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**William P. Dineen**  
**Village Attorney**

## MEMORANDUM

TO: Steve Anderson, Village President

COPY: Village Board of Trustees; Tammy LaBorde, Village Manager

FROM: William P. Dineen, Village Attorney **WPD**

DATE: September 27, 2021

RE: Zoning Amendments – Precedent

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This memo is intended to follow up on my Memo of September 8, 2021 related to the proposed development of the Property on Brown Deer Road (formerly known as the Eder property and hereinafter referred to as “the Property”).

You have forwarded a copy of an undated document entitled “REMINDER” that you advised was received via mail at your residence and that you believe was mailed to all of the Village residents. You are concerned about the statement in that document that states:

“If the former Eder Farm gets rezoned to 1/3 acres lots, this will set a precedence (sic). Potentially, this could mean that there will be numerous attempts to rezone other properties in the village no matter their location. One of those attempts could be right next to your home.”

You have asked for my opinion if these statements are factually and legally accurate statements. Let me begin by noting the statements are speculative conjectures based upon a misunderstanding of the zoning changes and how zoning laws are adopted or amended. As set forth, in my September 8, 2021 memo, the proposed changes would not provide for 1/3 acre lots but would require that the existing zoning requiring minimum 5 and 2 acre lots be changed to allow a Planned Unit Development district solely applicable to the Property. That change would not apply to or set a precedent for any other lots in the Village.

Precedent is a legal concept in Judicial and Quasi – Judicial matters. The adoption and amendment of zoning ordinances by the Village Board is a legislative function. Precedent is not a controlling factor in legislative determinations to adopt or amend zoning ordinances. Even if one were to accept that precedent should have a role in this matter, the property in question is 53 acres of vacant land, situated on a 6 lane State Trunk Highway, located next to a house of worship and across Brown Deer Road from the Lyndon Sculpture Garden; and the land is owned by the Village. For precedent to have effect there needs to be comparable situations and properties and there is no similar situation or property in the Village that is comparable to the Property. Changing the zoning ordinance to allow for greater density for single family homes as part of a Planned Unit Development for the Property will not be a basis for precedent in seeking changes to the zoning of other property in the Village.