

August 26, 2016

Jill H. Ziegler, AICP  
Community Development Director  
Village of Westmont  
31 W. Quincy Street  
Westmont, IL 60559

***Re: Proposed development at 3500 Midwest Rd., Westmont, Illinois (“Property”)***

Dear Ms. Ziegler:

**INTRODUCTION**

The Harp Group (“Harp”) is proud to present a future mixed use development, “World Class Westmont,” at the property commonly referred to as the Oak Brook Hills Resort, located at 3500 Midwest Rd. (the “Property”). As you know the Oak Brook Hills Hotel currently offers 386 rooms and suites, 42,000 sq. ft. of meeting and event space, an 18-hole championship golf course, indoor and outdoor swimming pools and numerous dining options. The Harp Group is currently seeking to improve the 18-acre area upon which the hotel sits and incorporate market-driven uses that will cohabitate successfully architecturally, culturally, and financially, with the resort hotel, conference center, restaurant, bar, and golf course.

By way of summary, the future development on the Property includes 250 luxury apartment units and a world-class natatorium which would be located north of the conference center and east of the new apartments respectively. The newly designed apartment building represents a significant decrease in the number of overall units by about 30% from the original plan. It includes an outdoor pool, coffee bar, a fitness center, community room, roof top garden green roof, business center and individual unit balconies. The interior garage has an area for car washes, electric vehicle charging stations, bike storage and repair. In addition, there will be incidental retail, ride share rentals, and cafes. There will also be shuttle buses running 24/7 connecting the resort to downtown Westmont and the train to Chicago.

The size of the units range between 600 sf. to 1250 sf. The unit mix will be as follows: (15) studios, (164) one bedrooms, (71) two bedrooms. The architecture and construction of the units will allow them to be converted to condominiums in the future pending favorable market conditions. The target market is empty nesters, mid-age single tenant families and millennials who seek to rent instead of owning, but who want a higher level of living with quality units and ample amenities.

The master plan keeps surface parking close to the hotel and conference center dual entries as well as to the public access for golf takeoff. The apartment complex is strategically located at the northern border and a natatorium at its eastern border, thereby creating a mini-town square with public parking centrally located for use by all. Circulation divides the on-site traffic (resort, apartment, and natatorium patrons) from the adjacent townhome neighbors. In lieu of stop signs, a new roundabout will direct on-site traffic patrons to the right, and adjacent townhome traffic to the left. Patrons for the apartments and the natatorium can split off to the left, via parking, and resort patrons can either drop off, valet, or self-park as they wish.

This component of the overall project incorporates a unique design and layout of high-end apartments surrounding a parking structure with 1285 parking spaces in addition to the 496 parking spaces serving the resort property. This “wrap around” design allows residents to park their cars on the same floor of their apartment. We have found this design to be favorably received in many communities.

### THE TEXT AMENDMENT AND B-3 ZONING

On April 14, 2016, this Village Board approved a text amendment to allow residential uses in the existing B-3 Zoning District. The Village’s decision enables the consideration of the pending special use.

Importantly, this text amendment reflects the Village’s intent and understanding that residential uses can be appropriate in and adjacent to a business district. It reflects the appreciation that these two uses thrive together, especially in the B-3 which staff has recognized as an intense development area. As stated in the Village’s Zoning Code, the intent and purpose of the B-3 special development district is “to provide for the combining of hotel and/or motel, office, research and recreational uses in a unified development and to provide for secondary retail, *residential* and service uses to serve the development.” Moreover, the B-3 district is intended for “*increasing urbanization* and of growing demand for these kinds of land uses and to encourage innovations and variety in type, design and arrangement of such uses,” which is exactly what is being proposed by Harp. Indeed, many of the uses, such as office, allowed in the B-3 zoning district are more intense than that which is being proposed.

We appreciate the Plan Commission’s hard work and the thoroughness with which it reviewed our proposal. After months of hearings, their input made the project better for the community at large. That said, we believe that this Board now has an opportunity to create a unique destination for which the Village will become well known for in the state, region and country. The world class natatorium, and LEED-certified luxury apartments, will not only financially stimulate the immediate area but also the entire community.

