA 7 456 (20) (a)

(See Exhibit B).

The property is located in the City of Rochester Hills, County of Oakland, State of Michigan.

G & V PROPERTIES, L.L.C., a Michigan limited liability company

By: [Signature]
William G. Gilbert, Member

And By: [Signature]
Cornell G. Vennetilli, Member

STATE OF MICHIGAN)
)SS.
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 26th day of January, 2003, by William G. Gilbert and Cornell G. Vennetilli, members of G & V Properties, L.L.C., a Michigan limited liability company, on behalf of said company."

DEBRA M. CATALDO
Notary Public, Macomb County, MI
My Commission Exp. Nov. 19, 2005
Acting in Oakland County, MI

Debra M. Cataldo
Notary Public
Macomb County, Michigan
My commission expires: 11-19-05

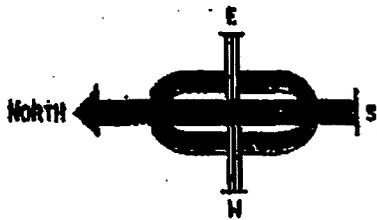
Drafted By:
C. Kim Shierk
MYERS NELSON DILLON & SHIERK, PLLC
40701 Woodward Avenue, Suite 235
Bloomfield Hills, Michigan 48304

When recorded return to: [Signature]
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309 3/24/03

O.K. - MH

LIBER 32444 PG 340

EXHIBIT "B"



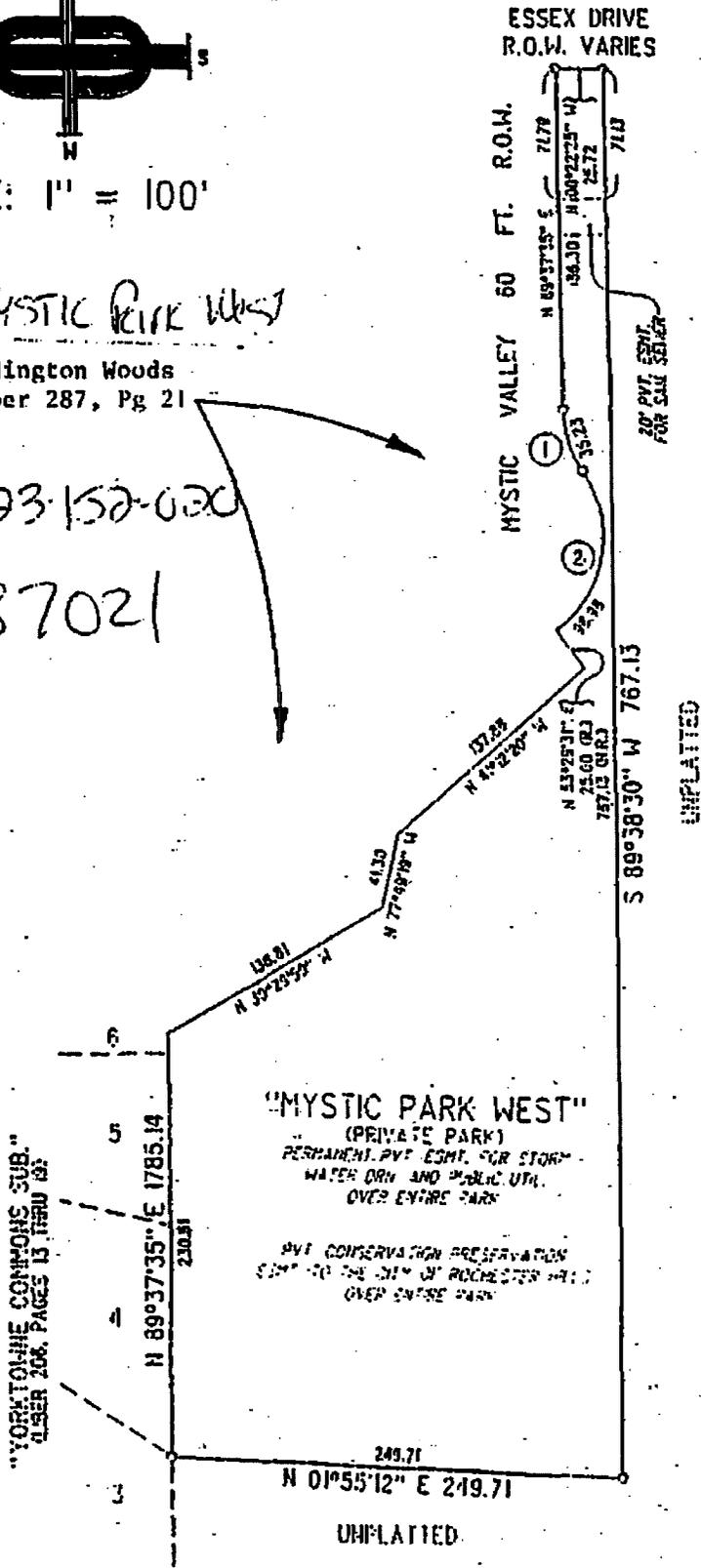
SCALE: 1" = 100'

