

Item #17:
Village Planner Hogue
6852 Indian Creek Road – PUD & Scenic Corridor

Holland & Knight

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Paula C. Kirlin
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October 16, 2009

VIA E-MAIL (dewolf@swbattorneys.com) and REGULAR MAIL

Daniel A. Wolf, Esquire
Schwartz Wolf & Bernstein LLP
314 N. McHenry Road
Buffalo Grove, IL 60089

Re: 6852 Indian Creek Road, Long Grove, IL

Dear Mr. Wolf:

This office serves as Village Attorney for the Village of Long Grove ("**Village**"). I am writing in response to your letter dated October 7, 2009 (the "**October 7 Letter**") regarding the property commonly known as 6852 Indian Creek Road in Long Grove, Illinois ("**Subject Property**").

Your client submitted to the Village an application for a building permit to construct an addition to the existing single-family residence located on the Subject Property (the "**Proposed Addition**"). The Proposed Addition would be located within a 100-foot scenic corridor easement on the Subject Property (the "**Scenic Corridor Easement**"), which Scenic Corridor Easement is depicted on the Final Plat for Lake Eleanora Estates (the "**Final Plat**"). The Final Plat was approved pursuant to Ordinance Number 88-O-68, "An Ordinance Granting Final Planned Unit Plat Approval for the Lake Eleanora Estates Planned Unit Development" ("**Ordinance No. 88-O-68**"). Importantly, the Final Plat includes a note stating that "All areas on this plat designated conservancy district, scenic easement or buffer easement shall be maintained in their natural, undisturbed condition, with no man made structures of any kind." Given the terms of the Final Plat, the Proposed Addition is not authorized in the location requested.

In the October 7 Letter, you suggest that the prior approval of a 1993 application for a building permit for construction on the Subject Property and within the Scenic Corridor Easement (the "**Prior Permit**") constitutes a waiver of the provisions of Ordinance No. 88-O-68. The Village's failure to enforce in connection with the Prior Permit does not render void the restrictions of the Final Plat or the approval Ordinance No. 88-O-68. In fact, the Prior Permit is "wholly irrelevant as to the validity of [Ordinance No. 88-O-68]," and does not furnish a ground

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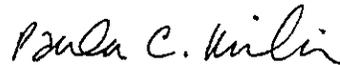
of attack against Ordinance No. 88-O-68. *American Banking Co. v. Wilmington*, 370 Ill. 400, 404 (Ill. 1939); *Cleaners Guild of Chicago v. Chicago*, 37 N.E.2d 857, 867 (1st Dist. 1941). Accordingly, the provisions of Ordinance No. 88-O-68 remain fully applicable to the Subject Property and preclude the Proposed Addition without specific relief from the conditions of the Final Plat. Furthermore, the Village cannot be estopped from enforcing its ordinances absent an affirmative act on the part of its corporate authorities, such as the passage of an ordinance. Unauthorized acts of a ministerial officer, such as approval of a building permit application contrary to the provisions of an ordinance, cannot estop a municipality from thereafter enforcing its ordinances. *Tim Thompson, Inc. v. Hinsdale*, 247 Ill.App.3d 863, 878-79 (2d Dist. 1993). Accordingly, the Village is not estopped from enforcing Ordinance No. 88-O-68 by the Prior Permit.

If your client desires to pursue the Proposed Addition, authorizations must be sought in a proper fashion. Because the Scenic Corridor Easement was contained in the approval Ordinance No. 88-0-68 and the Final Plat, a major amendment to the planned unit development ("**PUD Major Amendment**") is required to alter the Scenic Corridor Easement restrictions. See Village Code Section 5-11-18J. The PUD Major Amendment process requires both Plan Commission review and Board of Trustees approval. More specifically, such PUD Major Amendment may be approved only following submission of a new preliminary plat and supporting data, followed by approval of an amendment of the Final Plat. See Village Code Section 5-11-18I(1). Note that, if the modification of the Scenic Corridor Easement language is the only change, the preliminary and final plat amendment procedures could possibly be combined.

Please be aware that State law requires that all owners of Lake Eleanora Estates consent to the plat amendment by signing the amended Final Plat. In addition, the Village will also have to approve and sign the amended Final Plat. Because the threshold for owner support is essential, we suggest that such signatures be secured prior to the Plan Commission's consideration of an application for the PUD Major Amendment. Even with such owner approval, however, the Village Plan Commission and Board of Trustees retain independent discretion on whether to approve the amended Final Plat.