Westmont’s approximate population of 25,000 is comprised of about 10,000 people between 18 and 44, the very demographic that will be attracted to the project. Not only does the target market include millennials but it also will include empty nesters, mid-age single tenant families among whom the trend is to rent and not purchase, and who desire a higher level of living with quality units and ample amenities. With this in mind, we believe that our project will only benefit the Village.

## COMPREHENSIVE PLAN

The Village's Comprehensive Plan (the "Plan") is a guide, not a directive. Importantly, it "...provides guidelines by which the Planning and Zoning Commission and Village Board can review and evaluate private development proposals." To the extent the Village wishes to creatively deviate or consider portions of the Plan when evaluating a development project, it may do so. Opposing counsel inaccurately gave the Plan Commission the impression that the Plan is a mandate, which must be followed absolutely. His suggestion is simply wrong and misleading. A comprehensive plan is advisory and itself not to be construed to regulate or control the use of private property in any way. Plainly put, a zoning ordinance is law; a comprehensive plan is not. *Smart Growth Sugar Grove, LLC v. Village of Sugar Grove*, 375 Ill. App. 3d 780; 873 N.E.2d 20 (2<sup>nd</sup> Dist. 2007). A city council is bound by the City's zoning ordinance, not the comprehensive plan. Acting administratively, the city council is bound by the City's zoning ordinance, not the comprehensive plan. Thus, the city council's reliance on the comprehensive plan could not justify the decision to deny a special use permit. *City of Chi. Heights v. Living Word Outreach Full Gospel Church & Ministries*, 196 Ill. 2d 1; 749 N.E.2d 916; (Ill. Sp Ct. 2001)

Interestingly, there are some critical passages within the Plan which we bring to the Board's attention:

First, the Plan notes a higher demand for multifamily and single family housing, both for-sale and rental. It is the current demographic trend, along with the CBRE market analysis, that reinforces our confidence that the proposed apartments will succeed. In fact, high-end rental apartments with convenient parking are currently in high demand and are predicted to remain in high demand for the future. It also states that residents would like to see the community develop in a way that provides the Village of Westmont with a strong identity and sense of place. The proposed project accomplishes just that by creating a unique resort destination. By adopting the text amendment last April, the elected officials have made their position clear as to the appropriateness of additional residential housing in a mixed use area. Lastly, the Plan states that the future (and existing) land use for the property is Parks/Open Space, which it further defines as "private recreational area". In doing so, the Plan was clearly referring to the resort's golf course, not the current parking lot. As stated previously, this proposal does not include any development on the golf course and as previously stated, no such development will occur for at least the next 28 years, which is the current life of the lease on the golf course.

## DENSITY

Too often "density" is considered as a negative feature. In fact, it is often the engine which drives and stimulates economic development. If we considered density in a vacuum without other contexts, we would not have office buildings, or thriving retail and commercial business as collaborative uses. In other words, density itself is not an adverse result. Nevertheless, in response to comments made at the previous public hearings, have reduced the total number of apartments by 76 units and the FAR from .95 to .86. We have further lowered the overall height of the building from 7 stories to 6, and lowered portions of the building from 7 floors to 6 floors with 3 floor wings. Moreover, we increased the open space per unit to 518 sf,

well in excess of Village requirements of 250 sf/unit. This is in contrast to some of the neighbors who have shown no willingness to compromise, offer an alternative site or even meet with us despite our several attempts to do so. Their steadfast intransigence has obstructed this development opportunity now before you. All of the Plan Commissioners, and even the attorney representing the neighboring association, recognized the positive nature of our changes. Indeed, had this property been developed as office buildings, as originally proposed and approved for many years ago, density and the FAR would have far exceed Harp's current proposal.

### **PARKING**

The current plan is fully compliant with the Village's parking requirements and, in fact, has a surplus of about 100 spaces. Specifically, we have widened the deck and added parking to the roof and lower level of the apartment building. Where we were once arguably 700 spaces short, we have listened to the Plan Commission, sharpened our pencils, and designed a project where parking fully responds to the Commissioners' concerns and complies with (or even exceeds) Village code.

