

Response to City of Sunset Hills Non-Compliance Report dated November 1, 2019

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| <p>Applicant</p> | <p>The Trustees of Tapawingo as to Parcels 3, 4 and 5 (the “Manors”), JSB Tapawingo Holdings, LLC (“Golf Course”), as to Parcel 6 as reflected on the Ownership and Encumbrance Report dated August 24, 2020, issued by First American Title Insurance Company, File number NCS-1028586 (the “Ownership Report”). Notably, a portion of Maple Drive is already a public street owned by the City of Sunset Hills (the “City”) as reflected on the Ownership Report (parcels 1 and 2). The Alice Anheuser Beims Moore Trust dated December 19, 1966 (“Moore Trust”) owns a sliver of property reflected as Parcel 7 on the Ownership Report. As noted in our cover letter we have been unable to garner the attention of the Moore Trust. (See Documents Numbered 1, 3-5)</p> <p>Ordinance 2000 does not require that there only be one owner of the streets in order for the City to accept the streets for maintenance.</p> |
| <p>Streets Requested To Be Accepted for Maintenance</p> | <p>That Portion of Maple Drive shown in yellow on the Tapawingo Street Ownership Map (the “Ownership Map”), owned by the Trustees of Tapawingo, the portion of Maple Drive owned by Golf Course shown in green on the Ownership Map, and the portion of Maple Drive owned by the Moore Trust shown in red on the Ownership Map:</p> <p style="text-align: center;">Caddyshack Circle Pagada Parkway Marchem Sunny Dawn Court Kahlia Way Marchem Circle</p> <p>Shown on the Ownership Map is that portion of Maple Drive already owned by the City which is shown in grey on the attached map. (See Document 6).</p> |

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| | <p>Also attached is a drawing prepared by Timothy VanLeer, Cochran Engineering, showing where the areas subject to the ROW dedications shown in Bk. 13187 Pg. 247 and Pg. 250 are located (on the west half of the 50 feet wide road at #13290 and #13315 Maple Drive). (See Document 7).</p> |
| <p>63 Concrete slabs need to be replaced due to unsatisfactory condition by visual observation</p> | <p>The City states in its Non-Compliance Report that 63 concrete slabs need to be replaced due to unsatisfactory conditions. The Manors will pay the cost of replacing all of the slabs other than those in the existing City right of way. Attached is a bid from M&H Concrete to replace the existing slabs identified by the City (other than the 10 slabs in the existing City right of way on the (west) side of Maple between the fairway and Caddyshack) in accordance with the City standards. (See Document 9).</p> <p>Also attached is report from CBB Transportation dated August 12, 2020. Notably there are approximately 1,423 concrete slabs on the streets the applicant asks the City to accept. Of these 1,291 slabs have no notable visual imperfection and have a rating of 9 or 10. (See Document 8).</p> <p>The CBB Paser also shows that the streets have deteriorated, little if at all, since the Vogt analysis done in Feb. 2017. The Paser scale is an industry accepted system for road pavement condition. Over 95% of the 1423 pads scored 7-8's or better in this Paser analysis, in fact over 90% are 9-10's. SSH Paser analysis report on the Public Works website notes that most of the City streets are 7-8's. So, the Manors' streets are comparable if not better.</p> |
| <p>10 sidewalk ramps need to be replaced due to not meeting current ADA requirements</p> | <p>The City states that 10 sidewalk ramps need to be replaced due to not meeting current ADA requirements.</p> <p>It is our understanding that the City is willing to make the improvements to bring the ramps</p> |