Mystic Park West

(1) Eddington Woods
Liber 287, Pg 21

15-23-52-020

287021



APPROVED FESC

 PROFESSIONAL ENGINEER
 03-12-03

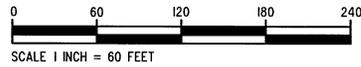
CURVE DATA

NO.	RADIUS	ARC	DELTA	CHORD	CHORD BEARING
1	60.00	35.23	33°38'19"	34.72	N 72°46'26" E
2	63.50	88.98	87°30'15"	87.53	N 80°18'30" W

EXHIBIT “4”

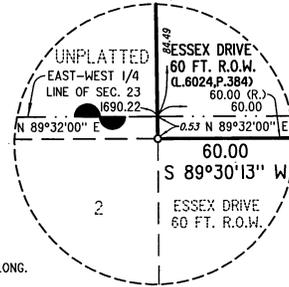
"EDDINGTON WOODS"

PART OF THE N.W. 1/4 AND S.W. 1/4 OF SECTION 23, T.3N., R.11E.,
CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN.

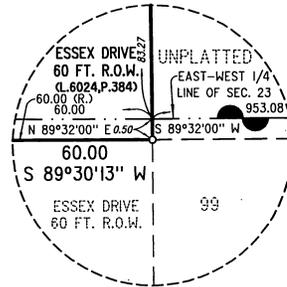


PLAT LEGEND

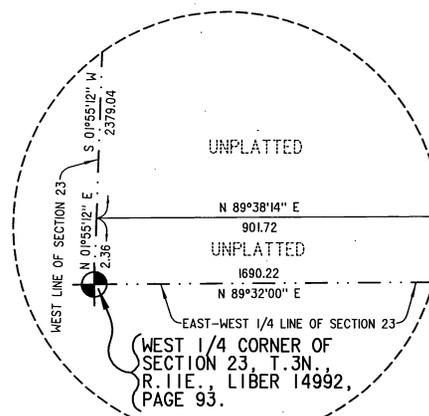
ALL DIMENSIONS ARE IN FEET.
ALL CURVILINEAR DIMENSIONS ARE SHOWN ALONG THE ARC.
(R.) DENOTES RADIAL. (N.R.) DENOTES NOT RADIAL.
THE SYMBOL "O" INDICATES A SET MONUMENT WHICH IS A 1/2" DIAMETER STEEL BAR 36" LONG, ENCASED IN 4" DIAMETER CONCRETE.
THE SYMBOL "⊙" INDICATES A FOUND MONUMENT WHICH IS A 1/2" DIAMETER STEEL BAR, ENCASED IN 4" DIAMETER CONCRETE.
THE SYMBOL "+ " DENOTES AN END OF CURVATURE OF STREET R.O.W. NO MONUMENT OR LOT MARKER SET.
ALL LOT MARKERS ARE 3/4" INSIDE DIAMETER IRON PIPES AND ARE 18" LONG. "NO IDENTIFICATION CAPS"
ALL BEARINGS ARE IN RELATION TO THE BEARING OF THE SOUTH LINE OF "YORKTOWNE COMMONS SUB." SECTION 23, T.3N., R.11E., CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN AS DEPICTED ON THE PLAT OF "YORKTOWNE COMMONS SUB." RECORDED IN LIBER 206, PAGES 13 THRU 19.