The Oak Brook Hills Resort currently has a surface parking lot, less than ideal in winter, that provides 979 parking spaces which will be modified with the proposed developments resulting in a net supply of 1,781 parking spaces. The apartments development will provide approximately 403 spaces for the 250 units, resulting in a parking ratio of over 1.5 spaces per unit. Excess parking in the garage will be available to visitors of the natatorium as well. 1,285 parking spaces in the garage will be sheltered from the inclement weather and not visible to guests or patrons. Attached please find a parking chart for your reference. Nonetheless, we have over 500 spaces of off-site parking which could be made available if necessary.

The Harp Group commissioned a parking and traffic analysis by KLOA Engineering, a copy of which has been provided to the Village. In summary, the analysis concludes that the proposed development will provide a sufficient number of parking spaces to accommodate its peak needs on a typical day and during meets at the natatorium. The 1,781 parking spaces will be adequate in accommodating the peak parking demand for the typical use of the resort, apartments and natatorium, even assuming that peak traffic occurs simultaneously with all uses and no overlap. Additionally, almost 75% of these spaces will be indoors, sheltered from the elements and out of public view.

### **THE NATATORIUM**

The development will also include a world-class Natatorium at Westmont (the "Natatorium"), which will be host to local and regional swimming tournaments, public and private programming and will be used by the surrounding community. It will feature a two-pool swim complex. A 50-meter pool will be built to state-of-the-art technical specifications for competitions locally, regionally, and nationally. A 25-meter public pool will be open to help residents of Westmont and the local region learn to swim as a water safety lifetime skill and participate in swim team events and competition as a sport.

The Natatorium is possible because of the generosity of a foundation funded by the owners of Athletico (The Kaufmann Family Foundation), who are passionate about swimming as a sport and life safety skill for all residents. It is rare indeed where \$25.0 million in private funds

are available for a unique civic sports development. This Village has the opportunity at this time to add this civic sports venue to their existing cultural and sport facilities without the expenditure of any public funds for it or its required parking.

The Natatorium will have most of its activity on the main level. There is a mezzanine wrapping three sides of the pool with bleacher seating that will be used flexibly for competitive swimming and diving competitions, including swim meets for young swimmers in age group swimming to elder masters level swim meets for adults into their 90's. The location on the east side of the site was necessitated by the size of the optimal facility, which dictated its location to the east, as well as the flow of vehicular circulation on site.

A peak event would include a maximum of 800 swimmers and a total of 1,200 spectators at any one time. These events would take over the hotel and our 1,780 parking spaces (less the 530 for the apartments and retail) would leave 1,250 spaces available for the hotel and natatorium peak event.

By and large, and based upon the feedback from the community, the Natatorium has been well received. Importantly, we believe there is a significant synergy that will be created among the natatorium, apartments, retail, and the hotel uses. For instance, parents who drop off their kids may grab a coffee while waiting for their child's event to conclude. Overnight tournaments will accommodate visitors at the hotel. Those training for college or Olympic swimming events can rent one of the apartments. Moreover, large special events at the Natatorium will inevitably use the parking deck inside the apartment building. In the end, all of these uses go hand in hand with one another. In all, the natatorium will be a great asset to the Resort and to the Village at large. In fact, it is expected that it will create 15 – 19 permanent jobs, and the balance of the project will increase the number of jobs at the hotel and conference center from 183 to 250 during the summer months.

### LEGAL ISSUES

In an effort to distract the Plan Commission from the core land use issues in this matter, and again mislead the Commissioners, the attorney representing the adjacent condominium association and its members referenced a reciprocal area access agreement between the Hotel Owner and The Oak Brook Hills Condominium Association property (the former Office Site). He did so in manner that caused confusion and perhaps trepidation on the part of the Plan Commission. He did so despite the fact that even though he submitted hundreds of pieces of paper to the Plan Commissioners just moments before the June 15, 2016 public hearing (and again most recently at the August 17, 2016), he casually omitted a critical recorded document that completely rebuts his claim. In particular, during the June 15, 2016 public hearing, counsel for the association, much to the consternation the Plan Commission Chairman, delivered a large binder of historical information relative to the resort and surrounding properties. Not only was it unfair to the Plan Commissioners to receive the untimely information that same day, but it was misrepresentative and disingenuous as it specifically omitted the 1995 Supplemental Easement Agreement. Doing so, was not only an act of disrespect to the public hearing process but an intended act of omission. Accordingly, an accurate and complete review of the Property is in order.

