



7701 Forsyth Boulevard, Suite 500  
Clayton, MO 63105  
Main: 314.613.2800

**Colleen Ruiz**  
Counsel  
colleen.ruiz@lathropgpm.com  
314.613.2538

May 20, 2020

**Via E-mail**

Robert E. Jones, Esq.  
Curtis, Heinz, Garrett & O'Keefe P.C.  
130 S. Bemiston Ave., #200  
Clayton MO 63105  
[rejones@chgolaw.com](mailto:rejones@chgolaw.com)

**RE: The Manors at Tapawingo**

Dear Bob:

Lathrop GPM LLP represents The Manors at Tapawingo ("The Manors") in connection with the application to have its streets accepted by the City of Sunset Hills, Missouri (the "City") for maintenance. In that regard, it is our understanding that the Board of Alderman, at its meeting on May 12, 2020, considered the memo prepared by Casey Wong, Ward 2 Alderman and directed members of the City staff, including the director of public works, to prepare a survey to be sent to all of the residents of the City soliciting their opinion regarding the acceptance of the streets of the Manors by the City for maintenance.

City Ordinance 2000 (the "Ordinance") sets forth the process and specific requirements for the acceptance of private streets for City maintenance. It is a lengthy process including multiple steps. The process does not include a survey. Requirements and procedures set out in the local planning ordinances should be followed. *State ex rel. Helujon, Ltd. v. Jefferson Cty.*, 964 S.W.2d 531, 538 (Mo. Ct. App. 1998). The addition of a direct mail survey to the procedures set forth in the Ordinance is not in compliance with the Ordinance and is akin to an attempt to enact an additional requirement and to amend the Ordinance. Enabling statutes, provided for under Chapter 89 of the Missouri Revised Statutes, are the sole source of power and measure of authority for a city, town, or village in such matters. *Moore v. City of Parkville*, 156 S.W.3d 384, 387–88 (Mo. Ct. App. 2005) (internal citations omitted). Where the procedural requirements of these statutes are not strictly complied with the ordinance is invalid and cannot be enforced. *Id.* See also *State ex rel. Casey's Gen. Stores, Inc. v. City of Louisiana*, 734 S.W.2d 890, 895 (Mo. Ct. App. 1987) ("Municipalities derive their authority to establish land use regulations through the state's police power delegated through enabling statutes. Where the enabling statutes are not complied with, the ordinance passed is invalidly enacted and cannot be enforced."). Under Chapter 89, public hearings and official notice are required for all changes and amendments to such ordinances. See *Id.* (holding the public hearing and official notice requirements of § 89.050, RSMo. – which is analogous to the requirements of § 89.360, RSMo. – "shall apply equally to all changes or amendments.") See also *Campbell v. Cty. Comm'n of Franklin Cty.*, 2014 WL 3582711, at \*4 (Mo. Ct. App. July 22, 2014) ("[L]ocal requirements and procedures for amending zoning regulations must be followed.").

Robert E. Jones, Esq.  
May 20, 2020  
Page 2

Based on information presented at the May 12, 2020 Board of Alderman meeting, it is our understanding a few individuals were directed to draft and send out a mail survey surrounding the acceptance of the streets of The Manors to the residents of the City. Adding a survey to the already tedious process outlined in the Ordinance is not contemplated by the Ordinance, and conducting such a survey without the Manors' input as to the information provided therein welcomes biased results. Further, arbitrarily allowing residents of the City to provide their input by simply placing answers to a survey in the mail (without a need to attend any hearing where they would be provided with relevant information) solely as to The Manors' application is unreasonable, arbitrary, and capricious and a violation of The Manors' due process rights. See generally *Furlong Companies, Inc. v. City of Kansas City*, 189 S.W.3d 157, 164–65 (Mo. 2006). See also *Depositis v. City of Sunset Hills*, 619 S.W.2d 814 (1981). That the City had no statutory authority to add such a survey to the process outlined in the Ordinance (given it did not comply with the relevant enabling statute when attempting to add such a procedure) further evidences the egregiousness of such an attempt.

Because of the foregoing, I ask that you advise the Board of Alderman to cease any efforts to distribute a survey related to The Manor's application for acceptance of its streets and to instead comply with the procedures outlined under the Ordinance – in other words, to treat The Manors' application the same as any other application. Please confirm the City will refrain from distributing. Any distribution of a survey would irreversibly damage The Manors' ability to obtain approval of its application. If we have not received such confirmation by May 25, 2020, The Manors will consider exercising its legal remedies, including, but not limited to seeking a temporary restraining order with the Court prohibiting the issuance of such survey, seeking an order of mandamus compelling the City to comply with the procedures as set forth under the Ordinance, and an action for damages under 42 U.S.C. section 1983 for damages, including its attorneys' fees and costs which are allowed thereunder, incurred by The Manors as a result of the City's arbitrary, capricious, and unreasonable treatment of The Manors' application.

Very truly yours,

Lathrop GPM LLP



Colleen Ruiz

cc: Robert Flynn  
Donald Hagen  
Michael Clithero