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MEMORANDUM

TO: Dan Ungerleider, Community Development Director
FROM: Jason Guisinger
DATE: December 19, 2019
RE: Summary of 88 Park Avenue Litigation

Please accept this memorandum as a summary of the legal proceedings and court rulings related to 88 Park Avenue and the lawsuit filed by Susan Hanlon and Phil Altvater (the "Plaintiffs") against the Village of Clarendon Hills and 88 Park Avenue LLC (the "Lawsuit"). In summary, the Plaintiffs sought to invalidate a planned unit development ordinance approved by the Village for the development of a condominium building, which has now been constructed at 88 Park Avenue. The Plaintiffs asserted three bases to invalidate the ordinance, all of which were rejected by the trial court and the appellate court, resulting in a final judgement in favor of the Village on all claims asserted by the Plaintiffs.

Trial Court Proceedings and Ruling

On October 21, 2013, the Village Board approved a planned unit development (PUD) and enacted Clarendon Hills Ordinance No. 13-10-32 (the "PUD Ordinance"), granting preliminary PUD plan approval. In January of 2014, Plaintiffs Susan Hanlon and Phil Altvater (the "Plaintiffs") filed a two-count complaint challenging the PUD Ordinance and the proposed PUD-condominium development. The original complaint contained two counts:

- Count I alleged that the challenged ordinance was arbitrary and unreasonable under the factors described in the cases of *LaSalle National Bank of Chicago v. County of Cook*, 12 Ill.2d 40, 145 N.E.2d 65 (1957), and *Sinclair Pipe Line Co. v. Village of Richton Park*, 19, Ill.2d 370 (1960).
- Count II alleged that the Village, as a non-home rule entity, had not followed its own rules as set forth in its Zoning Ordinance in granting preliminary approval to the proposed PUD.

On April 2, 2015, the Plaintiffs filed a first amended complaint, adding Count III and repeating the original two counts of the complaint. Count III alleged that, under Section 20.14.2.C(8) of the Village Code, the preliminary PUD approval had expired because the owner had not filed a request for final PUD approval within one year of the preliminary PUD approval. Count III alleged that the owner had not sought and the Village had not granted an extension before the one-year limitation period specified in the Village Code expired and, thus, the PUD ordinance was null and void. The Village moved to dismiss Count III pursuant to Section 2-619 of the Code of Civil Procedure, which was granted by the trial court.

Thereafter, the two counts contained in the original complaint proceeded to trial. After trial, the trial court entered judgement in favor of the Village and 88 Park Avenue, LLC, and against the Plaintiffs.

On November 18, 2015, the trial court issued its decision. Regarding Count I of the complaint, the trial court held that:

The Court[,] after considering all of the factors in determining the validity of a zoning ordinance, as set forth in LaSalle/Sinclair, and analyzing and weighing the evidence admitted at Trial in relation to those factors, finds that the Plaintiffs have failed to establish by clear and convincing evidence that the ordinance as applied to the property in question is arbitrary, unreasonable and without any substantial relation to the health, safety, comfort, morals or general welfare of the public.

With respect to Count II of the complaint in regard to the allegation that the Village failed to follow its own standards for granting a special use for a PUD, the trial court also found in favor of the Village, holding that the Village properly interpreted and applied its standards for granting a special use for a PUD. In short, the trial court ruled in favor of the Village and 88 Park Avenue LLC on all counts of the Plaintiffs' complaint, without reservation.

Appellate Court Proceedings and Ruling

The Plaintiffs timely appealed the trial court decision on the original two counts of the complaint to the Appellate Court of Illinois, Second District. Additionally, the Plaintiffs filed an appeal of the trial court's decision to dismiss Count III of the complaint with prejudice.

After hearing oral arguments from the parties, the appellate court issued its decision affirming the decision of the trial court in favor of the Village and 88 Park Avenue LLC, rendered after trial, on Count I and Count II of the complaint. Further, the appellate court affirmed the trial court's decision dismissing Count III of the complaint.

The Plaintiffs filed a petition for leave to appeal the appellate court's decision to the Illinois Supreme Court, which was denied. The effect of the Illinois Supreme Court's denial of the Plaintiff's petition for leave to appeal was to allow the appellate court decision to stand.

In summary, the Plaintiffs' complaint asserted three counts against the Village and 88 Park Avenue, all of which sought to invalidate the PUD Ordinance. The Village and 88 Park Avenue LLC prevailed on all three of the Plaintiffs' counts before the trial court and on appeal, and both the trial court and the appellate court upheld the validity of the PUD Ordinance, which allowed the project to be constructed at 88 Park Avenue.

Accordingly, any statement that the Village did not prevail in any part of the Lawsuit is legally incorrect.

Please contact me with any questions.