On November 19, 1984, pursuant to Ordinance No. 84-132, the Village of Westmont rezoned an approximate 144-acre site ("Subject Property") from R-2 to B-3 Special District ("B3") in order to enable the construction of a resort hotel, golf course and office development. The B-3 district's intent is to be used for high intensity development with abutting land uses. On October 18, 1985, an Easements, Covenants and Restrictions Agreement ("Agreement") was recorded relative to the Subject Property by and among LaSalle National Bank, Trust No. 109930 ("Hotel Owner"), and LaSalle National Bank, Trust No. 109925 ("Golf Course and Office Building Owner") (collectively the "Owners"). At the time, the Final Concept Plan included a hotel, located on the central western portion of the Subject Property, and (3) separate 10 story office buildings, located on the central east portion. The golf course surrounded the hotel and office buildings. The parking lot design was essentially a continuous lot with designated areas of parking for the hotel, golf and offices. Based on the intent of the B-3 district (which was for intense mixed use development), the intent of the Owners, and the circumstances at the time, the Easement Agreement was drafted, including the area access easement, which appears entirely logical for the Owners to grant upon each other the following perpetual *nonexclusive* easements and restrictions:

1. EASEMENTS

(a) Each Owner hereby grants to every other Owner for the mutual benefit of their respective Sites, perpetual non-exclusive **reciprocal** easements in, to, over and across their respective Sites for the following purposes:

(i) Construction, installation, operation, maintenance, repair renewal and replacement of the roads and other means of access identified as "Front Entrance Road Easement", "Access Road Easement", "Access Area Easement", "Emergency/Secondary Access Road Easement", on Exhibit B for ingress and egress to and from the sites of the Owners for the **passage of vehicles** (but in no event the parking thereof (except that Hotel patrons and staff may park in designated areas of the Access Area Easement)) and the **passage and accommodation of pedestrians**; provided, however, that ingress and egress over the Hotel Site for the benefit of the Office Building Site shall be limited to passenger motor vehicles and pedestrians..."

In approximately 1988, the Oak Brook Hills Assessment Plat was prepared and recorded for "tax assessment purposes only," delineating Parcel I (Hotel Site), Parcel II (Golf Course), and Parcel III (Office Building Site). The hotel and golf course were constructed as originally planned. However, the office development, which was to be constructed 5-10 years following the hotel and golf course, was not constructed. A new entity, The Gray Group, became subsequent owner of the Office Building Site and, in approximately 1991, met with the Village and began seeking rezoning of its 17 acre (Office Site) from B-3 to a R-4 Planned Unit Development overlay district for the proposed development of approximately 92 single-family residential

subdivision called The Fairway Homes of Oakbrook Hills. At the time, the Hotel Owner objected to the rezoning for a variety of reasons. However, the Village eventually approved the R-4 PD rezoning the location where the objectors now reside.

Ultimately, the matter ended up in Illinois Appellate Court and was addressed in *LaSalle National Bank Trust, N.A. v. Village of Westmont*, 264 Ill. App.3d 43(1994). The Court held that the proposed rezoning from B-3 to R-4 PD was unconstitutional. Additionally, the court held that the Easement Agreement rights still existed even though the proposed residential development was originally for the Office Site. Importantly, ***the Court concluded that because the Easement did not specifically address an intent to prohibit the use of the easement for residential development, the Easement therefore could be used for the residential development.*** *Id.* at 13.

