

# STRAUSS TROY

attorneys at law

Matthew W. Fellerhoff, Esq.  
 The Federal Reserve Building  
 150 East Fourth Street  
 Cincinnati, Ohio 45202-4018  
 Telephone: 513.621.2120  
 Fax: 513.241.8259

FAX TRANSMITTAL SHEET

DATE: FROM: TOTAL PAGES:

May 23, 2017	Matthew W. Fellerhoff	6
--------------	-----------------------	---

City of Springdale Planning Commission	513-346-5747

Re:  
 CM Capital Partners Springdale LLC's Application for Major Modification to GE Park PUD

ORIGINAL COPY:

<input type="checkbox"/> Sending By Overnight Express <input type="checkbox"/> Sending By Regular Mail <input checked="" type="checkbox"/> Not Being Sent	If you have any questions or problems receiving this fax, please call 513/768-9748 and ask for:  Debbie Hilling
---	---

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

# STRAUSS TROY

attorneys at law

MATTHEW W. FELLERHOFF  
Writer's E-Mail: [mwfellerhoff@strausstroy.com](mailto:mwfellerhoff@strausstroy.com)

Writer's Direct Dial: 513.768.9791

May 23, 2017

VIA FACSIMILE 513-346-5747  
City of Springdale  
Planning Commission  
11700 Springfield Pike  
Springdale, OH 45246

Re: CM Capital Partners Springdale LLC's Application for Major Modification  
to GE Park PUD

Dear Members of the Board:

I represent Vandercar Holdings Capital, LLC, a Kentucky limited liability company. Vandercar is the prior applicant that negotiated the change in the PUD in 2015 for the entire property that is the subject of this request ("GEEAA Property"). Vandercar is currently engaged in litigation with CM Capital to determine which entity is entitled to be the owner of the GEEAA Property, which despite the deed-in-lieu to CM Capital, is still legally owned by the General Electric Employees Athletic Association ("GEEAA"). In that litigation, CM Capital seeks to foreclose the property and have the property sold to a third party at a Sheriff's sale. Furthermore, Vandercar is an owner of property in the currently zoned PUD immediately to the west of the GEEAA Property (the "Crossings Property"). As an owner of part of the property in the PUD sought to be modified, Vandercar has not been included in this application and does not agree to the modification. Vandercar is also the owner of the developer's rights for the Crossings at the Park LLC property and any change to the zoning on the GEEAA property must be approved by Vandercar pursuant to the existing Covenants and Restrictions for the properties. Such approval has not been obtained.

Pursuant to the major amendment to PUD obtained in the Fall of 2015, this Board approved rezoning the entire property as a unified interconnected development to provide significant economic development in the City of Springdale. The current proposal would destroy that unified approach, severing the Crossings Property from the PUD. It presents a much more limited and much less economically valuable development for the City of Springdale all the while creating a greater impact on the neighborhood. It would also effectively rezone the Crossings Property without the owner's approval resulting in an unconstitutional taking of my client's property. It further results in a removal of the access that was provided to the Crossings Property pursuant to the current zoning, which is now being sought to be amended.

A. Status of Title to the Property.

In the fall of 2015, Vandercar was prepared to close on the purchase of the GEEAA Property. As this Commission is certainly aware, at the same time Vandercar was obtaining

Page 2

zoning approval for the proposed PUD, which included the GEEAA Property and the Crossings Property, which Vandercar acquired from Crossings at the Park LLC. As alleged in court documents, just as the zoning was about to be acquired, certain third parties, including CM Capital, fraudulently induced Vandercar to delay the closing so enabling it to subvert Vandercar's contractual rights to purchase the GEEAA Property and obtain it, thereby profiting from Vandercar's zoning efforts.

