

Haynes Kessler Myers & Postalakis

I N C O R P O R A T E D

Attorneys and Counselors at Law

Jacqueline N. Baumann
Christopher T. Cline
S. Scott Haynes*†
Eric B. Hershberger
David S. Kessler

300 West Wilson Bridge Road, Suite 100, Worthington, Ohio 43085
Phone: (614) 764-0681 Facsimile: (614) 764-0774

Fazeel S. Khan
Nicole S. Maxwell*
Marc E. Myers
Stephen P. Postalakis
Tara R. Price*

ctc@bhmlaw.com direct dial 614-923-3132

*OSBA Board Certified Family Law Specialist

†Fellow, American Academy of Matrimonial Lawyers

+Certified Mediator, American Academy of Matrimonial Lawyers

Of Counsel: Thomas Law Group II Co., LPA

December 1, 2021

Chase Ridge
Dublin Planning Department
5200 Emerald Parkway
Dublin, Ohio 43017

re: Oak Park Subarea F; 20-192FDP, 20-193FP

Dear Chase:

I have been asked to comment on how our Amended Declaration of Covenants, Easements, Conditions and Restrictions for Oak Park (hereafter "deed restrictions") responds to the seven Dublin City Council Conditions of Approval for the Oak Park Rezoning Ord 06-20 heard on June 10, 2020 for the twelve new single family lots which replaced the previous two commercial reserves that allowed about 40,000 square feet of retail zoning.

The dominant issue with the rezoning was the removal of the retail commercial zoning at the entrance of the subdivision which had served as a negative factor for both value of the Oak Park homes and also constrained future residential development. Oak Park Dublin, LLC, had taken the initiative to purchase this land and remove the retail zoning. The existing residents saw an additional issue in future maintenance of the existing private drives and this issue consumed much discourse and significant time of public officials over many months. Ultimately the issue was resolved by the City of Dublin agreeing to bring the bulk of the private drives under the mantle of being public roads.

All of the residential private drives in Oak Park were within subareas I&J, plus pavement areas were located in the commercial subareas A&D. The private drives being taken over by the City are commonly known as Oak Tree Drives North and South, the main north/south roadways at the entrance to the subdivision; this includes the two round-about bulbs at the north and south ends of the roadways. Although private drives, these prospective new City roadways already appeared to be, and functioned the same as, other public roads in Oak Park.

The remaining private drives are essentially alleys with about 18' pavement width. With the commercial area gone they essentially provide access to the 20 rear-entry patio homes (called "Villa Homes") which front on existing public roads. Six of the 12 new single family homes will also have driveways on these remaining private drives. Pavement area which will remain as private drives after the conversion of the balance to City roads will be about 1,000 square yards.

The agreement by the City to take over responsibility for Oak Tree Drives North and South plus the round-about bulbs had three components: 1) the assumption by the City of responsibility for some of the private drives, 2) the developer agreeing to pay \$25,000 into a pavement maintenance fund to assist in future maintenance costs of the remaining private drives, and 3) the agreement by the developer to amend the deed restrictions for Oak Park to add an additional monthly assessment on the new 32 lots (20 patio homes and 12 single family homes) that would provide funds for future maintenance of the remaining private drives. This agreement was reflected in seven conditions Dublin City Council included in its June 10, 2020 approval of the rezoning for the twelve new single family lots.

It is unusual for a governmental entity to involve itself in private deed restrictions. Normally deed restrictions and zoning are kept as strictly separate processes: one civil and the other governmental. In this case the developer agreed to the City's involvement in the deed restrictions as the solution to the existing problem intertwined governmental and civil interests. The developer has made many other amendments to the deed restrictions also since the overall makeup of the subdivision has changed due to elimination of two subareas (townhomes and commercial) and creation of two subareas (Villa Lots and New Village single family homes). Those other changes to the deed restrictions are not subject to review by the City.