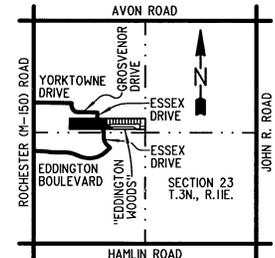
DETAIL "B"
SCALE: 1" = 3'



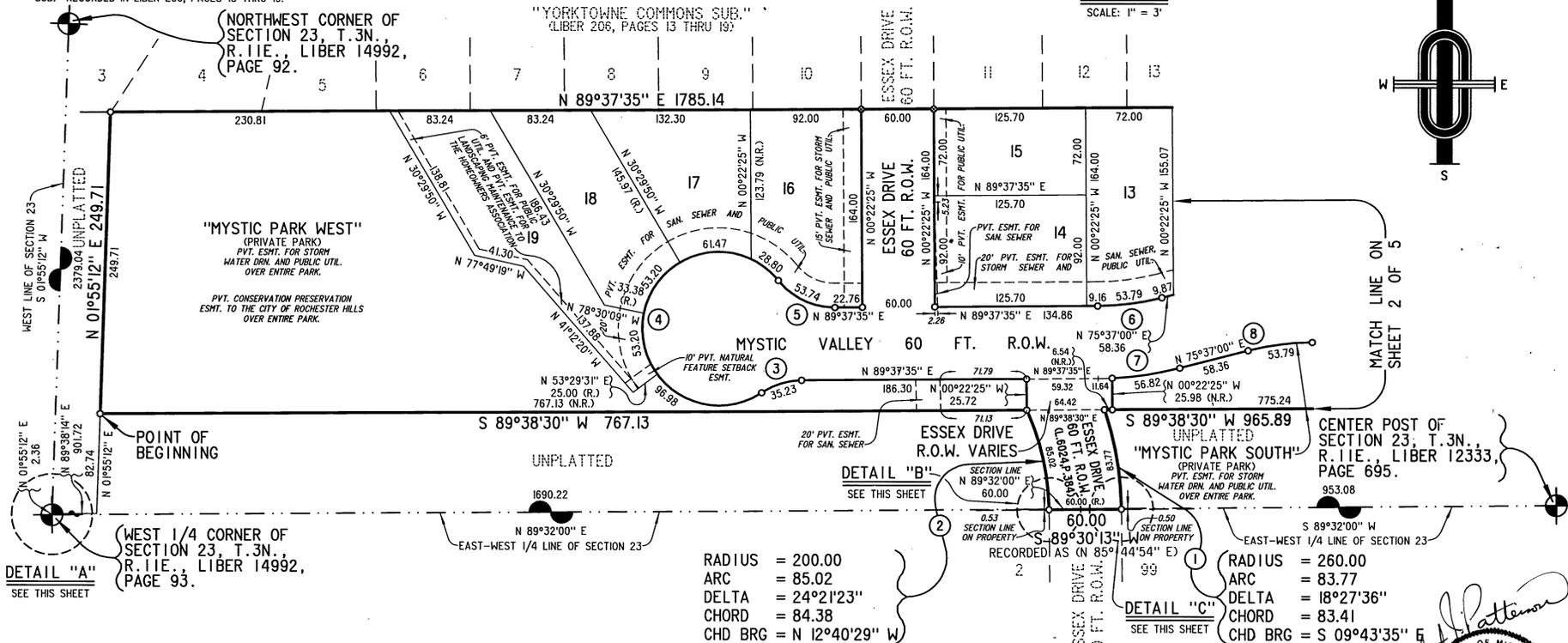
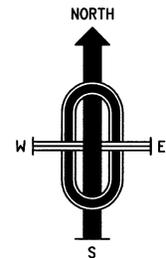
DETAIL "C"
SCALE: 1" = 3'



