

Before The Planning and Zoning Commission
City of Warrenville
State of Illinois

January 23, 2013

RE: Testimony of William A. Price concerning New Business Agenda Item A, Country Ridge Owners Association/Greg Michel, Project No. 2013-0572 , Located north of Country Ridge Drive, east of Route 59, Request for approval of Minor Amendment to the previously approved Planned Unit Development plans, and documents for Country Ridge subdivision, which would allow installation of a gate on Country Ridge subdivision property at the 15-foot wide emergency access between the Country Ridge and River Oaks subdivisions.

1. My name is William A. Price. My wife Susan and I own and have resided at 2S512 River Oaks Drive, which is a part of the River Oaks subdivision, for 16 years. The proposed gate and lock would adversely affect our enjoyment of property rights of access for recreation, pedestrian access, and emergency access through Country Ridge parcel No. 042730277, which contains the common elements of the Country Ridge subdivision, including driveways and parking lots and paths and through the access pathway adjacent to 2S561 River Oaks Drive, which the “minor” amendment proposed would block.

2. The River Oaks subdivision and the Country Ridge subdivision had common ownership as of 1985. See recorded sheriff’s deed R1985034189, which is in the chain of title for our property, for 2S561 River Oaks, and for Country Ridge parcel No. 042730277. Deeds for other portions of Country Ridge and River Oaks appear as of 1987, e.g. R1987063401, the first deed of Country Ridge Subdivision Unit 2 39-9, which is the lot with common address 2S561 River Oaks Drive, one of the properties adjacent to the pedestrian walkway that would be blocked. This is also the year that our house was built. It would appear that separation of title from common ownership to separate parcel ownership of the River Oaks and Country Ridge subdivisions commenced as of 1987.

3. Title to the common elements of Applicant's property appears of record as most recently changed in 1996, by deed R1996195610. If this is the date of Mr. Michel's ownership of units in the Country Ridge owner's association, he clearly lacks any capacity to change property rights mutually beneficial to River Oaks and to Country Ridge which were created in 1987.

4. Prior to such separation of title, and at all times thereafter, there has been open, notorious, and continuous use of the common areas of Country Ridge for the purposes of recreation, pedestrian (including bicycle) access, and emergency access.

5. This recreational, pedestrian access, and emergency access right, via well established and paved paths, and driveways and parking lots that have existed in River Oaks and across the common areas of the Country Ridge apartments during and since 1987, is of considerable benefit to our property, and has been regularly used by us and others since we purchased our property in 1998. It was and has been used in an open, obvious, continuous, and permanent way by prior owners of our property and by other homeowners in the River Oaks subdivision during and after the separation of properties in 1987. Denial of these rights of use would eliminate necessary, convenient and beneficial elements of our right to the quiet enjoyment of ownership of our property. The elements of necessity and benefit include, but are not limited to:

a. Pedestrian access via a route other than Illinois Route 59, which lacks pedestrian sidewalks, has considerable and dangerous high-speed truck and other vehicle traffic, and is obviously less safe or convenient for access to the Batavia Road bike path and Batavia Road/Route 59 shopping area than is access through the common areas of the Country Ridge apartment subdivision.

b. Recreational access via the pedestrian pathway between 2S561 and 2S551 River Oaks and the driveways and pathways in the common elements of the Country Ridge apartment properties provides benefits for exercise via walking, dog walking, and bicycle access, for residents of the River Oaks subdivision. It should be noted that similar benefits are enjoyed by residents of the Country Ridge apartments, since they and their children regularly walk and visit in the River Oaks subdivision, using the pedestrian path, including trick or treating on Halloween.

c. The staff's note indicates that inbound emergency access to the property was a basis for the City's demand for initial PUD inclusion of the path. The city's demand regarding the original PUD merely referenced building code requirements (which the PUD filing might otherwise have ignored) that require developments to provide sufficient emergency vehicle access. However, as residents of River Oaks, my wife and I argue that the reciprocal condition, emergency egress, has no less necessity and confers an equal benefit. This emergency access route also provides a means of exit by foot or bicycle for residents of River Oaks when, as happened not that long ago, one of the houses in River Oaks caught fire. Emergency vehicles can (and, in this instance, did) block passage along the single, cul-de-sac road in River Oaks for considerable periods of time.

6. Furthermore, the Illinois Supreme Court, in *Granite Properties Ltd. v. Mann*, 117 Ill.2d 425 (1987), recognized that real property owners enjoy rights of use and access established at and before separation of properties which exist by implied reservation of such rights to the portion of common property previously enjoying such access rights. The court opinion cited the following definition of such rights:

“The easement implied from a prior existing use, often characterized as a "quasi-easement," arises when an owner of an entire tract of land or of two or more adjoining parcels, after employing a part thereof so that one part of the tract or one parcel derives from another a benefit or advantage of an apparent, continuous, and permanent nature, conveys or transfers part of the property without mention being made of these incidental uses. In the absence of an expressed agreement to the contrary, the conveyance or transfer imparts a grant of property with all the benefits and burdens which existed at the time of the conveyance of the transfer, even though such grant is not reserved or specified in the deed.”

7. The three elements required to establish the implied easement were:
- prior common ownership,
 - “apparent and obvious, continuous, and permanent” use prior to separation of ownership, and
 - “the easement shall be necessary to the proper enjoyment of the land or to its reasonable, convenient or beneficial enjoyment, 'reasonably

necessary' to its enjoyment or use, 'convenient use,' or 'clearly necessary' to its beneficial use."

The Court cited an authority which stated, with respect to the creation of such implied easements, that "The parties are presumed to contract with reference to the condition of the property at the time of the sale, and neither has a right, by altering arrangements then openly existing, to change materially the relative value of the respective parts."

8. The implied pedestrian access easement by prior use exists for all homeowners in River Oaks, as argued above in paragraphs 1 through 5.

9. The proposed PUD amendment, and the locked gate proposed to be built as a result of same, would be a violation of this easement, and is therefore not something the Country Ridge owner's association, or any of its owners, has any legal standing to seek or right to create.

For the reasons above stated, the Applicant's request for an amendment to the Planned Unit Declaration to allow a locked gate and to deny recreational, pedestrian, and emergency access through the common elements of Parcel 042730277 should and must be denied.

Respectfully submitted,

William A. Price, Attorney at Law
2S512 River Oaks Drive
Warrenville, IL 60555
Email: wprice@growthlaw.com
Tel/Fax 1-800-630-4780