



City Of Kenmore, Washington

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

February 4, 2011

Mr. Jack McCullough
McCullough Hill, PS
701 Fifth Avenue, Suite 7220
Seattle, WA 98104

Re: LakePointe Project Commercial Site Development Permit Extension

Dear Mr. McCullough:

Thank you for your interest in the City of Kenmore, and the Kenmore greater community. Since December 31, 2009, the City has granted temporary extensions of the LakePointe Commercial Site Development Permit (CSDP), most recently to February 4, 2011 to discuss the feasibility of developing a work program, schedule and process for modifying project entitlements including potential amendments to project phasing and other project conditions. The conclusion reached by both the City and your client, (LakePointe, Inc. and Pioneer Towing) who represent the project applicant and landowner, is that potential amendments to conditions of project approval are best considered at the time an investment or development partner, whose intent is development of the LakePointe project, is engaged by the current property owner. Given current economic and market conditions an extension of the CSDP is the appropriate option at this time.

A revised traffic information (memo from The Transpo Group dated June 22, 2009) was submitted September 14, 2009 via e-mail. The City Engineer reviewed the information (memo dated November 30, 2009) and this information was provided to you December 1, 2009. The City Engineer concurred with the conclusion of the Transpo Group that traffic levels adjacent to the project site have decreased to levels below the 1997 counts which provides additional justification for granting an extension of the CSDP.

You previously requested (correspondence dated October 27, 2008 and December 2, 2009) an extension of the period within which the first building permit application for the project must be submitted, to December 31, 2012. The City has considered this request and through our discussions believes there are mutual benefits that can be derived by extending this date to December 31, 2015 pursuant to the conditions stated below if the developer/applicant demonstrates to the City's satisfaction on or before May 19, 2011, that the terms, conditions and requirements of the CSDP and related agreements and documents are binding and enforceable on Lot B.

18120 68th Ave NE PO Box 82607 Kenmore, WA 98028

Office (425) 398-8900

Fax (425) 481-3236

cityhall@kenmorewa.gov

www.kenmorewa.gov

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After reviewing the LakePointe Property Utilization Agreement you provided to me on January 31, 2011, we conclude it does not require the owner of Lot B to allow construction and operation of LakePointe Way, or any other transportation and other infrastructure improvements, on Lot B. Section 2 states that upon construction of LakePointe Way, the owner of Lot B will "cooperate" with the developer's request for a BLA to allow LakePointe Way to be entirely on Lot A. However, the owner of Lot B is required to sign the BLA and accept compensating property from the developer only if the location of the compensating property is "reasonably acceptable" to the owner of Lot B. The owner of Lot B can declare the compensating property not to be "reasonably acceptable" if such owner determines that Lot B, as reconfigured, "is not suitable for the business to be conducted on Lot B." In other words, the owner of Lot B has effective veto power over any BLA, that is, if the developer disagrees with the owner of Lot B's determination, the developer's only choice is to sue to have a court determine whether the owner of Lot B's decision was "reasonable." Furthermore, if the alignment of LakePointe Way is not "generally consistent" with the location shown on Exhibit B to the Agreement, then the owner of Lot B is not obligated to enter into a BLA as long as the BLA will "adversely affect the value of or hinder or prevent the owners use of Lot B." This decision regarding value or hindrance is based on the opinion of the owner of Lot B, not an objective factor. Also, the BLA requirement kicks in only if the owner of Lot B sells Lot B; if the owner of Lot B does not sell the Lot, this BLA requirement does not even apply. Finally, Section 1 states that the owner of Lot B shall cooperate with the developer in the development of the LakePointe Project, but only if the Project is as "generally described" on Exhibit C to the Agreement. Exhibit C is a detailed schematic of the Project. If the owner of Lot B considers the Project to have been changed materially, the owner of Lot B can choose not to cooperate."

If on or before May 19, 2011 the City confirms in writing that the developer/applicant has demonstrated to the City's satisfaction that the terms, conditions and requirements of the CSDP and related agreements and documents are binding and enforceable on Lot B, then the City is therefore willing to grant an extension to December 31, 2015, based on the following conditions.

