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August 10, 2024

**CONFIDENTIAL CORRESPONDENCE
ATTORNEY-CLIENT PRIVILEGE**

Mayor Gatt and City Council
City of Novi
45175 Ten Mile Road
Novi, MI 48375

RE: Villas at Stonebrook – Roads/City Park Access Issues

Dear Mayor Gatt and Council Members:

Our office was asked to provide some general background information as to how the private road leading to the Stonebrook development came to have a public easement across it, and how it became an access point for the Wildlife Woods Park. The request is presumably in response to statements at recent Planning Commission and City Council meetings by residents that having the public use a private road to access a public park without having the City help pay to maintain it is unfair or inappropriate. Similar comments have been made about the fact that an access point is provided to the currently vacant property north of Stonebrook that is proposed to be developed with the “Camelot” multiple-family development.

In a recent email that our office was copied on, the writer made a comment to the effect that the residents of Stonebrook “didn’t sign on” for those kinds of things. As it turns out, the Stonebrook development did in fact sign on for those things, and each of the property owners who bought in the development would have been made aware of that through language in the Master Deed.

1. City approval documents – PSLR Agreement.

The underlying zoning of the Stonebrook development is light industrial, and until Stonebrook was built there was a building on site and in use. Where the current private road connects with Wixom is generally where the driveway back to the industrial building was located. Significantly, that driveway was subject to an easement to the adjacent property to the south that gave access to an oil well that is still currently located there.

When Pulte proposed the Stonebrook development under the PSLR Overlay provisions of the zoning ordinance, the initial plan assumed that the access to the oil and gas well would be over the private road that you now see there, as well as a narrow drive between two homes located in the development. The current configuration came about as a result of discussions between the

developer and the City, when it became clear that the developer was offering to also provide access to Wildlife Woods Park.

The City Council initially reviewed the Stonebrook development at its August 27, 2018, meeting. A link to that City Council packet is here: [cityofnovi.org > agendas-minutes > city-council > more > 2018 > 180827 > 1-villasatstonebrookjsp17-62plannedsuburbanlow-ris](https://cityofnovi.org/agendas-minutes/city-council/more/2018/180827/1-villasatstonebrookjsp17-62plannedsuburbanlow-ris). As Council can see, the alternate “mitigation plan” version of the development that was ultimately built clearly shows the access off of Stonebrook Drive to both the oil and gas well and the park (and proposed parking lot).

Included within that City Council packet is the proposed PSLR Agreement, which was ultimately entered into in more or less the same form as provided in the packet. That document contains several provisions that talk expressly about the fact that (1) Stonebrook Drive would be a private road, not a public road; (2) that it would provide access to the oil and gas well and the City park; and (3) that it would be the obligation of the Stonebrook development to maintain that road. The Agreement also indicated that the vacant property to the north of Stonebrook Drive would have access to it (with no indication that such access would require assistance by the property to the north in paying for maintenance costs). For Council’s convenience, here is some of that language:

- A. The Development shall provide a drive connection and additional public access points to the adjoining City Park to the south as well as related parking benefits to the Park in the form of 12 additional parking spaces as indicated in the ‘Off-Site Access Road Exhibit’ shared via e-mail dated April 20, 2018. Additional revisions to the road design may be required to address Fire and emergency turn-around requirements at the time of Preliminary Site Plan. Developer is offering to include City Park’s name on their development sign along Wixom Road and provide way finding signage. The final layout of the access drive, parking spaces, location, format, and content of the park signage, woodland and wetland permit application shall be submitted for approval by the City, at the time of preliminary site plan review, and shall be within the City’s sole discretion. The City will terminate the existing access easement over the City’s park to the existing petroleum facility to the south of the Development, and will grant a replacement access easement in accordance with the approved plan for the City park access.
- B. The applicant shall provide an access easement on the north side of the proposed entry drive for future connection capability to neighboring properties to eliminate multiple exits onto Wixom Road.

Like the PRO, or the RUD, or the PD option, a PSLR development is an optional form of development, that vests discretion in the City to grant approval or not. The PSLR ordinance contemplates that a developer will need to establish that there are some benefits to the City of exercising its discretion in favor of the developer and the proposed development. It also

contemplates the ability to impose or accept conditions on a development. Basically, what happened here is that the developer listed a number of aspects for the development and conditions that the City could impose in order to make the development fit within the review criteria for a PSLR development, and those things expressly included public access over Stonebrook Drive and an easement to the vacant northern parcel.

2. Condominium Documents.

Under MCL 559.184a, part of the Michigan Condominium Act, every prospective purchaser in a condominium development must be given a copy of the recorded master deed. A copy of the recorded Master Deed for Stonebrook is also attached hereto. That Master Deed also clearly reflects the private easement to the north, but more importantly the public access over Stonebrook Drive to get to Wildlife Woods Park. Specifically, see the following:

Section 4.6 Development Agreement. The Project is subject to the terms and conditions of the Development Agreement with the City which governs development of the Project as described in Section 3.13. The Development Agreement sets forth requirements for development, construction and use of the Project. In accordance with the Development Agreement, the condominium shall be subject to the Open Space Preservation Easement in relation to any areas of remaining wetland, woodlands and open space. By taking title to a Unit in the Community, each Owner acknowledges and agrees to the requirements of the Development Agreement, and the obligations of the Unit Owners related thereto.

Section 4.8 Oil and Gas Lease; Public Access Easement. The Project is subject to the Public Access Easement and the Oil and Gas Lease as described in Sections 3.24 and 3.25, respectively, providing access to Somoco and the public over the Condominium via an access road along the southwest boundary of the Condominium as shown on the attached Exhibit B and subject to the terms and conditions contained in those agreements. By taking title to a Unit in Villas at Stonebrook, each Co-Owner acknowledges and agrees to be bound by the terms of the Oil and Gas Lease and Public Access Easement.

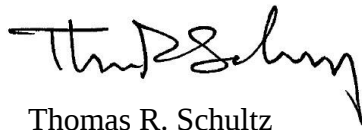
Section 6.5 Roadway Maintenance Plan and Easements. The Roads in the Condominium are private Roads to be maintained, repaired, replaced and insured by the Association with the costs of the foregoing to be assessed to the Unit Owners as described in Article 2 of the Bylaws. The owners of Units in Villas at Stonebrook shall be responsible for and shall be assessed a share of the costs of insurance, maintenance, repair and replacement of the Roads through the Association as set forth in the Bylaws. The Association shall establish a plan for regular maintenance, repair and replacement of the private roads in a safe and useable condition and shall assess all Unit Owners for the cost thereof in accordance with the Bylaws. The owners of all Units in Villas at Stonebrook have an easement in and the right to use the Roads as set forth in this Master Deed. As described in Sections 3.24 and 3.25

above, Somoco and the public also have certain access rights over a portion of the Roads in Villas at Stonebrook in accordance with the Oil and Gas Lease and Public Access Easement.***

Clearly, the developer of Stonebrook entered into these provisions knowingly. The law also presumes that the individual purchasers did as well.¹

Very truly yours,

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC



Thomas R. Schultz

TRS/jah

cc:

¹ We were not asked to address in this memorandum any of the things that the City might do to mitigate the issues being raised by the residents (cameras, increased police patrols, traffic enforcement, etc.).