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August 3, 2021

VIA E-MAIL

Mr. Charles Daniels (cdaniels@forneytx.gov)
Interim Forney City Manager
101 Main Street
Forney, TX 75126

Re: Windmill Farms (the "Project") Preliminary and Final Plats for Phases 4D-2 and 4D-3 ("Plats")

Dear Mr. Daniels:

Our firm represents EQK Bridgeview Plaza, LLC ("Developer") which is the developer of the Project. The Forney Planning & Zoning Commission denied the Plats at its July 1, 2021 meeting. According to the staff comments, the Development would be required to pay \$1,053,950 in park fees prior to recordation of the Plats. The Development is not located within the City's corporate limits. Developer appeals the amount of the fee in general and as it applies to the Plats pursuant to § 212.904, TEX. LOC. GOV'T CODE.

The City's park land dedication ordinance is contained in Section 4.4 of the City's subdivision ordinance ("Park Fee Ordinance") which was adopted in 2008. Developer's appeal of the park fee is based on the following:

1. *No Authority.* Our position remains that the City has no authority to enforce its park dedication ordinances in the ETJ because such ordinances directly regulate the use of property in violation of Section 212.003(a)(1), Texas Local Government Code. Forney is restricted in its Extraterritorial Jurisdiction ("ETJ") to regulate only as authorized by statute. *Bizios v. Town of Lakewood Village*, 493 S.W.3d 527 (2015); *Collin County v. City of McKinney*, 553 S.W.3d 79 (Tex. App.-Dallas 2015, no pet.). Platting authority in the ETJ is provided exclusively by Chapter 212, Tex. Loc. Gov't Coe. Forney has neither express nor implied authority to require park fees or dedication in its ETJ.

2. *Chapter 245 Violation:* The Park Fee Ordinance cannot be applied to the Development pursuant to Chapter 245 of the Local Government Code. The land use plan for the entire Development project was consented to by the City in the 2003. In addition, final plats for the Development were approved prior to the extension of the Park Fee Ordinance to the ETJ. Although the development agreement has expired, such expiration is unrelated to and does not affect any vested rights inuring to the Project as a result of the development agreement or any other potential vesting instrument submitted to the City over the life of the Project and prior to the extension of the Park Ordinance in 2018. Chapter 245 precludes the City's application of the Park

Ordinance to the Project and the Plats. Therefore, no park fees should be charged related to the Development.

3. *Ordinance Fee Amount is Not Proportional:* Developer challenges the fee amount in the Park Fee Ordinance. The amount of the fee was not calculated in accordance with the methodology of the Texas Impact Fee Act contained in Chapter 395, TEX. LOC. GOV'T CODE or any other valid fee calculation methodology.

In *Town of Flower Mound v. Stafford Estates Limited Partnership*, 135 S.W.3d 620 (Tex. 2004), Stafford sued the Town in the District Court of Denton County alleging the requirement that it construct and pay for the improvements to Simmons Road as a condition to the Town's approval of the final plats constituted a taking of property without compensation in violation of Article I, Section 17 of the Texas Constitution, and the Fifth and Fourteenth Amendment of the U.S. Constitution and 42 U.S.C. § 1983, and a claim for attorneys' fees and expert witness fees under 42 U.S.C. § 1988. After a trial on stipulated facts, the District Court awarded Stafford approximately \$425,000.00 in damages under the Texas Constitution as a result of the exaction of the Simmons Road improvements in excess of Stafford's proportionate share.

The Fort Worth Court of Appeals affirmed the award of damages to Stafford under Article I, Section 17 of the Texas Constitution. *Town of Flower Mound v. Stafford Estates Limited Partnership*, 71 S.W.3d 18 (Tex. App.—Fort Worth, 2002). The Supreme Court affirmed the judgment of the Court of Appeals. *Town of Flower Mound v. Stafford Estates Limited Partnership*, 135 S.W.2d 620 (Tex. 2004).

The Legislature incorporated the elements of *Stafford* when it enacted § 212.904, TEX. LOC. GOVT. CODE. This section requires the City to prepare an engineer's report showing that the cost of infrastructure improvements imposed on a developer may not exceed an amount that is "roughly proportionate to the proposed development." There is no statutory requirement for the developer to provide a similar study. Developer challenges the amount of the Fee itself pursuant to § 212.904. Tex.Loc.Govt.Code.

4. *Fee Amount is Not Proportional to Developer:* Developer further challenges the proportionality of the fee because it does not credit Developer for the park and open space improvements that have been provided in the Development. The following existing open space/amenity improvements have been provided by the Developer and will be increased in future phases, all of which will also be utilized by future residents in the Project:

Description	District	Acres
Amenity Center – Existing	District 1B	1.2
Amenity Center – Existing	District 1C	8.7
Amenity Centers – Future (every District will have at least one Amenity Center) Trail / Open Space – Existing	Districts 1E, 1F, 1A (1G, 1H, 1I)	TBD
Trail / Open Space – Existing	District 1B	32.2
Trail / Open Space – Existing	District 1C	86.2
Trail / Open Space – In progress	District 1D	115.0
Trail / Open Space – Future	District 1E	34.0
Trail / Open Space – Future	District 1F	45.0
Trail / Open Space – Future	Future (1A)	1,100.0
Total Current & Future Open Space		1,427.3

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The approximate construction cost for the amenity center, trails and open space that will be utilized by these future residents is approximately \$5,000,000 in District 1D and \$5,000,000 in future districts. Therefore, there should be a 100% credit given to Developer for the park fees.

Developer appeals the City's determination that its exactions are roughly proportionate to the proposed development to the Forney City Council pursuant to § 212.904(b), TEX. LOC. GOVT. CODE. Please forward the City's outside engineering report required under § 212.904(a) to our office at your earliest convenience.

Please provide this office with notice as to the date of the city council hearing and a copy of the City's expert engineering report. As you know, our client's attorneys' fees and expenses will be paid by the City if a subsequent appeal is successful. Furthermore, we will be seeking damages related to the delay in development resulting from the City's actions. We expect these damages to be in the millions of dollars. If you have any questions regarding this matter, please give me a call.

Very truly yours,



Arthur J. Anderson

AJA/km

cc: Jon Thatcher, City Attorney (via e-mail: jthatcher@forneytx.gov)