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September 14, 2021

Via Electronic Mail Only

Mayor and Council
City of Takoma Park
7500 Maple Avenue
Takoma Park, Maryland 20912

Re: Dorothy's Woods
My File No.: 341-101

Dear Mayor and Council:

I am writing in response to the Council's assignment directing me to address the permissible uses of the Dorothy's Woods property under the existing Declaration of Covenants.¹

I reviewed the Declaration of Covenants, the relevant state statute, relevant case law, and information available on the City's website regarding Dorothy's Woods. By way of example only, I reviewed the Takoma Park Mobilization Committee for Takoma Alliance for Local Living Economy's (hereinafter "TALLE") proposal seeking to restore a portion of Dorothy's Woods, and conduct other activity on the property. I also reviewed the Maryland Environmental Trust's requirements for establishing a deed of conservation easement. Additionally, I spent considerable time reviewing several treatises on conservation, restoration, and preservation.

After giving the matter careful consideration, I concluded that it would be practically impossible to provide useful detailed guidance regarding the entire legal universe of permitted activity given the large number of variables and the potential impact of non-legal considerations, i.e., technical input from experts in the field of conservation, preservation,

¹ As this is an informal opinion letter of the City Attorney, it is subject to change and not binding.

and/or restoration. I also concluded that it is not advisable to consider proposals for activity in the absence of an established process.

Some areas of uncertainty with regard to the Declaration of Covenants raise questions and would require further analysis in combination with an established process. One uncertainty is that the word “restoration” is not used anywhere in the Covenants, while the words “conservation” and “preservation” are. With respect to TALLE’s Restoration proposal, it is unlikely to be permissible under the Declaration of Covenants as the proposal is currently written.

Going forward, I recommend that: (1) prior to proceeding with consideration of potentially permissible activities on the Dorothy's Woods property, the City – with legal review and review by the Department of Public Works – establish a stewardship process, i.e., determine permissible activities and establish oversight of those activities, (2) until such a time as the stewardship process is established, the City should not consider adoption of proposals for any activity on the property, and (3) until the stewardship process is established, activities related to necessary maintenance, e.g., removing litter, may be permitted provided it is pre-approved and supervised by the Department of Public Works with any necessary advice provided by the City Attorney’s office.

Sincerely,

Karpinski, Cornbrooks & Karp, P.A.

/s/

By: E. I. Cornbrooks, IV

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