With this preface, I will discuss how the amended deed restrictions respond to the seven city council conditions of approval (attached as Exhibit I hereto) of the rezoning.

1. The first item provides a requirement for a process that determines how much money needs to be set aside from each new lot owner (32) as additional monthly assessments "to provide a fund to pay for the expected pavement maintenance, repair and replacement of the Private Drives." Basically, there are two maintenance issues for roadways. At recurring intervals, generally about five years, the roadways are crack filled and sealed. At longer intervals, between 15 and 25 years, the roadways are subjected to "mill and replace" that involves grinding down the surface of the roadway and replacing with new pavement. The developer had already been looking into a program for maintaining the private drives and been collecting bid information based on inspection of the roadways. I also had data another client had submitted to the city for a condominium project. So, this was not a new issue for us, and we had already collected data as required in the City Council Condition #1. I submitted our data and analysis to Paul Hammersmith, the City Engineer, who had been intensely involved in the negotiations with the residents on the issue. Paul agreed with our methodology but raised our assessment to \$12.25 per month, a sum that I recall was about \$2.00 more than our recommendation. Since the Dublin City Engineer was the final arbiter of the issue the matter was settled and Article VI(C)(3) on page 16 of the amended deed restrictions sets the amount of the additional pavement assessment at \$12.25.

2. The second condition provides that the developer will contribute \$25,000 to fund a pavement repair fund for Reserves I & J and to segregate both that sum and future pavement assessments received from owners of the 32 new lots, lots 109 to 140, in a separate account to be used only for pavement repairs. Article VI(C)(6) at page 16 of the amended deed restrictions requires that the HOA Board create a separate fund, the I&J Pavement Fund, to be kept “separate and apart” and not commingled with other assessments. The pavement assessments will be used by the HOA “solely for pavement maintenance, repair and replacement of the private drives in Reserves I & J.
3. The third condition basically summarizes the requirements of the first two, and the amendments to the deed restrictions are cited above. Article VI(C)(3) page 16 further provides for the required \$12.25 per month additional pavement assessment for the 32 new lots “subject to increase or decrease by the Board to ensure the funds are being appropriately reserved for actual or projected cost of maintenance, repair and replacement of the Private Drives as herein described”. Article VI(C)(3) also includes the required provisions about the developer (Declarant) being able to adjust the monthly additional amount upward so long as it controls the HOA Board, and that the pavement assessments be kept separately and used only used for pavement repair as well as additional provisions to deal with the possibility that the pavement fund might fall short necessitating the HOA Board needing to collect a deficiency from the 32 lots by increasing the assessment.
4. The fourth condition provides that the Law Director approve the amendments to the deed restrictions prior to filing with the Union County Recorder, to be done 60 days following approval of the rezoning. The Law Director has advised me that the requirements are appropriately included in the amended deed restrictions. I assume he will give you that report directly. Submission to the Union County Recorder may be delayed past the 60 days following final approval of this Final Development Plan due to the fact that the amended deed restrictions cannot be filed with the Recorder until after the Final Plat is filed. The Final Plat cannot be filed until approved by PZC, by City Council, and signed off by all required city officials. Typically, these signoffs are not made until after the City approves engineering for the improvements contemplated in the Final Plat. These improvements are minor, but require coordination with the City of Columbus since utilities are involved and the process is slow.
5. The fifth condition provides details for maintenance of the Private Drives by the Developer until turnover to the HOA and condition at turnover. Article IV(A)(3) and (4) page 30 titled “Dublin City Council Requirements for Maintenance of Pavement Areas in Reserves I and J” includes all requirements of this condition. Developer is required to maintain the Private Drives until turnover at sale of the last lot. At turnover the pavement must meet a Pavement Condition Rating of at least 80 as determined by the city engineer and if not met repairs to bring the pavement up to the standard must be done by the Developer.
6. The sixth condition deals with the Developer deeding to the City of Dublin the portions of Reserves I & J comprising the Private Drives that will become City streets. Developer has submitted these deed descriptions as part of the Final Development Plan and Final Plat materials, and I believe they were approved by the City Engineer some time ago. Again, the

60 day requirement may be delayed; Developer is ready to deed these lands to the City but assumes the City does not want to receive them until the Final Plat is filed with the Union County Recorder since that is when part of the new City roadways will be dedicated. Simply, part of the new City roads will be deeded and part dedicated by plat and the City probably wants both portions to be done at once.

