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AUG 24 2018

BOARD OF
COUNTY COUNCILORS

August 22, 2018

Clerk of the Board of County Commissioners
Clark County Council
1300 Franklin, 6th Floor
Vancouver, WA 98666

Re: **DeWitt Development Agreement**

Dear Chair Boldt and Councilors Olson, Stewart, Blom and Quiring:

As you may remember our office represents DeWitt and on June 29, 2017 a Development Agreement ("DA") was executed in order to assist them in moving from their location off of 139th Street to a new location off of 72nd Avenue. We worked with staff for quite a long time to address several transportation related issues given the unique nature of the business.

In processing the land use application recently it came to our attention that the development agreement contained a "scrivener's error" in Section 6.5 of the DA. We would like to request a brief work session with the Board to address the "scrivener's error" and potentially move out the construction start date stated in the agreement given some substantive issues that arose with the application.

The Scrivener's Error in Section 6.5 of the Development Agreement

Section 6.5 states that "Owner/Developer anticipates start of construction *on or before September 1, 2017.*" See attached, Exhibit A, § 6.5 (emphasis added). This should be September 1, 2018. I will take ownership that neither myself, nor Mr. Horne caught this before the agreement got executed. We started the discussion of the agreement in 2016 and this date must have just been overlooked when we finalized. This is a relatively easy fix and does happen on occasion.

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Additional Time Request

But even if we changed the start of construction to September 1, 2018 our client cannot meet the timeline set forth in the agreement and so our client would like to propose an alternative construction start date of May 1, 2019. This alternative start date will allow us to finish the site plan process and move to construction when the weather permits. The adoption of this alternative construction start date requires the County to make an administrative adjustment to the DA, adjusting the construction start date in Section 6.5 from September 1, 2017 to May 1, 2019. An adjustment to Section 6.5 of the DA is necessary in order to remedy the timeline-related issues that have derived from the scrivener's error, and to ensure this project proceeds within the timeline delineated by the DA.

Section 6.2- Substantive Issues

Section 6.2 of the DA states:

"Owner/Developer will submit a Site Plan Review (PSR) application to the County within one hundred twenty (120) calendar days from the date Owner/Developer receives the County's pre-application report. Should the pre-application report raise *substantive issues* or requirements that require clarification or action before the pre-application report is finalized; the one hundred twenty (120) calendar day period shall begin to run at the time that such substantive issues or clarifications are conclusively resolved."

Exhibit A, § 6.2 (emphasis added).

Our client did submit a preliminary site plan (PSR) within the 120 timeline from the issues of the County's pre-application staff report. But subsequently after the PSR was filed additional issues were raised triggering a not fully complete status. This has pushed back the timeframes contained in the Development Agreement.

The substantive issues related to the PSR related to the habitat onsite which required us to mitigate for a large grove of Oregon White Oak on the eastern edge of the project, revising the stormwater structures to accommodate the mitigation for the Oregon White Oak, the demarcation of a new sanitary sewer easement on the eastern edge of the project parcel and several site conditions and how they might impact a future road alignment called for in the County's arterial atlas.

And because of the time of year we cannot now open up the site for development and therefore pushing the date out to May 1, 2019 will allow for us to get in early during next seasons construction window.

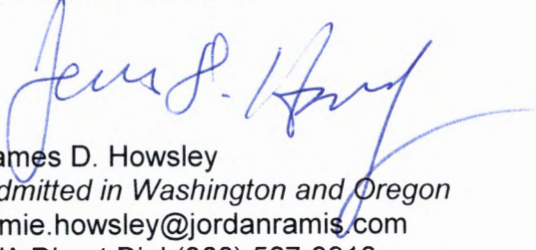
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Conclusion

As such, the project is still within the timeline provided by the DA—except for the Section 6.5 anomaly, caused by a scrivener's error. We request that the County adopt our alternative construction start date of May 1, 2019, in order to ensure this project remains within the timeline set forth by the DA.

Very truly yours,

JORDAN RAMIS PC



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cc: Client