

The City Of Kenmore

P.O. Box 82607 • Kenmore, Washington 98028-0607

August 6, 2004

Mr. Jack McCullough
McCullough, Hill, Fikso, Kretschmer, Smith
2025 First Ave., Suite 1130
Seattle, WA 98121-2100

Re: LakePointe Project Commercial Site Development Permit Extension

Dear Mr. McCullough:

The City of Kenmore has received and considered your letter dated June 1, 2004 requesting an extension of the Lake Pointe Commercial Site Development Permit (CSDP). In your letter, you request an extension to December 31, 2006 of the deadline to submit a building permit application for some portion of Phase I of the LakePointe project.

Extensions of Commercial Site Development Permit Applications are governed by KMC 18.90.070 (formerly KCC 21A.41.100). Section C of this section states that:

The director may grant one or more extensions of the time limits..., each of a duration determined by the director, if the following findings are made:

1. If initial building permits have not been submitted or the project has not been completed due to causes beyond the applicant's control, such as litigation, acts of God, unanticipated site conditions or adverse economic market conditions;
2. The applicant has shown a good faith effort to commence or complete the project within the time previously allotted;
3. Conditions identified as part of SEPA or other permit processes remain appropriate to address project impacts. The Director has the authority to establish additional conditions designed to address incremental changes in project impacts arising or occurring as a result of any extensions of time; and
4. The period of the extension granted is reasonable in light of the conditions warranting the extension and the incremental changes, if any, in project impacts.

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Background

The current deadline for submittal of a building permit application for some portion of phase I of the LakePointe project is August 14, 2004. This date was the result of a six-month extension issued by the City of Kenmore on June 26, 2002 and an 18-month extension issued on January 30, 2003.

Findings

1. Delay due to causes beyond the applicant's control.

Since August 2001, there has been a severe contraction in the overall development market, though current signs are that the economy is beginning to recover. Continuing high vacancy rates for existing office developments in the Puget Sound, however, make the development of new office space infeasible, and the decline of the retail and hospitality industries have made the financing for new hotel and large-scale retail projects extremely difficult. In addition, rental rates in the multifamily market remain relatively low and have complicated the prospect of securing financing for that type of development. Each component of this mixed-use project has suffered considerably in the past several years at a market level and, simultaneously, capital investment in the real estate industry has declined markedly. These economic hardships have made this project relatively infeasible to finance in the current capital climate.

The adverse economic conditions resulted in the departure of First Wellington Crown Corporation, the first joint-venture developer for the Project. The applicant does not have the resources to pursue this project on his own and has worked with numerous developers over the past several months in order to pursue a new joint-venture partner. Invariably, the potential partners reached the conclusion that the current market conditions do not support development of the permitted project at this time. The applicant is continuing to work with potential development partners.

The economic downturn and the hardships it has created are beyond the control of the applicant and therefore this request meets the first condition for the granting of an extension.

2. Good Faith Effort.

Since the initial issuance of the Commercial Site Development Permit (CSDP) in 1998, significant resources have been expended to develop more detailed plans for the project as well as for securing funding and tenant commitments for the project. The applicant indicates that since 2002, significant efforts have been made to secure financing commitments and tenant commitments for the Project. The applicant has also met with several potential partners to move the Project forward. The City has also met with or spoken to several potential development partners over the past year.

The applicant and his development team have made significant good-faith efforts to commence the project since the initial issuance of the CSDP and therefore this request meets the second condition for the granting of an extension.

3. Appropriateness of Conditions.

The CSDP includes numerous conditions generated by the original SEPA and permit review process for the Project.

Transportation. Transportation-related mitigation for the Project is set forth in the Transportation Mitigation Agreement, which is Attachment E to the CSDP. This Agreement imposes over \$15 million in traffic and transportation-related mitigation obligations on the Project. This analysis and mitigation was based on an assumption that trip generation from proposed uses in the Project would be approximately 13,600 average daily trips. The City has reserved authority to require additional review if trip generation levels from the Project are anticipated to exceed this level.

Additional traffic analysis for the Project was conducted subsequent to the CSDP issuance, during the extensive hearing Examiner proceedings in 1999 and 2000. The City issued a Notice of Decision in May 26, 2000 based upon the additional traffic work, which assumed full build-out through 2005. In addition, this analysis (and the hearing process with which it was associated) resulted in the adoption by the applicant of several additional mitigation measures.