DETAIL "A"
SCALE: 1" = 3'



LOCATION MAP
NOT TO SCALE



RADIUS = 200.00
ARC = 85.02
DELTA = 24°21'23"
CHORD = 84.38
CHD BRG = N 12°40'29" W

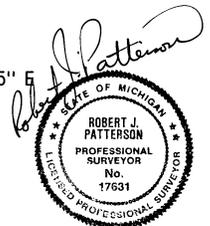
RADIUS = 260.00
ARC = 83.77
DELTA = 18°27'36"
CHORD = 83.41
CHD BRG = S 09°43'35" E

CURVE DATA

NO.	RADIUS	ARC	DELTA	CHORD	CHORD BEARING
1	260.00	83.77	18°27'36"	83.41	S 09°43'35" E
2	200.00	85.02	24°21'23"	84.38	N 12°40'29" W
3	60.00	35.23	33°38'19"	34.72	N 72°48'26" E
4	63.50	293.65	264°57'39"	93.66	N 08°28'06" E
5	60.00	53.74	51°19'20"	51.97	N 64°42'45" W
6	220.00	53.79	14°00'35"	53.66	N 82°37'18" E
7	280.00	68.46	14°00'35"	68.29	N 82°37'18" E
8	220.00	53.79	14°00'35"	53.66	N 82°37'18" E

EDDINGTON FARMS SUBDIVISION
(LIBER 200, PAGES 39 THRU 48)

67077

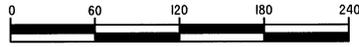


MCS ASSOCIATES, INC.
CIVIL ENGINEERING AND SURVEYING
STERLING HEIGHTS, MICHIGAN.

"EDDINGTON WOODS"

PART OF THE N.W. 1/4 AND S.W. 1/4 OF SECTION 23, T.3N., R.11E.,
CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN.

NORTH 1/4 CORNER OF
SECTION 23, T.3N.,
R.11E., LIBER 15796,
PAGE 530.



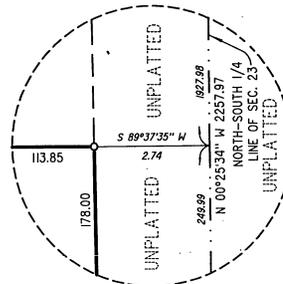
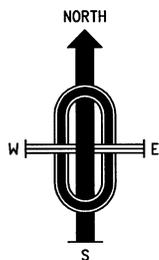
SCALE 1 INCH = 60 FEET