1. The Transportation Mitigation Agreement expires August 6, 2013. An addendum to extend the terms of this agreement to December 31, 2015 must be signed by all parties, including the City of Kenmore, and owners of Lot B per the 2004 Boundary Line Adjustment. The addendum shall also include amendments to the agreement to delete conditions no longer applicable and clarify conditions based on the terms of the CSDP extension. The addendum must be executed no later than May 19, 2011, unless all parties agree to a later date. If an addendum is not executed, then the City will revoke the December 31, 2015 extension within which the first building permit application for the project must be submitted and establish an extension date of August 6, 2013 consistent with the expiration of the Transportation Mitigation Agreement.
2. A building permit application or permit application to construct other site improvements within the 200 foot shoreline jurisdiction will not be accepted without an approved Shoreline Substantial Development Permit. The CSDP, master plan and building permit applications must be amended to comply with conditions off shoreline permit approval.
3. A building permit application or permit application to construct other site improvements must be submitted in accordance with the City's adopted surface water regulations in effect at the time of permit application.

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4. Critical Area Ordinance (CAO) compliance is not required if development occurs under the vested CSDP. However, if the applicant seeks a minor modification of the CSDP, such modifications shall be designed (i) not to increase any nonconformity with the CAO, and (ii) where reasonably feasible, to achieve a higher level of conformance with the CAO, as compared to the vested project, without impairing the functionality or integrity of the development plan or imposing significant new development costs. A major modification of the CSDP would require conformance with the CAO.
5. A building permit application or permit must be submitted in accordance with Building and Construction regulations per Kenmore Municipal Code Title 15 in effect at the time of permit application.
6. An updated traffic analysis must be submitted with a building permit application or permit application to construct other site improvements. The traffic analysis must include additional AM and PM peak hour turning movement traffic counts taken at the intersections of 68th Avenue NE and SR522, NE 170th Street and Juanita Drive NE and 61st Ave NE and SR522. In addition a three day 24 hour roadway count must be taken on SR522 west of 61st Avenue NE and west of 68th Avenue NE south of NE 175th Street NE. The counts must be taken between March and October. The purpose of the counts is to provide an assessment of traffic levels adjacent to the Lakepointe site compared to the counts collected in 1997 documented in the Environmental Impact Statement.
7. Traffic and park impact fees must be paid in accordance with impact fees in effect at the time of building permit application.

The City requests, as a condition of this extension, a submittal of a status report by the end of each calendar year through 2015 on the progress and activities of the project. Thank you for your cooperation and interest. If you have any questions, please do not hesitate to contact me.

Sincerely,



Frederick C. Stouder
City Manager

cc: Gary Sargeant
Rod Kaseguma, City Attorney
City Management Team

McCullough Hill, PS

MEMORANDUM

TO: Rod Kaseguma
Fred Stouder

FROM: Jack McCullough

DATE: April 27, 2011

RE: LakePointe Extension

As a follow-up to our recent meeting, here is a summary of the information we promised:

1. BLA for LakePointe Drive. As we indicated, we do not believe that a boundary line adjustment or any other property adjustment will be necessary to accommodate the location of LakePointe Drive, but we included that option in the 2004 property conveyance documents with Glacier Northwest in order to prepare for that possibility. Those covenants do not give Glacier Northwest any discretion as to whether a BLA can be implemented, and only limited discretion as to the replacement property to which they are entitled. Ultimately, we noted that the risks associated with whether LakePointe Drive (or any other off-site improvement, for that matter) can be built is a risk borne by the applicant. The City's obligation would be to ensure that the applicant had obtained all necessary rights to construct on- and off-site improvements prior to issuance of construction permits for the project.

Therefore, we suggest the addition of the following condition to the CSDP extension letter:

Issuance of this extension of the CSDP does not relieve the applicant of the obligation to provide adequate evidence to the City, prior to issuance of construction permits for the project, that the applicant has obtained necessary consents and authorizations from owners of all property on which such work is proposed.

2. Condition #1 relates to the Transportation Mitigation Agreement, which expires on August 6, 2013. We discussed with you modifying the language of this Section so that it will read as follows:

The Transportation Mitigation Agreement expires August 6, 2013. Prior to that date, an addendum to extend the terms of this agreement to December 31, 2015 must be signed by all parties, including the City of Kenmore, and owners of Lot B per the 2004 Boundary Line Adjustment, or the agreement may be amended to exclude Lot B. The addendum shall also include amendments to the agreement to

delete conditions no longer applicable and clarify conditions based on the terms of the CSDP extension. ~~The addendum must be executed no later than May 19, 2011, unless all parties agree to a later date.~~ If an addendum is not executed, then the CSDP will expire on City will revoke the ~~December 31, 2015~~ extension within ~~which the first building permit application for the project must be submitted and establish an extension date of August 6, 2013~~ consistent with the expiration of the Transportation Mitigation Agreement.

3. We requested that Condition #6 be revised to provide (in line 1) that the updated traffic analysis may be submitted prior to the submittal of building permit applications. Due to the significant cost of preparing building permit applications, the applicant will need to complete this assessment prior to investing in such construction permit applications.