The applicant's request for an extension was considered by the City's traffic consultant on this project, Jones and Stokes. Ron Loewen of Jones and Stokes determined that projected traffic impacts within the requested extension period would be highly unlikely to exceed the levels previously analyzed for this project and that, from a traffic standpoint, an extension could be appropriate. New traffic counts were conducted at several locations and compared to levels from 1995, as well as those projected for 2005. Mr. Loewen noted that traffic levels have remained the same or declined since 1995. He indicated that in order to meet the traffic projections for 2005 analyzed in the previous studies, traffic volumes would need to grow at an unprecedented rate. Since this is highly unlikely, Mr. Loewen determined that the current traffic analysis and the associated mitigation conditions identified would be adequate to warrant the extension requested, with the provision that additional traffic work may be necessary at the time of permit application to ensure that traffic volumes within the extension period had not exceeded the previously analyzed traffic projections for 2005.

Shoreline Enhancement. This request is to extend the existing permit and will not change the project in a manner that would necessitate changes to the existing conditions placed on the project, nor have background conditions changed significantly since issuance of the CSDP. Thus, the existing mitigating conditions remain appropriate to address Project impacts.

Drainage. The Project review determined that, as mitigated, the Project would not result in adverse impacts in this area. This request is to extend the existing permit and will not change the project in a manner that would result in new additional

impervious surfaces, or any uses that would increase or intensify drainage flows. The City will review final drainage plans for the Project when they are submitted. Thus, the existing mitigating conditions remain appropriate to address Project impacts.

Hazardous Waste. Since the issuance of the CSDP, the applicant has obtained consent decree approval (with the State Department of Ecology) from the courts. In addition, this request is for an extension of the existing permit and will not result in any new or modified uses that would alter the scope of impacts addressed in the Project review. Thus, the existing mitigating conditions remain appropriate to address Project impacts.

Sensitive Areas. The Project review included a several-year-long comprehensive study of habitat and sensitive area issues associated with the Project site. All impacts of the Project were thoroughly reviewed and mitigated. This request is to extend the existing permit and will not change the project in a manner that would result in new or modified uses that would alter the conclusions reached in the Project review. Thus, the existing mitigating conditions remain appropriate to address Project impacts.

Other Issues. The extensive conditions applicable to the Project more than adequately mitigate any anticipated impacts in other areas. This request is to extend the existing permit and will not change the project in a manner that would necessitate changes to the existing conditions placed on the project. Thus, the existing mitigating conditions remain appropriate to address Project impacts.

The conditions identified as part of the initial permit issuance and as a part of subsequent permit decisions remain appropriate to address project impacts. No additional project impacts will result due to the requested extension and therefore no additional conditions are necessary. This request therefore meets the third condition for the granting of an extension.

4. Period of Extension.

The applicant indicates that the conditions warranting the requested extension – the market downturn – will likely require two years or more to correct itself. The applicant further anticipates that it will be able to identify a new joint-venture partner and negotiate an agreement with that party in 2005. The new developer will need a period of time to reevaluate the mix of uses in the Project under new market conditions, and to prepare a schematic design for the Project. During this time, financing support for predevelopment and construction will also be identified. Finally, building permit applications will need to be prepared for submittal. The applicant anticipates that these activities will require two years.

The requested extension (to December 31, 2006) of the deadline for the submittal of a building permit application for some portion of Phase I of the LakePointe

project is reasonable in light of the conditions warranting the extension. This request therefore meets the fourth condition for the granting of an extension.

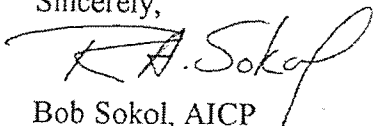
Determination

As indicated earlier in this letter, "the director may grant one or more extensions of the time limits..., each of a duration determined by the director..." if findings can be made that the four identified conditions can be met. As outlined in this letter, the request to extend the deadline to December 31, 2006 for the submittal of a building permit application for some portion of Phase I of the LakePointe project meets all of the identified conditions. **The City of Kenmore has considered the applicant's request and hereby grants an extension (to December 31, 2006) for the submittal of a building permit application for some portion of Phase I of the LakePointe project.** The City of Kenmore does, however, reserve the right to require additional studies or mitigation conditions, consistent with the CSDP, should the project be revised outside of the scope of the issued permit.

In response to your query regarding the concurrency certificate, the City of Kenmore does not have a specific concurrency ordinance and therefore does not issue certificates of concurrency. However, **provided that LakePointe continues to comply with the conditions of approval and the mitigating conditions identified in the TMA and subsequent traffic studies, the City has determined that the LakePointe project will remain concurrent and the Certificate of Concurrency issued by the County (March 26, 1996 or as subsequently amended) remains valid.**

The City looks forward to working with you to bring the LakePointe project to a successful conclusion. If you have any questions, please feel free to call me at 425-398-8900.

Sincerely,



Bob Sokol, AICP
Community Development Director

c: Steve Anderson
Mike Kenyon