



TO: Clark County Council

PREPARED BY: Matt Hermen, AICP, Planner III

DATE: October 1, 2019

SUBJECT: Consideration of an amendment to Development Agreements

INTRODUCTION

An amendment to the development agreement between Clark County and M&H Washington Property LLC and Hinton Development Corporation is proposed to correct Section 6.3.c of the development agreement. The amendment will correct the required fees due by December 31, 2023 from \$900,000 to \$600,000.

BACKGROUND

Clark County approved a development agreement with M&H Washington Property LLC and Hinton Development Corporation on August 20, 2019. The approved agreement addresses the Comprehensive Plan criteria to remove the urban holding plan and zoning overlays from certain property in exchange for financial considerations that, in part, reasonably fund the critical links and intersection improvements.

On July 18, 2019, the Planning Commission voted 4-1 to forward a conditional approval recommendation to remove the urban holding overlays subject to the County Councilors adopting a formal finding that the critical links and intersection improvements needed to create transportation capacity sufficient to accommodate the trips generated by the proposal are reasonably funded, in addition to approving a development agreement (DA).

PROPOSED AMENDMENT

The development agreement approved on August 20, 2019 obligates the developer to pay the County advanced traffic impact fee (TIF) payments and surcharges. The surcharges are additional payments for each lot developed. As private financing, he advanced TIF payments and the surcharges provide the county with leverage to capture



state and federal grants. The County needs to have certain advanced TIF payments paid and grants secured prior to constructing the critical links and intersection improvements, but the development of the property could be delayed for a number of reasons. Therefore, the development agreements set December 31, 2023 as the date that a portion of the payments are due, regardless of the status of the development. As adopted, the development agreement obligates the developer to pay \$900,000 in advanced TIF payments or a combination of advanced TIF payments and surcharges by that date. The development agreement erred, however, in calculating the total amount due by December 31, 2023 as \$900,000. The amount in total advanced TIF payment for the Hinton development of 32 acres has been correctly calculated as \$600,000. The proposed amendment to the development agreement would correct this error, as shown below:

Section 6.3

c. In addition to the TIF, Developer shall pay an additional surcharge in the amount of \$3,500 per lot (the "Surcharge") for each building permit for each lot developed on the Property. Developer shall pay the Surcharge will at the time of the issuance of the building permit. Developer anticipates building permits following the approvals of each phase as provided for in paragraph 6.3(b) above. Regardless of the schedule provided for in Section 6.3.a above, Developer agrees that by December 31, 2023, if the combined amount of TIF and Surcharge paid by Developer is less than \$960,000.00, then Developer shall , on or before December 31, 2023, pay to the County the difference between what Developer has paid in combined TIF and Surcharge and \$960,000.00 (the "Gap Amount"). The Gap Amount will be applied in the future to subsequent preliminary plat, final plat, or building permit applications on the Property as pre-paid TIF or prepaid Surcharge. Nothing in this Agreement limits to \$960,000.00 Developer's total obligations to pay combined TIF and Surcharge that may arise from the Property's future development approvals.

In addition to the proposed amendment to Section 6.3.c, following is a proposed amendment to the Recitals of the Development Agreement to provide clarity within the document:

Q. Clark County Council approved a prior version of this Agreement in an open public hearing on August 20, 2019; however, that version of the Agreement contained misstatements in Section 6.3.c, and it was never executed by the Parties. Those misstatements are corrected by amendment of Section 6.3.c, which was approved by the



County Council in open public meeting on _____. The initially approved Agreement has not been amended in any other respect as of _____, except for the correction of scrivener’s errors and the addition of this Recital. The Parties have adequately reviewed this FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT, and agree that its terms reflect their intent.

Staff proposes that for clarity and ease of use, the initially approved development agreement and these amendments merge into a FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT, as shown on Exhibit 1, attached hereto. In addition to the amendments, Staff asks that the Council approve this restated format set forth in Exhibit 1.