But for CM Capital's actions, the GEEAA Property would already have been developed by Vandercar, rather than sitting in its current state of disrepair. Litigation ensued, which is still ongoing. A portion of that litigation is now in the Court of Appeals and a trial of another portion of the litigation is currently scheduled for July 2017. Indeed, the "deed-in-lieu of foreclosure" which has been submitted as evidence of ownership of the property by CM Capital is a central subject of that litigation. In short, ownership of the GEEAA Property is not decided and Vandercar asserts its rights to develop the whole of the GEEAA Property. Should Vandercar prevail in the litigation, it intends to develop the GEEAA Property as previously approved by the Planning Commission.

Further, CM Capital is currently seeking to sell the GEEAA Property at a foreclosure sale. It is hard to understand how CM Capital can be seeking to develop this property while it is actively seeking to sell the property to an unknown third party at a public auction.

B. Vandercar is an Owner of the Property Sought to be Rezoned and Does Not Participate in this Request as Required by Springdale Zoning Code Section 153.255(F)(1)(a).

Vandercar has attempted at varying stages through this litigation to mediate or otherwise sit down with the owners of CM Capital to discuss the matter to try and find a way forward. CM Capital has refused. Further, despite the dramatic effect this zoning proposal would have on Vandercar's property rights related to the Crossings Property and on the original intent of the PUD, CM Capital has not approached or consulted with Vandercar on the effect of this rezoning. There has been no discussion with the neighboring property owner which would be most negatively affected by this proposed rezoning.

The Application for the modification of the PUD disingenuously fails to mention the most significant modification in the application, the removal of the Crossings Property from the plan. It is inconceivable that such a dramatic change is not even mentioned in the Application or the Staff Reports. This application should address the effects of the changes on the property to be removed from the PUD. Until that is sorted out, under the terms of the Zoning Code, it is inappropriate to proceed.

C. The Removal of the Crossings Property from the PUD and Ensuing Damages.

Under the current PUD which is sought to be amended, the Crossings Property was provided access to a public roadway. Further as part of the formerly unified development, the Crossings Property (i.e. Vandercar's property) primarily served as the buffer for the adjacent condominium development and the area for a roadway. Under the current

Page 3

proposal, there is no consideration for what would happen to the property owned by Vandercar other than attempting to continue to use this property as buffer. Rather, it appears that there is intent to leave it as property zoned with a roadway primarily on it, all the while cutting off access to that roadway. The property would be left zoned in a manner which is undevelopable. Doing so would certainly result in a denial of my client's constitutional rights and a violation of the requirements for PUDs under the City of Springdale Zoning Code. Notably, despite the concerns raised in this letter, CM Capital has made no effort to address this substantial alteration of the PUD.

My client desires to work with the City Springdale to achieve a development that maximally develops the GEEAA Property and Crossings Property in consideration with the neighboring uses. It worked tirelessly with the Planning Commission to do so. This project attempts to damage neighboring property owners and fails to consider the effect of this on these property owners. The application effectively changes the PUD zoning and utility of the Crossings Property, which consent for has not been sought nor granted. It further eliminates legal frontage and access to the Crossings Property.

D. The Application is inconsistent with the Current Reciprocal Easements and Restrictive Covenants Governing the Property.

According to the Reciprocal Easements and Restrictive Covenants governing the GEEAA Property, any development on the property must be approved by the City and must be approved by the "Developer." Under the sale of the Crossings Property, Vandercar acquired the Developer's rights. The Developer's approval has not been given.

Further under these documents, the Crossings Property is entitled to all utilities, in addition to its entitlement under the current PUD. The proposed Amendment makes no provision for these utilities.

E. Additional Concerns Raised by the Application.

In the interest of brevity, we will not go into significant detail on all of the concerns raised, but will list each of them. Further, as detailed below, since we have not been provided documents requested under the Ohio Public Records Act, we cannot fully comment. We are happy to sit down and discuss each of these issues with the developer or with members of the zoning staff.