7. The seventh condition required that the above conditions be included in the Development Text. The seven conditions in fact were included in the staff recommendation and adopted by Council at the time of approval of the rezoning for Ord 06-20 on June 10, 2020.

I hope that this letter includes information that assists you in verifying that the June 10, 2020 City Council Conditions have been adequately included in the Amended Declaration of Covenants, Easements, Conditions and Restrictions for Oak Park. I will be glad to answer any further questions at the hearing next week on December 8, 2021.

Very Truly Yours,



Christopher T. Cline

CTC:pq

Encl-1 City Council Conditions Ord 06-20

APPENDIX I

Dublin City Council

June 10, 2020

Ordinance 06-20

Conditions of Rezoning Approval for Oak Park Subarea F

1. Subject to the approval of the City Engineer, Applicant will prepare data showing projected cost of repairing and replacing the pavement areas of Subareas I and J of Oak Park that will remain as private drives (Private Drives) within Oak Park after dedication to the City of Dublin for Oak Tree Drives North and South. This projection will state intervals of work expected to be done, cost of work at each interval, and the additional Pavement Repair Assessment (Pavement Assessment) necessary, above the standard Oak Park Community Association, Inc (OPCA) lot assessments to be paid each month by each of the Villa Lots 109-128 and New Village Lots 129-140 (collectively "Lots 109 to 140") to provide to provide a fund to pay for the expected pavement maintenance, repair and replacement of the Private Drives.
2. Applicant will donate the amount of \$25,000.00 to OPCA to establish the Reserve I & J Pavement Repairs Reserve (I&J Pavement Fund) for the future pavement maintenance, repair and replacement of the Private Drives. OPCA will segregate this amount and the Pavement Assessment Amounts received from the owners of Lots 109 through 140. OPCA will credit the Pavement Assessment amounts to the I&J Pavement Fund no less than quarterly. Disbursements from the I&J Pavement Fund will be made by OPCA for no reason other than the maintenance, repair and replacement of the Private Drives.
3. To implement the above responsibilities and obligations, Applicant will amend the Declaration of Covenants, Easements, Conditions and Restrictions for Oak Park (Declaration) to include Lots 109 to 140. The amendment of the Declaration will include revisions to Article VI Assessments, to delete all references to Townhouse assessments and to add requirements that assessments for Lots 109 to 140 will include the additional Pavement Assessment for repairing and replacing the Private Drives. The Pavement Assessment will initially be \$12.25 per month subject to increase or decrease by the OPCA Board of Directors (Board) to ensure that funds are being appropriately reserved for actual or projected cost of maintenance, repair and replacement of the Private Drives in accord with the methodology of #1(a) above. However, so long as Applicant controls the Board, the Pavement Assessment may be adjusted upward at its discretion. The Pavement Assessment will be considered part of the Operating Assessments in the Declaration with respect to the Lots 109 to 140. Applicant will further amend the

Declaration to provide for the segregation and use of the of the I&J Pavement Fund by OPCA as provided in #1(b) above.