What opposing counsel so blatantly omitted from his binder was what occurred thereafter. In particular, on October 20, 1995, a Supplemental Easements, Covenants and Restrictions Agreement (“Supplemental Agreement”) was recorded against the Subject Property. A copy of the Supplemental Agreement is attached hereto. The Supplemental Agreement provided for two (2) relevant provisions. First, pursuant to Section 3, Grant of Easement (b), the Office Building Owner granted to the Hotel Owner certain rights to encroach upon the Office Building Site. Second, and more importantly, (clearly in response to the *LaSalle National Bank Trust, N.A. v. Village of Westmont* decision), the following language was included in the Supplemental Easement:

4. Supplemental Covenants and Restrictions

(b) Notwithstanding anything to the contrary in the Easement Agreement, the Office Building Owner covenants and agrees that ***at no time shall the Office Building Site or any portion thereof be used for, nor shall there be constructed thereon, any residential dwelling of any type, including but not limited to any single or multi-family dwelling, any condominiums, apartments cooperative, townhouse, or any buildings or structures intended for residential dwelling, without in each instance the express written consent of the hotel Owner, which may be withheld in the Hotel Owner’s Sole discretions for any reason.*** [emphasis added]

The above language is especially relevant because it is a restriction placed on the Office Building Site (now the site of the Residences of Oak Brook townhomes), which requires “that in each instance” the Hotel Owner must provide express written consent for residential construction. Moreover, it is a covenant that restricts the site for residential use which—if such a covenant had existed in the original Easement Agreement—the court would have agreed with the Plaintiff’s contention that the Easement Agreement rights cannot be used for residential development. Here, the Hotel Owner has never provided, in each instance, any express written consent for the townhomes or single-family homes to be built. Had it, opposing counsel would have surely included it with his documents. Currently, there is residential construction occurring on the former Office Site which has not been approved, nor conforms with the Supplemental Covenants and Restriction cited above. Yet these are the same documents that opposing counsel uses to support his baseless allegations that certain structures cannot be building on the hotel’s

property. So the issue of easements ultimately indicates that there was no permission given for the residences which opposing counsel and his clients are trying to protect, nor were any of these residences properly approved. Thus, opposing counsel is attempting to enforce a specific provision of the 1985 Easement which is no longer enforceable. Not to mention, his clients are currently violating the enforceable 1995 Supplemental Easement.

Use of an easement is limited to the use that is reasonably necessary for the intended purpose of the easement when granted. See *Seymour v. Harris Trust & Sav. Bank*, 264 Ill. App. 3d 583. Illinois case law on the issue generally supports the notion that interpreting an easement requires an investigation into the intentions and circumstances of the parties at the time of the original grant. *Id.* It is clear from the language of both documents (1985 and 1995 Easements) that the intent and understanding of all parties involved the construction of *office* buildings, as opposed to a residential subdivision. Moreover, pursuant to the clear language in the 1995 Supplemental Easement, the said easements did not apply to residential use on the office site, and were strictly prohibited. The residential subdivision is contrary to the intentions and circumstances of the parties when the easement was granted and further supplemented. If the parties had known that a residential subdivision would eventually be built on parcel III, and that parcel III would be partially separated from the hotel parcel by wetlands, an easement providing an access area for motor vehicles and pedestrians over the hotel parking lot to Parcel III would not have made sense. Thus, it was contrary to the original intent and prohibited due to the 1995 Supplement.

While an easement owner is entitled to full enjoyment and every right connected to the enjoyment of the easement, the easement owner does not have a right to hamper the servient estate owner's control or use of the land by going beyond what is a reasonable use of the easement. *Doan v Allgood*, 310 Ill 381, 141 NE 779 (1923). Indeed, an easement owner is limited to using the easement only to benefit the land the easement was originally intended to benefit, and no other lands the easement owner may own. *Beloit*, 28 Ill 379, 192 NE2d 384; *Miller v Weingart*, 317 Ill 179, 147 NE 804 (1925).

