

DUFFY & SWEENEY, LTD
BUSINESS LAW & LITIGATION

Joelle C. Rocha, Esq.
jrocha@duffysweeney.com

August 15, 2024

VIA ELECTRONIC MAIL

Doug McLean, Director
Coventry Planning Department
Town Hall Annex
1670 Flat River Road
Coventry, RI 02816
dmclean@coventryri.gov

RE: *Highlands at Hopkins Hill, portion of land located in Coventry, Rhode Island known as Assessor's Plat 13, Lot 22, comprising sub-phases 1-G, 1-H, 1-I, 1-J, 1-M, and 1-N on the approved master plan with the Town of Coventry ("Property")*

Dear Doug:

As you know, I represent D2 Homes, Inc. which is under a Rhode Island Superior Court-approved Purchase and Sale Agreement to purchase the Property at the Centre of New England development ("CNE") from Matthew McGowan, Esq., in his capacity as Permanent Receiver ("Receiver") in the matters of *Nicholas E. Cambio, Trustee, The Nicholas E. Cambio, Roney A. Malafronte and Vincent Cambio Trust v. Commerce Park Realty, LLC, Commerce Park Property, LLC, Commerce Park Commons, LLC, Commerce Park Associates 4, LLC and Catapult Realty, LLC*, P.M. No. 13-0350 and *Matthew J. McGowan, as Receiver v. Commerce Park Management, LLC*, C.A. No. PB 13-5001, each pending before the Superior Court as Providence County-docketed matters (the "Receivership Proceedings"). As discussed in our meeting -on August 13, 2024, we are seeking confirmation from the Town of Coventry that the Property has a vested master plan approval as well as all other rights in and to the development of the Property as set forth in the "February 2019 Consent Order Concerning Resolutions with the Town of Coventry" entered by the Superior Court on May 13, 2019 in the Receivership Proceedings (the "Town Consent Order").

As you also know, it is my client's position that the Town Consent Order stands on its own in this matter and that it should not be required to provide this letter. Nonetheless, with its objection to having to provide such a letter noted and all of its rights and claims fully reserved, it

presents this letter in an effort to avoid a dispute with the Town on the matters set forth herein and to attempt to move forward in a constructive manner with the Town.

Background of the CNE Development

CNE submitted for and was granted master plan approval in November 2003. *See* Master Plan Decision and Map at **Exhibit A**. The Property owners and developers subsequently brought suit related to the CNE approval and the ordinances applicable to the CNE development in a court proceeding docketed as KC-2003-0444. *See id.* In that 2003 case, it was determined, among other things, that the 1997 Zoning Ordinance, as amended in 2001, applied to the CNE development. *See id.* The Consent Judgment that eventually came out of that 2003 case specifically provides that no ordinance provision or regulation passed subsequent to these ordinances applied to the CNE Development. *See id.*

For over 10 years, the Receiver has managed, marketed, and sold various properties in CNE which were part of the Receivership Estate. When Commerce Park Realty, LLC and related entities were placed into receivership, the CNE development was unfinished and substantial portions of it remain unfinished to this day. During the course of the Receivership Proceedings (as noted in the comprehensive Town Consent Order), the Receiver had numerous meetings and communications with the Town, its managers, solicitor, department heads, town council members and others, concerning what needed to happen for the development of CNE (which had become plagued by a number of serious financial, infrastructure, and other problems and had essentially stalled-out at that point) to be able to get on track and to eventually be completed as had been envisioned at its inception. More specifically, what was discussed and negotiated in those meetings and communications were the terms and conditions of the Town Consent Order, including the very substantial benefits that would inure to the Town thereunder, as well as and, as part of that, important incentives that needed to be put in place in order for the Receiver to be in a position to interest and bring in buyers who would develop the CNE property. All of that was to be, and was, reliably confirmed in a writing that was both approved by the Coventry Town Council and approved and entered as an order of the Rhode Island Superior Court in the Receivership Proceedings, so that it could be looked to by developers and others with certainty. *See **Exhibit B***. A primary incentive found in the Town Consent Order, which would aid the Receiver in marketing CNE property to developers (including the Property that is identified here), was one that ensured the preservation of the master plan approvals for the remainder of the undeveloped parcels in CNE. *See **Exhibit B**, §§ D–G. (pp. 3–5) & § 3, (Pg. 9–14).*