4. The amendments in #1(c) above are subject to the approval of the Law Director prior to filing with the Union County, Ohio, Recorder and will be so submitted for approval within 60 days following final approval of the within rezoning.
5. The Private Drives will be maintained by the Applicant, without using OPCA funds, until turnover to OPCA. Unless agreed to in writing by a majority of the Oak Park residents, turnover of the Private Drives will not take place until the last lot of Lots 109 to 140 is sold. After the final lot of Lots 109 to 140 is sold and prior to turnover of maintenance of the Private Drives to OPCA, the Applicant shall request a pavement evaluation of the Private Drives from the City Engineer. Under the direction of the City Engineer, the City of Dublin will evaluate the pavement condition and establish a pavement condition rating (PCR) for the private drives. A PCR of 80 or higher will be required before turnover of maintenance of the Private Drives to the OPCA. If the PCR is evaluated to be lower than 80, the Applicant shall perform maintenance necessary to bring the PCR to 80 or higher at the Applicants sole cost and expense. Ideally, the pavement work will be performed, and turnover made, after heavy construction operations are completed on the home on the last lot. To this end, prior to issuing a final Certificate of Occupancy for the home on the last lot sold, or six months after sale of the last lot if construction has not been commenced thereon, the Applicant will perform the required work. The City Engineer may also permit the Applicant to make security assurances for performance of the work in the future prior to the pavement turnover to the OPCA. This condition does not limit the Applicant's right under the Declaration to turn over property other than the Private Drives or the functions of the OPCA at any time, at its discretion.
6. The Applicant will deed to the City portions of Reserves I and J, prior to the approval of any building permits for Lots 109 to 1490, and no later than 60 days after the approval by Dublin Planning and Zoning Commission of the Final Development Plan for this section. This area is generally Oaktree Drive North, north of Acorn Lane to the northern terminus, including the bulb. It will include the area of Oaktree Drive South, south of Bur Oak Lane to southern terminus, including the bulb.

The description and exhibit of this area to be deeded to the City is required to be submitted with the Final Development Plan for this Section.

7. The above conditions, upon approval, are required to be included in the Development Text.

Final Development Plan - Oak Park Dublin
SW Corner Hyland Croy and Mitchell DeWitt Roads
Applicant: Oak Park Dublin, LLC
November 2020

FINAL DEVELOPMENT PLAN STATEMENT

SUBAREA F (RESERVES A AND D - OAK PARK)

PROJECT DESCRIPTION: RELATIONSHIP TO EXISTING CHARACTER, LAND USE AND ARCHITECTURE

This Final Development Plan contains Reserves A and D of Subarea E of the Oak Park Subdivision. As approved in the rezoning/preliminary development plan this area converted the originally zoned commercial use to a residential use with twelve single family homes, six in each reserve.

The twelve single family lots are consistent in character and land use to the existing Oak Park Development as follows:

- Lot size for the eight lots fronting Oaktree Drive N and S is similar to the range of lot sizes in the Oak Park single family subareas
 - Lot minimum width of 55' up to 69'
 - Lot depths minimum of 130' (existing Oak Park residential lot depth is 125')
- Lot size for the four lots fronting Oak Park Boulevard will be deeper and therefore larger than any lots in Oak Park. These lots will permit detached garages in addition to attached garages.
- Development standards will mimic the developed Oak Park single family subareas
- Architecture will use existing approved Oak Park elevations or modifications approvable administratively, similar to the process for the Villa lots
 - e.g., existing elevations modified for garage on adjacent non-frontage street and detached garages
- Result will be homes indistinguishable from existing homes in Oak Park
- No new streets will be constructed; existing streets will service the new homes
 - Eight homes will have access and frontage on existing Private Street, Oaktree Drive North and South, which will be platted as a public street to the City of Dublin.
 - Four Homes will front on Oak Park Boulevard but will not have driveway access to it. Driveways will have driveway access to private streets: Bur Oak Lane, Acorn Lane, Shumard Oak Lane and Chinkapin Oak Lane.
- Utility facilities are already in place but will need to be modified and extended.
- On street parallel parking will be permitted along Oaktree Drive North and South
- Particular attention will be paid to the presentation of homes facing Hyland Croy Road to ensure an attractive gateway to the Oak Park subdivision