Clearly, in this case, the use of Access Area Easement by the residential subdivision, which is cutoff from the Hotel Site by wetland and vegetation, can hardly be described as reasonably necessary and convenient for the intended purpose of the easement. There is no longer one continuous common parking lot. Furthermore, the residential subdivision has its own gated ingress and egress for motor vehicle and pedestrians. The objecting homeowners appear to suggest that they have some unlimited right to use the hotel property exclusively. They have failed to realize (or to inform the Village) that the Supplemental Easement provides the contrary.

### **PLANNED DEVELOPMENT**

One of our requests is a map amendment to a planned development overlay district in the B-3 Zoning District. In an effort to clarify the record and better respond to some of the comments of the Plan Commissioners, we offer the following explanation.

In addition to the objectives prescribed in previous sections, the PD district is included in the zoning ordinance in order to achieve the following purposes:

- (A) To *encourage more creative design and development of land.*
- (B) To *promote variety in the physical development pattern* of the village.
- (C) To concentrate open space in more useable areas or to *preserve natural resources of the site.*
- (D) *To provide means for greater creativity and flexibility in environmental design than is provided under strict application of the requirements of other zoning districts, while at the same time preserving the health, safety, order, convenience, prosperity and general welfare of the Village of Westmont and its residents.*
- (E) To allow flexibility in development of land as necessary to *meet changes in technology and demand* what will be in the best interest of and consistent with the general intent of the comprehensive guide plan of the village.
- (F) To provide for the more *efficient allocation and maintenance by private initiative of useable open space to all residential and commercial areas* and to allow the most efficient use of public facilities and land in keeping with the best interests of the village.

In this instance, the proposed development does just that, as recognized by staff and most of the Planning and Zoning Commissioners. Indeed, many of them were very supportive of the intent, design and creativity of the plan. The associated waivers sought for proposed project are few and are reasonably requested in light of the uniqueness and scope of the project as discussed above.

### FINANCIAL IMPACT

During the course of these proceeding, there has been little, if any dispute as to the extent of the positive financial impact the project will have on the Village and other taxing districts. Specifically, by the time the project is fully mature in 2022, over \$1.4 million in additional real estate taxes will be generated from the development every year, with approximately \$1.0 million annually directed to the local school district which has been unable over the past three years to successfully attain additional funding through referendum (despite seeing EAV's drop 25% since 2008). Needless to say, the positive economic impact is significant to the Village and related taxing districts, while any burdens are limited, at best.

To the extent that there was discussion regarding the potential negative impact of the development upon the adjacent residences, we would like to reiterate that the expert testimony provided did not suggest any specific, or even range of an appreciable negative impact on the home values. In fact, much of the objector's opinions were based upon "comparables" that were nothing close to the resort property as well as conjecture. Moreover, in light of concerns that the proposed structures would be unattractive or that they would be too close to their homes, we would draw attention to the rendering and fly-over video we provided, which shows that the development is almost totally occluded by existing vegetation, and well removed from the homes in question. The apartments are 280 feet from the nearest residence, almost a football field in length away. Moreover, the natatorium, which is comparable in height to the neighboring

residences, is separated by a 50' heavily landscaped berm with a fence on the resort side and a 15' setback on the townhome side. To the extent those owners are critical of the location of the natatorium or residential building, it is interesting to note that they have never complained about the height of the hotel, which is 55' higher than the apartment building. In fact, they live in a general residence zoning district (R-4). All of this takes us back to a group of objectors who refused to meet with us, presented incomplete, untimely and misrepresentative materials, and whose "not in my backyard" arguments appear hollow and contradictory.

### **MISCELLANEOUS COMMENTS**

The proposed development offers this Village a tremendous opportunity that does not come often. It offers a mixed-use development with extraordinary benefits including a world class Natatorium that will be one-of-kind in the State, if not the Midwest. It offers a sense of place and community where retail residential and active uses will create a dynamic and beautiful mixed use development. In so doing, it makes use of private dollars, without any aid or financial assistance from the Village (which is so often the case with large projects). Finally, this mixed-use development will contribute significant financial tax revenue to the Village. We look forward to appearing before the Village on September 8, 2016. To further assist the Board at that time, we will present our team consultants and a brief video.

Sincerely,



Daniel C. Shapiro  
Attorney for The Harp Group, Inc.