PLAT LEGEND

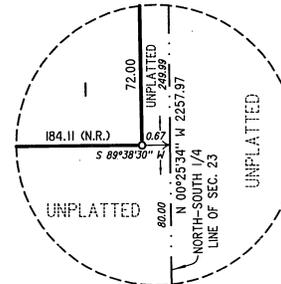
ALL DIMENSIONS ARE IN FEET.
ALL CURVILINEAR DIMENSIONS ARE SHOWN ALONG THE ARC.
(R.) DENOTES RADIAL. (N.R.) DENOTES NOT RADIAL.
THE SYMBOL "○" INDICATES A SET MONUMENT WHICH IS A 1/2" DIAMETER STEEL BAR 36" LONG, ENCASED IN 4" DIAMETER CONCRETE.
THE SYMBOL "⊙" INDICATES A FOUND MONUMENT WHICH IS A 1/2" DIAMETER STEEL BAR, ENCASED IN 4" DIAMETER CONCRETE.
THE SYMBOL "⋄" DENOTES AN END OF CURVATURE OF STREET R.O.W.
NO MONUMENT OR LOT MARKER SET.
ALL LOT MARKERS ARE 3/4" INSIDE DIAMETER IRON PIPES AND ARE 18" LONG.
"NO IDENTIFICATION CAPS"
ALL BEARINGS ARE IN RELATION TO THE BEARING OF THE SOUTH LINE OF "YORKTOWNE COMMONS SUB." SECTION 23, T.3N., R.11E., CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN AS DEPICTED ON THE PLAT OF "YORKTOWNE COMMONS SUB." RECORDED IN LIBER 206, PAGES 13 THRU 19.



LOCATION MAP
NOT TO SCALE

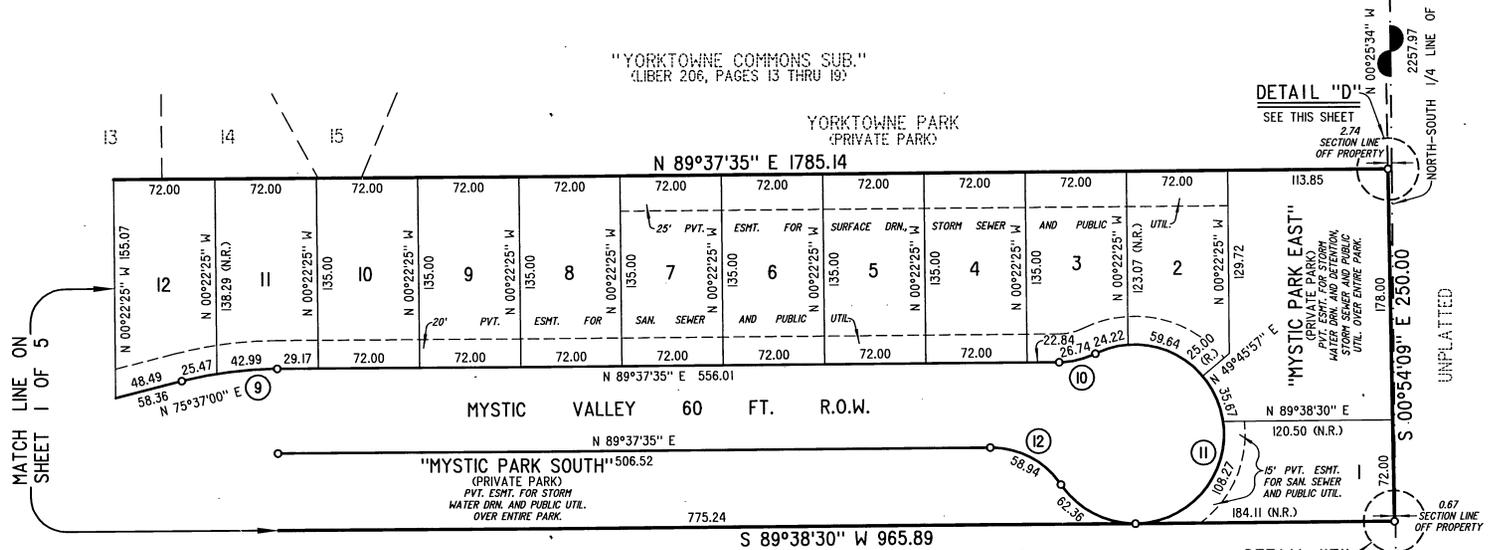


DETAIL "D"
SCALE: 1" = 3'



DETAIL "E"
SCALE: 1" = 3'

"YORKTOWNE COMMONS SUB."
(LIBER 206, PAGES 13 THRU 19)



