

Ryan L. Greely
Writer's Direct Dial:
(312) 506-4462
Writer's Email Address
rgreely@koponairdo.com

August 18, 2015

VIA EMAIL/PDF, FACSIMILE AND FED EX OVERNIGHT

FedEx Tracking No. 8088 9866 6894

Bill Enright
Deputy Director Planning and Community Development
Village of Arlington Heights
33 South Arlington Heights Road
Arlington Heights, Illinois 60005
(847) 368-5988 (fax)

Re: *The Clerics of St. Viator's Objection Letter to Arlington Heights' New
Comprehensive Plan and the Park District's Park Site Reservations*
Our File No: 149-1-2-31-48

Dear Mr. Enright:

I am writing on behalf of my client, Clerics of St. Viator ("Viatorians"), in response to your July 7, 2015, letter regarding the Village of Arlington Heights' ("Village") and the Arlington Heights Park District's ("Park District") request to place a Park Site Reservation on the Viatorian Novitiate site and the St. Viator High School site (collectively hereinafter "the properties"). The Viatorians have enjoyed a mutually beneficial relationship with the Village for the past 67 years, and look to continue this relationship for many years to come. That said, as set forth in detail below, the proposed designations could significantly impact the economic value of the properties and, if the Village opted to exercise the rights under the Park Site Reservation, it would result in a violation of the "Takings Clause" under the Fifth Amendment to the United States Constitution, which is applicable to all states and local governments through the Fourteenth Amendment. Accordingly, this letter will serve as the Viatorians' objection to the Village's and Park District's Park Site Reservation being placed on the properties.

According to Illinois law, a regulation on property can amount to a "takings claim" if such regulation has an economic impact on the owner's property, particularly if the regulation interferes with distinct investment-backed expectations of the property owner. *David v. Brown*, 221 Ill.2d 435 (2006), citing *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 124 (1978).

The Village's and Park District's Park Site Reservation would place the properties on the Village's Official Map and provide public notice that if the properties were to be subdivided for

residential purposes, the Park District would either exercise a right of first refusal to purchase the entire property or request a portion of the properties' land as payment in lieu of a fee pursuant to the Village's Land Contribution Ordinance, Chapter 29, entitled "Subdivision Control Regulations." Without the Viatorians' consent, or without providing proper compensation to the Viatorians, both of the above options will amount to a takings claim, should the Viatorians decide to sell the land, because either request will significantly devalue the properties and interfere with the Viatorians' investment expectations as the landowner.

A right of first refusal would permit the Park District the ability, if the properties were ever sold, for first right to purchase the land. This right to purchase would be permitted even if the Viatorians had a prior agreement with a private purchaser or developer. Such a right places an encumbrance on the properties which makes them less attractive to potential buyers and, consequently, will cause the properties to lose value.

Illinois property law classifies a right of first refusal as a negotiable condition which requires proper compensation in order to be enforceable. See *Crestview Builders v. Noggle Family Ltd. Partnership*, 352 Ill. App. 3d 1182, 1135 (2d Dist. 2004). Article I, Section 15, of the Illinois Constitution, and the Fifth Amendment of the United States Constitution, prohibit the taking of private property for public use without just compensation. *Morton Grove Park Dist. V. American Nat. Bank and Trust Co.*, 78 Ill. 2d 353, 362 (1980). Therefore, without proper compensation, the right of first refusal provision places an unjust economic restraint on the properties and damages the Viatorians' ability to receive expected value for the properties.

Furthermore, the Village's and Park District's request to take a portion of the land upon the sale of the properties is also a violation of the Takings Clause. Illinois law specifically states that "the transformation of private property into public property on a bare assertion of authority is the very kind of thing that the Takings Clause of the Fifth Amendment was meant to prevent, and that Clause stands as a shield against the arbitrary use of governmental power." *Canel v. Topinka*, 212 Ill. 2d 311, 332 (2004).

Not only does this provision allow the Village and the Park District to arbitrarily take a portion of the properties from the Viatorians, but it further violates the Takings Clause because it reduces the value of any potential purchase price and compromises the Viatorians' bargaining power as the seller of the properties. *Penn Central Transportation co.*, 438 U.S. at 124. The provision places a cloud on the title and over the properties by permitting the Village or Park District to take a portion of the properties from any potential sale and dedicate it according to the Village's wishes. Such a cloud will certainly concern potential buyers because it may affect a private developer's or entity's plan for the properties or may ruin whatever aspirations a private party has for the land altogether.

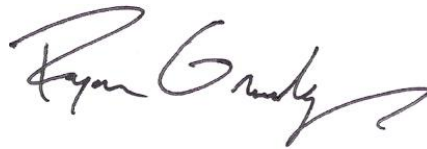
In effect, Park Site Reservation would act as a *de facto* lien on the properties by clouding the title to the properties to any future developers if the Viatorians were ever inclined to sell the properties or any portion thereof. With these types of liens and encumbrances in place, this effectively decreases the properties' values and interferes with the Viatorians' investment expectations as a land owner. As a result, if the Park District decides to exercise its right under

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the Park Site Reservations, the actions will amount to an unlawful takings claim under Illinois law. *See Canel*, 212 Ill.2d at 332.

For the foregoing reasons, the Viatorians respectfully object to the Park Site Reservation being placed on the properties. Given the longstanding relationship between the Viatorians and the Village of Arlington Heights, we hope that you respect the Viatorians' wishes in this regard, and omit the Viatorian properties from the proposed Park Site Reservation.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Greely", with a stylized flourish at the end.

Ryan L. Greely

RLG/MAA/LJS

cc: Fr. Thomas von Behren, CSV
James Thomas
Michael A. Airdo, Esq.