As was stated above, Vandercar's property is being effectively rezoned. Vandercar has not been consulted on the effects of this rezoning. Additional concerns which were addressed in the original PUD, apparently have been left out of this application.

- The amended plan does not provide the Crossings Property access to the public sewer located along the creek as was envisioned in the previously approved PUD.
- The amended plan shows hundreds of feet of regulated streams to be filled, with no evidence of applicant's intention or ability to receive permits for such fill in. If these

Page 4

streams cannot be filled, the development plan as presented cannot be executed. Evidence should be required showing how these streams are handled or the plan should be rejected.

- The grading storm water plan appears to cut stream runoff to the existing pond on my client's property which will harm the functioning health of the existing pond, damaging the value of my client's property, in addition damaging the condominium property.
- The current application provides no information with regard to any development of large portions of the PUD land in the southern portion of the PUD as had been approved in the earlier PUD. As such, it is deficient.
- The prior PUD provided a 75 foot buffer against properties to the west, while the current plan reduces the buffer to approximately 15 feet. In addition to the damages created by the described above, very little buffer is provided for my client's property, in violation of the Zoning Code.
- The prior PUD provided approximately 95 new tree plantings, earth mounding and a screen wall in the buffer benefitting properties to the west along with preservation of approximately 50 large existing trees, as further buffering from the project. The amended PUD provides a single row of approximately 20 trees.
- The prior PUD accommodated storm water using wet ponds, while the amended PUD proposes dry ponds which are much less attractive and will perform more poorly with regard to improving the water quality from run off from the development.
- The site sections do not match the grading plan.
- The prior PUD provided a 25 foot non-disturb area along the eastern boundary of the PUD to allow the existing mature tree stand along the property to remain in healthy condition. This has been eliminated for much of the mounding area as shown in the site sections and will kill the existing trees.
- As shown in the site sections, grading with direct run off from the PUD property onto the adjacent residential properties to the east.
- The mounding proposed along the east boundary is dramatically lower than the current PUD plan which was approved to address the concerns of the residential property owners. These mounds are from 4 to 20 feet lower than those approved.

F. Violations of the Ohio Open Records Law.

As was indicated, my client was not consulted on this proposed amendment to the PUD. Upon learning of the amendment, we sent a public documents request the City of Springdale seeking, in addition to the zoning files, any communications with the City staff regarding this proposed amended PUD. In particular, considering the dramatic negative effects this proposed amended PUD would have on the surrounding properties, we thought

Page 5

it appropriate understand those communications, because frankly the documents in the zoning file do not support the granting of this PUD. We sought this information, through a letter on May 2, 2017. Despite repeated daily requests for those additional documents (over and above the documents in the zoning file), these public documents have not yet been provided to us. As such, we have been denied the full opportunity to respond appropriately to this PUD request, in violation of the requirements of the Ohio Public Records law. We request the opportunity to receive those documents prior to any decision, otherwise, my client will have been prejudiced by this violation. If not, we will seek appropriate remedy.

G. Conclusion.

In short, the proposed PUD proposes to take a well negotiated and well thought out plan and cut it in two, without even mentioning this to the Commission. It proposes a plan which will negatively affect neighboring property owners and take away my client's constitutional rights to use its property. It will create havoc in the neighborhood, particularly with failures to accommodate proper drainage, proper siting, screening and the preservation of trees and other landmarks.

Finally, title to the property is not decided. Acting on any zoning amendment at this time, in addition to the damage it will create, is premature. Should Vandercar be determined to be the owner of the property, it will develop the property as has been approved already by this Planning Commission.

For the above stated reasons, the proposed amended PUD is inappropriate, unconstitutional, premature and in violation of the City of Springdale Zoning Code. We ask this Commission to deny the proposed amended change.

Sincerely,

**STRAUSS TROY**

Matthew W. Fellerhoff

cc: Jeffrey D. Forbes, Esq.  
via facsimile 513-419-6492

12171666\_1.docx