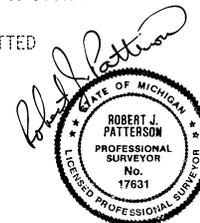
DETAIL "D"
SEE THIS SHEET
2.74 SECTION LINE OFF PROPERTY

DETAIL "E"
SEE THIS SHEET
0.67 SECTION LINE OFF PROPERTY

CURVE DATA

NO.	RADIUS	ARC	DELTA	CHORD	CHORD BEARING
9	280.00	68.46	14°00'35"	68.29	N 82°37'18" E
10	60.00	26.74	25°31'52"	26.52	N 76°51'39" E
11	63.50	290.16	261°48'39"	95.99	N 15°00'02" E
12	60.00	58.94	56°16'47"	56.60	N 62°14'02" W

UNPLATTED



CENTER POST OF
SECTION 23, T.3N.,
R.11E., LIBER 12333,
PAGE 695.

67077

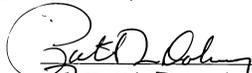
MCS ASSOCIATES, INC.
CIVIL ENGINEERING AND SURVEYING
STERLING HEIGHTS, MICHIGAN.

"EDDINGTON WOODS"

PART OF THE N.W. 1/4 AND S.W. 1/4 OF SECTION 23, T. 3N., R. 11E.,
CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN.

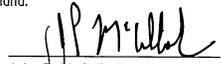
COUNTY TREASURER'S CERTIFICATE

The records in my office show no unpaid taxes or special assessments for the five years preceding October 30, 2002 involving the lands included in this plat.


PATRICK M. DOHANY
Oakland County Treasurer, Deputy

COUNTY DRAIN COMMISSIONER'S CERTIFICATE

Approved on NOVEMBER 1, 2002, as complying with Section 192 of Act 288, P.A. 1967, and the applicable rules and regulations published by my office in the County of Oakland.


John F. McCulloch
Oakland County Drain Commissioner

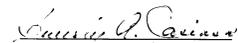
CERTIFIED TRUE COPY OF
RECORDED PLAT
BY DEPARTMENT OF CONSUMER
AND INDUSTRY SERVICES

BY 
MAYNARD R. DYER, P.S., DIRECTOR
OFFICE OF LAND SURVEY
AND REMONUMENTATION

DATE 7-28-2003

CERTIFICATE OF MUNICIPAL APPROVAL

I certify that this plat was approved by the City Council of the City of Rochester Hills, at a meeting held Wed. April 16, 2003, and was reviewed and found to be in compliance with Act 288, P.A. 1967. Surety has been posted for the placing of monuments and lot markers within one year of the above date. Minimum lot area required by Section 186(2), Act 288 of P.A. 1967, has been waived and conforms with the legally adopted zoning and subdivision control ordinances of the City of Rochester Hills. Surety has been posted to insure the installation of public sewer and public water services.

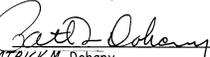

Beverly A. Jasinski
City Clerk

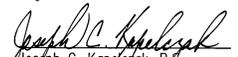
COUNTY PLAT BOARD CERTIFICATE

This plat has been reviewed and is approved by the OAKLAND COUNTY PLAT BOARD on FRI., MAY 23, 2003 as being in compliance with all of the provisions of Act 288, P.A. 1967, and the Plat Board's applicable rules and regulations.


THOMAS A. LAW
Chairperson
Board of County Commissioners


G. William Caddell
County Clerk
Register of Deeds


PATRICK M. DOHANY
County Treasurer


Joseph C. Kapelczak, P.E.
County Plat Engineer

RECORDING CERTIFICATE

STATE OF MICHIGAN
Oakland County)

This plat was received for record on the 17th day of July, 2003, at 10:31 A. M., and recorded in Liber 287 of Plats on Pages 21, 22, 23, 24 & 25


G. William Caddell
County Clerk
Register of Deeds



67077