

David T. McDonald
david@mcdonaldpc.com
503-226-0188

July 17, 2019

Clark County Planning Commission
% Ms. Sonja Wiser

July 18, 2019 hearing on Hinton and Wollam Draft Development
Agreements

Via e-mail to Sonja.wiser@clark.wa.gov

Dear Commissioners:

I am opposed to any funding package as well as the County entering into any DA with Hinton and/or Wollam. I have read the Draft DA's that are on the Grid and they are different from the Holt DA that was before the Council last night (and which may be subject to further amendments). I would request the Planning Commission deny the current requests by Hinton and Wollam or, in the alternative, require the following in the Development Agreements:

Advance Payment of TIF and Payment of Surcharge

- a. The Parties recognize that TIF payment obligations would normally be due and owing at the time of the issuance of a building permit for a dwelling unit. However, to increase the County's ability to fund and construct transportation improvements in the Mt. Vista SubArea, Clark County agrees to "vest" the TIF rate for the property at \$605 per trip per dwelling unit and Developer (Hinton and/or Wollam), or a successor in interest in the property, agrees to pay \$ (0 Million Six Hundred Thousand and 00/100 Dollars for Hinton and 1 Million Four Hundred Thousand and 00/100 Dollars for Wollam) as advance payment of TIF to Clark County on the following schedule (EVENLY DIVIDE OUT PAYMENTS FOR TOTAL AMOUNT OF TIF GUARANTEE):
 - i. \$ on or before February 15, 2020;
 - ii. \$ on or before November 1, 2020;
 - iii. \$ on or before February 15, 2021;
 - iv. \$ on or before November 1, 2021;
 - v. \$ on or before February 15, 2022;
 - vi. \$ on or before November 1, 2022;
 - vii. \$ on or before February 15, 2023;
 - viii. \$ on or before November 1, 2023.

- b. The Parties stipulate that these payments totaling \$600,000 (Hinton) and \$1,400,000 (Wollam) are binding, guaranteed payments by Developer (Hinton and/or Wollam), or its successor in interest, and will be paid irrespective of Developer (Hinton and/or Wollam), or its successor in interest, filing any development application for the Property;
- c. The Parties stipulate that Developer (Hinton and/or Wollam), or its successor in interest agrees to pay TIF in the amount \$605 (total TIF per dwelling unit to be calculated at the current trip rate of 9.52 trips/day for SFR dwelling units and 5.81 trips/day for Townhouse dwelling units) **plus** an additional surcharge of \$3500.00 for each dwelling unit issued a building permit on the Property;
- d. The Parties stipulate that Developer (Hinton and/or Wollam), or its successor in interest, will receive a dollar for dollar offset of the obligations that will be do and owing under paragraph 8.c above for the \$600,000 (Hinton) and \$1,400,000 (Wollam) paid under paragraph 8.a.

In addition, the PC should require that the Draft DAs contain:

1. A provision for the County to take a security interest on the Property as part of these development agreements
2. A damages clause for failing to pay (and having to sue for payment)—for example

Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

3. Finally, I would add a provision under paragraph 10 that if there is a breach by either party that requires an enforcement action, the prevailing party is entitled to reasonable attorney's fees and costs.

Thank you for your attention to these matters.

Sincerely,


David T. McDonald

Cc: Ms. Christine Cook
Dr. Oliver Orjiako
Mr. Ahmad Quayoumi/Matt Hermen Public Works