In addition to the above summary regarding architecture, there are currently about 25 approved models for both the single family lots and the Villa lots. This “stable” of elevations for the twelve new lots will use any of these plans and the Development Text will so state. Additionally, the Development Text will also empower planning staff to make changes to these approved models and to approve designs for detached garages and other permitted accessory uses. This will enable any modifications necessary to adapt an existing model to a particular lot in this new part of Oak Park. Such an adaptation might be changing the access orientation for a garage, decreasing (or expanding) the width of a building, or reorienting a particular elevation to face a different street on a corner lot. Totally new models could also be approved by planning staff.

RELATIONSHIP TO COMMUNITY PLAN

The Northwest Glacier Ridge Area Plan and the Hyland Croy Corridor Character Study both emphasize the objective of preserving the rural, open feel of Hyland Croy Road with low intensity clustered residential land uses with large setbacks from the roadway and significant open space. Oak Park effectively follows this lead with the rezoning change from commercial reserves to the single family residential use. Once constructed, these homes will improve the Oak Park window to the roadway. The Glacier Ridge subarea plan of the Community Plan notes that this neighborhood retail center would affect the visual character of Hyland Croy Road; by removing the visibility needs of this retail center the visual impact along the corridor will be improved and the overall landscape theme improved

Oak Park falls within the Mixed Residential Rural Transition district which contemplates about 1.5 dwelling units per acre. Existing Oak Park, with 92 residential units, currently matches this target. Adding the twelve new single family lots will raise the total to 104 units, still shy of the original Oak Park total of 108 units. This new overall residential density is about 1.69 units per acre, still less than Oak Park’s original residential density of 1.76 units per acre.

The removal of the 40,000 square feet of commercial retail space that was previously included in Oak Park’s total impact results in a major decrease in the overall intensity of the site, reduces traffic by the conversion of the commercial areas to single family homes. And eliminates the visual clutter from commercial signage and lighting, noise from commercial trash pickup, and nighttime retail hours that would have conflicted with residential quiet times.

CONSISTENCY WITH THE DEVELOPMENT PLAN

This Final Development Plan is consistent with the approved Preliminary Development plan and provides for twelve single family lots and the conversion of Oaktree Drive North and South from a private street to a platted public right of way through the Final Plat process.

MEETS THE REVIEW CRITERIA PER 153.055(B)

- (1) *The proposed development is consistent with the purpose, intent and applicable standards of the Zoning Code;***

The proposed Final Development Plan is consistent with the purpose, intent and applicable standards of the Zoning Code;

- (2) *The proposed development is in conformity with Community Plan, Thoroughfare Plan, Bikeway Plan, and other adopted plans or portions thereof as they may apply and will not unreasonably burden the existing street network;***

The proposed development is in Conformity with the Community Plan, Thoroughfare Plan, Bikeway Plan, and other adopted plans. The development will not unreasonably burden the existing street network and as indicated above, the overall traffic impact is decreased with the conversion from commercial use to single family homes.

- (3) *The proposed development advances the general welfare of the city and immediate vicinity and will not impede the normal and orderly development and improvement of the surrounding areas;***

The proposed development advances the general welfare of the city, the immediate vicinity of the Oak Park neighborhood and adjacent developments by providing a consistent land use and reduced traffic impact. The twelve homes will not impede the normal and orderly development and improvement of the surrounding areas

- (4) *The proposed uses are appropriately located in the city so that the use and value of property within and adjacent to the area will be safeguarded;***

The proposed uses are appropriately located in the City and will only enhance values of the property within and adjacent to the area through consistent land use, architecture and lot size.

- (5) *Proposed residential development will have sufficient open space areas that meet the objectives of the Community Plan;***

As part of the overall Oak Park development, over 50% of the development is contained within open space.