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| | <p>into compliance with the ADA and Manors agrees to reimburse the City for the cost.</p> |
| <p>9 locations need sidewalk repair/maintenance</p> | <p>The Applicant is not requesting that the City accept the sidewalks for maintenance. There is no requirement in Ordinance 2000 that the Applicant make any repairs to its sidewalks in order to have the roads accepted for maintenance. However, the Applicant is willing to repair the sidewalks in the locations identified on page 4 of the Non-Compliance Report and the cost to the Applicant of making the repairs is included in the bid from M&H Concrete.</p> |
| <p>7 signs need replaced due to unsatisfactory condition/not meeting current Manual on Uniform Traffic Control Devices (“MUTCD”)</p> | <p>The signs referenced in the Non-Compliance Report have been replaced with signs that meet the MUTCD standards and /or reflexivity standards.</p> |
| <p>Multiple locations of roadway have grade above 7% allowed. Some locations are above the 10% allowed by variance</p> | <p>The City cannot now require any changes to the grade. The time to do so was before acceptance and approval of the roads.</p> <p>Sunset Hills Subdivision Regulation 2.2(c) (11) states: Acceptance and final approval. Before the applicant’s obligation to the City of Sunset Hills is terminated, all required improvements shall be constructed under the observation and inspection of the inspecting agency and accepted for maintenance or given final approval by the City of Sunset Hills. A complete set of all “all as built” construction drawing for streets, storm and sanitary sewers, and other utilities shall be filed with the city clerk before the . . . escrow . . . will be released.” In the memorandum prepared by Wes Searcy to Thomas Hrastich dated December 6, 2006, Mr. Searcy stated that “I found all of the improvement plans for all of the roads except Gary Player and Tapawingo Place (not part of the application). All of the other streets in the development according to the improvement plans accepted by the City indicate they met the criteria of the 1990 Subdivision Regulations.” By letter dated</p> |