If you have any questions please call me at (312) 578-6649.

Sincerely,



Paula C. Kirlin

cc: Mr. David A. Lothspeich, Village Manager
Mr. Jim Hogue, Village Planner
Mr. Robert Block, Village Superintendent
Victor P. Filippini, Jr., Village Attorney

From: [David Lothspeich](mailto:David.Lothspeich)
To: "paula.kirlin@hklaw.com"; [James Hogue](mailto:James.Hogue)
Cc: [Robert G. Block](mailto:Robert.G.Block); victor.filippini@hklaw.com
Subject: RE: 6852 RFD - request for building permit to construct addition in scenic corridor
Date: Thursday, October 22, 2009 1:38:55 PM

Paula,

No need to discuss any further, we discussed as Staff and came to the same conclusion. I would provide this response to their attorney and let them know that they will need to file a \$5,000 escrow if they wish to pursue the authorized relief and prior to any further discussions with Counsel in order to limit our costs.

Thanks,
Dave

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From: paula.kirlin@hklaw.com [<mailto:paula.kirlin@hklaw.com>]
Sent: Thursday, October 22, 2009 11:56 AM
To: James Hogue
Cc: David Lothspeich; Robert G. Block; victor.filippini@hklaw.com
Subject: 6852 RFD - request for building permit to construct addition in scenic corridor

All,

I received a call yesterday from the attorney representing the property owners of 6852 RFD, who applied for a building permit for construction of an attached garage within the scenic corridor easement on their property. Their attorney stated that his client obtained an updated plat of survey showing that the northernmost/rear portion of the house is only 5' from the 100' building line/border of the scenic corridor easement. He will request from his client a copy of that plat for our review.

The attorney suggested an alternative solution for the project, to-wit, construction of the garage outside of the scenic corridor easement, and connection of the house and garage with some sort of walkway (either elevated or at ground level). Vic and I concluded that this would still constitute construction of a man-made structure within the easement, but could be authorized via relief in the form of an interpretation of the PUD by the PCZBA, instead of a plat amendment. Of course that would still require notice to the other PUD owners, a public hearing, and an opportunity for the neighbors to be heard. But it would be simpler than a plat amendment.

I told the property owner's attorney that I would confer with Village representatives re: the proposed alternative. Our recommendation is that this topic be discussed during closed session at the upcoming 10/27 Village Board meeting.

Please let me know if you have any questions or need additional information.

Thank you,

Paula

Paula Kirlin | Holland & Knight

Associate

131 South Dearborn Street, 30th Floor | Chicago IL 60603

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August 26, 2009

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jbauer@longgrove.net

Mr. Robert Scarnechia
6852 RFD
Long Grove, Illinois 60047

RE: Addition to residence @ 6852 Indian Creek Road

Dear Mr. Scarnechia,

It has been brought to my attention that an addition is being proposed to the existing residence at 6852 Indian Creek Road in Long Grove, Illinois. The property is zoned under the R-2 PUD District regulations and is part of the Eleanora Estates Planned Unit Development (PUD) /Subdivision. Per the recorded plat of subdivision a 100' "Scenic Corridor" easement has been established on your property. The existing residence falls within the boundaries of this 100' Scenic Corridor.

Per the Village Code Scenic Corridors are established as follows;

(C) Scenic Corridor Easements:

Purpose: The purpose of the scenic corridor easement requirement is that it has been determined that corridors of land should remain undeveloped on each side of all major roads and it has been further determined that if this is done, the traffic noise normally associated with collector streets will not have as deleterious an impact and it has further been determined that the requirement of scenic corridor easements will serve to protect and maintain the rural atmosphere of the village and further provide a refuge for native animal and bird life, and serve as an area which yields undisturbed native trees, shrubs and prairie plant life and also provide an excellent natural buffer between more developed areas.

(b) On all other property sought to be subdivided or developed as a planned unit development which lies adjacent to all other remaining state, county and streets designated as collector streets within the village, including, but not limited to, Route 53, Route 83, Route 22, Old McHenry Road, Cuba Road, Aptaksic Road, Indian Creek Road, Diamond Lake Road and Gilmer Road, there shall be a one hundred foot (100') easement, measured from the right of way, on either side of said roads.

Scenic Corridors are to remain in a natural and undisturbed state with manmade structures being prohibited. In this instance this restriction was noted in the final approval ordinance, the covenants and restrictions associated with the subdivision as well as on the face of final plat of subdivision (attached).