- (6) *The proposed development respects the unique characteristic of the natural features and protects the natural resources of the site;***

The conversion of the proposed single family lots from commercial uses will help maintain the unique character of the natural features and protects the natural resources of the site through reduced lot coverage, reduced noise, traffic etc.

- (7) *Adequate utilities, access roads, drainage, retention and/or necessary facilities have been or are being provided;***

All infrastructure is in place and the applicant has worked with the City for the conversion of Oaktree Drive North and South to a public right of way.

- (8) *Adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion on the surrounding public streets and to maximize public safety and to accommodate adequate pedestrian and bike circulation systems so that the proposed development provides for a safe, convenient and non-conflicting circulation system for motorists, bicyclists and pedestrians;***

With the conversion from commercial to single family, traffic will be minimized. All streets and infrastructure are in place including pedestrian paths. With construction of the lots, sidewalk

connections will be completed to enhance pedestrian connectivity through the site and to the adjacent pedestrian network.

- (9) *The relationship of buildings and structures to each other and to such other facilities provides for the coordination and integration of this development within the PD and the larger community and maintains the image of Dublin as a quality community;***

As described in the Project Description above the relationship of buildings and structures to each other and to such other facilities provides for the coordination and integration of this development within the PD and the larger community and maintains the image of Dublin as a quality community;

- (10) *The density, building gross floor area, building heights, setbacks, distances between buildings and structures, yard space, design and layout of open space systems and parking areas, traffic accessibility and other elements having a bearing on the overall acceptability of the development plans contribute to the orderly development of land within the city;***

As described in the Project Description above, the proposed single family lots result in less density than originally approved for Oak Park, setbacks, building heights, architectural standards, etc are all consistent with the existing single family homes and contribute to the orderly development of not only the overall Oak Park development but land within the city.

- (11) *Adequate provision is made for storm drainage within and through the site so as to maintain, as far as practicable, usual and normal swales, water courses and drainage areas;***

Adequate provisions were made for storm drainage with the construction of the original Oak Park development. The proposed single family lots do not have any impact on existing storm water management or storm drainage systems.

- (12) *The design, site arrangement, and anticipated benefits of the proposed development justify any deviation from the standard development regulations included in the Zoning Code or Subdivision Regulation, and that any such deviations are consistent with the intent of the Planned Development District regulations;***

The design, site arrangement, and anticipated benefits of the proposed development justify any deviation from the standard development regulations included in the Zoning Code or Subdivision Regulation, and that any such deviations are consistent with the intent of the Planned Development District regulations.

- (13) *The proposed building design meets or exceeds the quality of the building designs in the surrounding area and all applicable appearance standards of the city;***

Building design will utilize the existing approved Oak Park elevations. New elevations for homes, detached garages and other permitted accessory uses or modifications to existing home elevations will be approvable administratively by planning staff.

- (14) *The proposed phasing of development is appropriate for the existing and proposed infrastructure and is sufficiently coordinated among the various phases to ultimately yield the intended overall development;***

The proposed single family lots will not require phasing for infrastructure (roads or utilities) since these are already in place. Lots will be built upon as they are sold with improvements for sidewalks and curb ramps constructed with the construction of each home.

- (15) *The proposed development can be adequately serviced by existing or planned public improvements and not impair the existing public service system for the area;***

The proposed development will be serviced by existing streets and utilities. Some minor modifications are required for water and sewer service lines to the lots.

(16) The applicant's contributions to the public infrastructure are consistent with the Thoroughfare Plan and are sufficient to service the new development.

Oak Park already contributed land and funding to Hyland Croy Road, McKitrick Road and Mitchell DeWitt Road improvements, in both City of Dublin and Union County. These contributions were based on the higher intensity previously planned for the 40,000 square feet of commercial use. Similarly, utility infrastructure is now more than adequate for the lesser intensity generated by the proposed downzoning to single family residential use.

J:\20190713\Correspondence\Submittals\FDP\working docs\FDP Statement - Nov 2020.docx