The Highlands at Hopkins Hill

The Property is part of a residential development within CNE known as the “Highlands at Hopkins Hill” condominium development (“Highlands”). The Highlands is known as Phase 1 of the CNE development and was expected to contain 204-218 residential condominium units. At the time of the Town Consent Order, there were 123 completed and occupied residential units in the Highlands. Two portions of that approved development then remained incomplete—(i) 29 lots/parcels/units in the Highlands; and (ii) a 52-66 parcel/lot/unit portion of the Highlands, with

that 66 parcel/lot/unit portion being the Property at issue here. *See id.*, § 3(a)(b) (pp. 9–10). In the Town Consent Order, as fully agreed to by the Town of Coventry, the remaining portions of the Highlands needed only preliminary plan and final plan approval from the Planning Commission, as well as building permits and certificates of occupancy, but, as expressly provided, no other permitting. *See id.* at §3(e) (p. 12). This was an important, fully bargained-for and negotiated provision that the Town was willing to grant (including because it cost the Town nothing) and one the Receiver had requested as one that would be attractive to potential buyers/developers. The Town Consent Order also explicitly recognizes that 66 units (and not the 52 shown on the master plan), were mapped out, and recognizes that the developer can proceed with the remaining permitting on the 66 lots/units without requiring an amendment to the master plan approval, and if such amendment was needed, it was deemed to have been granted. *See id.* at p. 11 ¶(3)(d).

The Town Consent Order covers a plethora of other items related to the CNE development, including (as set out in considerable detail) the specifics of the development of the remaining portions of the Highlands, from the remaining approval process, to the units allowed, to the taxes to be paid and charged, to sewer usage fees, and impact and sewer assessment amounts—all of which, too, were fully negotiated with the idea in mind of balancing the need to be financially fair to the Town (including to attempt to shore-up its sewer fund) with the need to provide meaningful incentives that the Receiver could use to interest buyers/developers. *See id.* Importantly, the Town Consent Order explicitly recognizes that the 2003 master plan approval remains in full force and effect and addresses the other aforementioned items to preserve value for the Receivership Estate. *See id.* at p. 24, ¶16.

Several years ago, the Receiver, with court approval and notice to parties in interest, sold 29 lots/parcels in the Highlands through the Receivership Proceedings to Cedar Ridge West Greenwich, LLC/Highlands CNE, LLC (“Cedar Ridge”). *See id.* Cedar Ridge, which, during the course of its due diligence, had received and become familiar with the Town Consent Order, in turn, built and developed residential homes thereon that were sold to residents, with all such homes fully occupied and serviced by Kent County Water Authority-sourced water. No preliminary or final plan approval was required for these 29 units by the Town prior to the issuance of the building permit.

As explained by the Receiver, the closing on the Property by D2 Homes, and the proceeds coming from that, are critically important to the overall development of CNE and to the very substantial contracted-for and court-approved infrastructure improvements at CNE (costing upwards of \$5.0 million), all of which will greatly benefit the Town—financially and otherwise (e.g., the main CNE roadways reconstruction work, the Highlands roadway reconstruction work, and the “wetlands crossover work”).

Despite the certainty that has been provided through the Town Consent Order, specifically in regard to there not being a need for a new master plan approval but rather, only for preliminary plan and final plan approval from the Planning Commission and such other limited approvals as are provided for in that order, recent correspondence with you has appeared to question the validity and status of the 2003 master plan approval as it relates to the Property

Doug McLean, Director

August 15, 2024

Page 4

and the provisions of the Town Consent Order. Given the time-sensitive nature of this and the further substantial expenditure of time, effort, and costs that my client is poised to put into obtaining such final and limited approvals, we request the Town, by close of business on Tuesday, August 20, 2024, confirm that, the Town considers the provisions of the Town Consent Order binding, and, as provided in the Town Consent Order, only preliminary plan and final plan approval from the Planning Commission and such other limited approvals as are expressly provided for in that order (as noted above) are needed in connection with my client developing up to 66 residential condominium units on the Property.

Thank you in advance for your attention to this matter. We look forward to hearing from you.

Sincerely,

/s/ Joelle C. Rocha

Joelle C. Rocha

Enclosures

cc: Stephen Angell, Esq., via email with enclosures
Matthew J. McGowan, Esq., via email without enclosures