3110 RFD, Long Grove, Illinois 60047-9623
Tel: (847) 634-9440 • Fax: (847) 634-9408
www.longgrove.net

Also in this instance an exception was made to allow for the encroachment of the existing structure within the scenic corridor area. This exception allows for the utilization and maintenance of the existing structure but prohibits the expansion of the building footprint within the scenic corridor area. This restriction was also noted in the final approval ordinance as well as the covenants and restrictions associated with the subdivision. Be advised similar restrictions exist for that portion of the driveway which traverses the scenic corridor area.

As such, your request for a 22' x 24' garage to be attached to the existing structure (i.e. two story frame residence) within the scenic corridor area cannot be approved. It may be possible to erect a detached garage on the property provided it is situated outside of the boundaries of the scenic corridor and all other zoning requirements (e.g. lot coverage, building height, setbacks, etc.) can be met. The Covenants and Restrictions associated with the PUD/ subdivision should also be referenced as they may relate to this property and accessory structures in general.

Should you have any additional questions feel free to contact me at (847) 634-9440.

Sincerely,

James M. Hogue

James M. Hogue
Village Planner

Encl.

Cc; David Lothspeich, Village Manger
Village President & Trustees
Robert Block, Village Superintendent
File

11. The final planned unit development plat shall have clearly depicted on its face all conservancy district, and scenic corridor areas and in conjunction therewith the final planned unit development plat shall have depicted on its face the following language:

All areas designated conservancy district or scenic corridor easement on this plat shall be maintained in their natural, undisturbed condition, and no man-made structures of any kind shall be constructed hereon, nor shall any grading be permitted on any conservancy district area or scenic corridor area except according to the regulations in the Long Grove Code that apply to these areas. All natural vegetation shall be preserved and maintained, and shall not be mowed, cultivated, sprayed or in any way disturbed without following the required procedures of the Village of Long Grove.

The existing building on Lot 47 may be maintained and utilized, even though it is within the scenic corridor area. However, the building cannot be expanded to have any greater footprint within the scenic corridor area. Similarly, the existing driveway, which services that building, which traverses the scenic corridor area, may continue to be utilized for driveway purposes, but the footprint of the driveway shall not be altered or changed and the footprint shall not be expanded in any respect to encroach on any additional scenic corridor area.

12. The Petitioners shall take all steps necessary to preserve the sedge meadow areas. In connection therewith, the size and shape of the lake indicated on the preliminary site plan shall be subject to the review and approval of the

DECLARATION of RESTRICTIONS: ELEANORA ESTATES HOA

ARTICLE V USE AND CONSERVANCY DISTRICT AND SCENIC EASEMENTS

All areas designated conservancy districts or scenic quarter easements on this Plat shall be maintained in a natural and undisturbed condition, and no manmade structures of any kind shall be constructed thereon, nor shall any grading be permitted on any conservancy district area or scenic quarter area except according to the regulations in the Long Grove Code that apply to these areas. All natural vegetation shall be preserved and maintained and shall not be mowed, cultivated, sprayed or anyway disturbed without following required procedures of the Village of Long Grove, except that the existing building located on Lot 47 may be maintained and utilized. Said building, however, cannot be expanded to have any greater footprint within the scenic quarter area. The existing driveway which services that building and traverses the scenic quarter area may continue to be utilized for driveway purposes. Said driveway shall not be altered or changed or expanded so that it encroaches upon any additional scenic quarter area. The Village of Long Grove shall have the right to enforce the proceedings in law or in equity.

ARTICLE VI ARCHITECTURAL APPROVAL

1. No dwelling shall be erected or maintained on any lot unless said structure has a minimum of 3,000 square feet of livable floor space, exclusive of garage and basement areas. New resident construction shall include the use of cedar shake roofing materials.
2. All homes must have a paved (concrete or blacktop) driveway completed not more than 12 months after receipt of the occupancy permit.
3. All homes must have at least a 3-car garage
4. A waste dumpster must remain on site and be in use from the time the first construction materials arrive until the final building inspection has been completed and passed.
5. No owner shall build any structure or make any structural alteration or shall undertake any exterior remodeling or addition to the residence which would substantially alter the exterior appearance thereof, or build any tennis courts, swimming pools or other structure without the prior approval of the plans and specifications thereof by the Board of Directors,