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| | <p>August 21, 2006, signed by Ronald J. Williams, the City Engineer/Public Works Director for the City of Sunset Hills, authorized the release of all escrow funds for subdivision improvements reflected on Plats 1-4 (all of which are for the Manors). The Williams letter includes tables reflecting that portion of the escrow applicable to grading, and it was released. Josh Foster, an employee of J. H. Berra Company, stated on June 18, 2020 that the streets referenced in the application were built to City standards. Mr. Foster provided the typical pavement section and underground drain detail required at the time. Mr. Foster stated that J. H. Berra Company poured all streets the same whether they were public or private. Even if the City failed to confirm that the streets were built to City standards prior to the release of the escrow, it is prevented from now challenging compliance with City standards by numerous legal doctrines, including but not limited to, laches, estoppel and waiver. Also, notably at least one slab exceeding the permissible grade violation is in the City right of way. (See Documents 13-15).</p> <p>As an accommodation to the City, if the City desires, Applicant will consider proposing a narrow amendment to Section 2.2(c)(1) of the City Zoning Code of Ordinances, Appendix A, Subdivision Regulations which would allow for a maximum grade of 11.01% where the road is in a development located in the City, and which includes a public golf club with three championship nines designed by one of the only five winners of the Golf Grand Slam, and a portion of which borders the Meramec River. Attached is the Percentage of Grade Report prepared by CMV Engineering showing the grades on Maple, Pagada Parkway and Caddyshack Circle. We anticipate that the consideration and approval of the amendment would be simultaneous with the dedication of the streets. (See Document 12).</p> |
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| <p>1 golf cart crossing is located within street right-of-way and 1 golf hole for the Tapawingo golf course is located within the street right-of-way and includes crossing a street during play</p> | <p>The City states that it is concerned about its potential liability for injuries to motorists and pedestrians using Maple Drive, over which the fairway for Hole 5 crosses. The City attorney in an earlier memorandum states that the City has a duty to maintain its roadway in a safe way for those using the streets and to protect motorists and other users from foreseeable injuries. The Memorandum states that of most concern to the City is that a motorist or pedestrian might be struck by a golf ball while using Maple Drive and suffer serious property damage or personal injury and that the City is on notice of this danger.</p> <p>The City has already assumed this risk. The City approved the golf course crossing in the plats it approved for the combined Tapawingo development. A portion of Maple Drive which abuts the fairway is a public street for which the City is responsible.</p> <p>Moreover, the City approved the use of Maple Drive by the public by providing the necessary approvals for the lease by the Lindbergh School District of the Mr. Al. B. Moore Leadership Center used for professional development and training of teachers, staff and student leaders. These members of the public have no way to access the Training Center except over the private roads of the Tapawingo community. The development includes more than 65 parking spaces, a tennis court and approximately 8 buildings. The City is now considering using this area as a public park. Additionally, the City approved the expansion of the golf course facilities (banquets, weddings, restaurant, etc) which increases traffic on the Manors' roads. The City has even on Maple Drive/ Rott Rd. signs directing traffic to use the Manors' private streets and not cut through or travel on Al Moore's property. The City should accept the roads for public maintenance since the City is allowing and directing the public's use of private roads.</p> |
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| | <p>The City argues that it cannot escape liability for potential injuries due to the principal that a “municipality has a nondelegable duty to maintain the improved public right of way as a result of accepting the dedication of public right of way. If the City is concerned about liability, it likely already has it based on its partial ownership of Maple Drive.</p> <p>The Memorandum states that the City is not 100% covered by the doctrine of sovereign immunity due to an exception for dangerous conditions on public property. This of course can be mitigated by the use of signage and other warnings. Notably, many of the people that use Maple Drive live in one of the Tapawingo subdivisions and choose to live there in part due to the amenity of the golf course. They have assumed the risk. But for those who do not live there, there is marque signage where Gary Player Drive joins Watson Road of the National Golf Club. It is also obvious that the golf club runs throughout the area. While there is no guaranty that the City would have no liability, the potential dangers of golf course crossings are not inherently any more dangerous than those of pedestrian crossings, bike lanes or other crossings for the deaf, for example. The City has accepted this type of risk in many other instances. In fact, there is a golf cart crossing on Hadley Hill Road leaving Sunset Hills Golf Club almost directly across from Mill Place. Interestingly, there are no signs warning of entering golf carts on Hadley Hill Road on either side, no notice to slow down and no signage to those driving the carts that they are about to cross Hadley Hill Road. The area is also somewhat hidden due to tree growth. This is converse to the Hole 5 fairway crossing over Maple Drive, which includes stop signs on either side and which has a clear view in all directions of the crossing. Another high profile golf course there are golf car crossings over public roads is</p> |
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| | <p>Forest Park.</p> <p>The City also benefits from a cap on damages which is generally the City’s policy limits on its insurance which may apply in this instance.</p> <p>In order to provide additional comfort to the City, the Golf Club and the Manors will add the City, as an additional insured, to its general liability policy. Additionally, the Applicant will repaint the golf crossing markings on the road. Applicant will add signage at the entry at Pagada Parkway similar to the entrance giving notice of the Golf Course.</p> <p>It is interesting to note that at least three other golf courses in Missouri, Osage National Golf Course (Osage Beach, MO), Loch Lloyd Golf Course (Belton, MO) and National Golf Course of Kansas City (Parksville, MO) have public roads running through their golf courses. Most courses /municipalities address the danger concern with signage, similar to such things as animal crossings, pedestrian crossings, bike lanes and crossings for handicapped individuals.</p> |
| <p>Confirmation storm sewers have been accepted by MSD</p> | <p>The Metropolitan Sewer District has accepted the sanitary and storm sewers in the development for dedication and public maintenance. A copy of the final letters of dedication from MSD together with the applicable plans are attached. (see document 17).</p> |
| <p>Confirmation all streets meet City standards of construction</p> | <p>Ordinance 2000 states in Section 1(b) that “the Director of Public Works shall review the condition of the subject street and document <u>ALL</u> of the Department’s concerns including but not limited to street condition, legal issues and ownership issues.” The City has included language on page 5 of the report that the report is not all inclusive, in violation of the language of the Ordinance.</p> |

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| <p>Street lights are located through the area being considered. Street Lights should be dedicated to the City per City Code</p> | <p>The Applicant has a maintenance agreement with Ameren pursuant to which Ameren maintains the street lights. Ordinance 2000 does not require that the street lights be dedicated to the City in order to have the roads accepted for maintenance. The Applicant is not requesting the City to take over maintenance of the lights.</p> <p>Attached is a letter from Ameren showing its maintenance of lighting. We are unaware of whether the City has taken any actions to light the portion of Maple Drive that it owns. (See Document 19).</p> |
| <p>Record Plat Scripts</p> | <p>Revise the record plat scripts in a manner mutually acceptable to City and Applicant, such revision to be recorded in the official real estate records of St. Louis County, Missouri. Applicant's attorney will work with the City attorney to make the necessary revisions to the record plats.</p> |