PROPERTY WITH ELECTRIC, COMMUNICATIONS, AND
DRAINAGE SERVICE IS HEREBY RESERVED FOR AND GRANTED TO:
THE VILLAGE OF LONG GROVE, OTHER GOVERNMENTAL
AUTHORITIES HAVING JURISDICTION OVER THE LAND
SUBDIVIDED HEREON AND THOSE PUBLIC UTILITY
COMPANIES OPERATING UNDER FRANCHISE FROM THE
VILLAGE OF LONG GROVE, INCLUDING, BUT NOT
LIMITED TO COMMONWEALTH EDISON COMPANY, ILLINOIS
BELL TELEPHONE COMPANY AND NORTH SHORE GAS COMPANY,

THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, JOINTLY AND SEVERALLY, TO
INSTALL, OPERATE, MAINTAIN AND REMOVE, FROM TIME TO TIME, FACILITIES
USED IN CONNECTION WITH UNDERGROUND TRANSMISSION AND
DISTRIBUTION OF ELECTRICITY AND SOUNDS AND SIGNALS IN, UNDER,
ACROSS, ALONG AND UPON THE SURFACE OF THE PROPERTY SHOWN WITHIN THE
DOTTED LINES ON THE PLAT AND MARKED "EASEMENT", AND THE PROPERTY
DESIGNATED ON THE PLAT FOR STREETS, TOGETHER WITH THE RIGHT
TO INSTALL REQUIRED SERVICE CONNECTIONS UNDER THE SURFACE OF
EACH LOT TO SERVE IMPROVEMENTS THEREON, THE RIGHT TO CUT
TRIM OR REMOVE TREES, BUSHES AND ROOTS AS MAY BE REASONABLY REQUIRED
INCIDENT TO THE RIGHTS HEREIN GIVEN, AND THE RIGHT TO ENTER UPON THE
SUBDIVIDED PROPERTY FOR ALL SUCH PURPOSES. OBSTRUCTIONS SHALL NOT
BE PLACED OVER GRANTEE'S FACILITIES OR IN, UPON OR OVER THE PROPERTY
WITHIN THE DOTTED LINES MARKED "EASEMENT" WITHOUT THE PRIOR WRITTEN
CONSENT OF GRANTEE'S. AFTER INSTALLATION OF ANY SUCH FACILITIES, THE
GRADE OF THE SUBDIVIDED PROPERTY SHALL NOT BE ALTERED IN A MANNER SO
AS TO INTERFERE WITH THE PROPER OPERATION AND MAINTENANCE THEREOF.

THE AREAS DESIGNATED AS CONSERVANCY DISTRICT SHALL REMAIN AS A
NATURAL WILDLIFE PRESERVE.

ALL AREAS ON THIS PLAT DESIGNATED CONSERVANCY DISTRICT, SCENIC
EASEMENT OR BUFFER EASEMENT SHALL BE MAINTAINED IN THEIR NATURAL,
UNDISTURBED CONDITION, WITH NO MAN MADE STRUCTURES OF ANY KIND.

LOTS 4, 36 AND 40 CONTAIN A LARGE PORTION OF WETLAND CONSERVATIVE
SOILS AND THE SIZE OF THE HOMES PLACE ON SAID LOTS WOULD BE RESTRICTED
TO 2 POSSIBLY 3 BEDROOMS AT THE MOST. IT IS ALSO POSSIBLE TO FIND
SMALL PORTIONS OF THE UNSUITABLE SOIL IN AREAS ABOVE THE LINES NOTED
ON THE ADJOINING PLAT THAT WOULD REQUIRE FILL AS APPROVED BY THE
LAKE COUNTY HEALTH DEPARTMENT, PARTICULARLY LOT 36.

DRAINAGE CERTIFICATE

WE HEREBY CERTIFY TO THE BEST OF OUR KNOWLEDGE THAT ADEQUATE PROVISIONS
HAVE BEEN MADE FOR THE DIVERSION AND RETENTION OF SURFACE WATERS INTO
PUBLIC AREAS OR DRAINS WITHIN THE RIGHTS OF THE SUBDIVIDER, AND THAT
SURFACE WATERS WILL NOT BE DEPOSITED ON ADJACENT LAND OWNERS PROPERTY
IN SUCH CONCENTRATION AS MAY CAUSE DAMAGE BY EROSION OR SEDIMENTATION
TO SUCH PROPERTY BECAUSE OF THE CONSTRUCTION OF THIS SUBDIVISION.

1986,

HEREIN

SAME