



The City Of Kenmore

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

December 18, 2008

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:

The City of Kenmore has considered your letter dated October 27, 2008 requesting a four year extension to December 31, 2012 of the LakePointe Commercial Site Development Permit (CSDP) for submittal of a building permit application for some portion of Phase I of the LakePointe project.

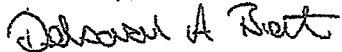
The City's December 4, 2006 letter previously granted an extension to December 31, 2008. The City stated in this letter that in connection with consideration of further permit extensions additional AM and PM peak hour turning movement traffic counts must be taken at the intersections of 68th Avenue NE 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.

City staff met with you and Mr. Gary Sargeant November 20, 2008. At that meeting you and Mr. Sargeant agreed to contract for services with The Transpo Group or other traffic consultant to provide the additional traffic data for City review. In order to obtain the traffic counts and allow time to review the information, the City hereby provides a one year extension of the CSDP to December 31, 2009. For the purposes of this limited one-year extension, the City finds that the extension meets the criteria for extension set forth in KMC 18.90.070, as described in your letter dated October 27, 2008. However, your requested extension beyond this date cannot be evaluated until the requested traffic information is submitted. If you submit the traffic information as requested, the City will then consider your request for extension to December 31, 2012 in accordance with KMC 18.90.070 which governs extensions of commercial site development permit applications.

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If you have any questions, please feel free to call me at 425-398-8900.

Sincerely,



Deborah A Bent, AICP
Community Development Director

Cc: Fred Stouder, City Manager
Lakepointe file

MCCULLOUGH HILL, PS

October 27, 2008

VIA ELECTRONIC MAIL

Ms. Debbie Bent, Director
Department of Community Development
6700 N.E. 181st Street
P.O. Box 82607
Kenmore, WA 98028-0607

Re: LakePointe Project, File No. L010022

Dear Ms. Bent:

We are writing on behalf of LakePointe, Inc. and Pioneer Towing Company to request an extension of the above-referenced Commercial Site Development Permit (the "CSDP") pursuant to KCC Sec. 21A.41.100 (as amended). Under this Code section, an extension for the CSDP should be approved based on satisfaction of the following conditions:

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.

Status

Section G.1 (page 62) of the CSDP provides that the term of the permit shall be governed by the approved Phasing Plan, which is attached as Exhibit D to the CSDP. Section 3.b(3) of the Phasing Plan provides that the applicant "shall submit a building permit application for some portion of Phase 1 within one year of the date of approval of the Master Plan." The Master Plan was approved, with the CSDP, in August 1998.

Section 3.b(4) of the Phasing Plan, however, provides for tolling of this one-year period:

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The time period listed in subsection (3) above shall be tolled during the pendency of an administrative or judicial appeal of the Commercial Site Development Permit or Shoreline Substantial Development Permit, during the pendency of litigation related to the project or to the property comprising the project site, and in the even of force majeure. Force majeure means extraordinary natural elements or conditions, war, riots, King County labor disputes or other causes beyond the reasonable control of the applicant.

In accordance with this section, the City previously determined that the one-year period set forth in subsection (3) for the filing of the first building permit for any portion of Phase 1 was tolled. First, an administrative appeal of the CSDP was filed in 1998, and was not ultimately resolved until August 2000. Second, the applicant was seeking approval of a clean-up action plan from the Department of Ecology ("Ecology") and negotiating the terms and conditions of a settlement of litigation to be filed by Ecology concerning the clean-up of contamination at the project site. This litigation settlement took the form of a consent decree, which was entered on August 14, 2001.

The City determined that the consent decree process overseen by Ecology constituted both "litigation related to the property comprising the project site" and "force majeure" (i.e., a cause of delay beyond the reasonable control of the applicant). Resolution of the consent decree process is an express condition of the CSDP. The proponent did not pursue an independent remedial action, but agreed with Ecology's view that institution of litigation and settlement of issues via a consent decree was the appropriate course for this site. In addition, because the project site has a "number one" ranking on Ecology's priority clean-up list, development of the project was not financeable, absent an approved consent decree. The City determined that this constituted a cause for delay in project development beyond the reasonable control of the proponent. Thus, the one-year period under Section G.1 of the CSDP commenced on August 14, 2001. The City thereafter extended this period to December 31, 2008.

Grounds for Extension

The grounds supporting this request for extension are described below:

1. Delay Beyond Applicant's Control. Since the date of the most recent CSDP extension in 2006, the overall development market in the Puget Sound area peaked and has been gradually declining. The previous improvement in market conditions led to some new development projects in the Seattle and Bellevue CBDs, but did not penetrate throughout the region. In this time, effective leasing rates for office developments in the Kenmore market continued to make the development of new office product in this submarket infeasible, and the financing for new hotel and large-scale retail projects in this submarket remains problematic. Residential condominium projects are simply not financeable at this time. Furthermore, the regional market is only beginning to see a reversal of the previous rental rate erosion in the multifamily market, which has complicated the prospect of financing for that product area. The gradual collapse of credit markets beginning in 2007 has effectively dried up funding sources for development of this site. In summary, each component of the LakePointe mixed-use project has continued to suffer considerably in the past two years at a regional and/or

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local market level. These economic hardships have made the LakePointe project infeasible to finance in the current market climate, which has deterred the interest of investors and developers. Additional time is required to allow the local real estate market to improve for each of the use categories projected for this development. In particular, the applicant does not expect the markets to heal sufficiently to make substantial development planning for the site likely for another 18 to 24 months.

Furthermore, as we have noted before, the integrated mixed-use design of the Project reduces the flexibility of the Project to respond to market challenges such as those described above, and therefore increases the vulnerability of the Project to adverse market conditions in any given product area (i.e., office, residential, lodging, retail). In this way, Project design created unanticipated problems for the applicant. To increase the flexibility of the Project to respond to these market conditions, the applicant is evaluating the possibility of modifications to Project design and adjustment to the mix of project uses. Such modifications would seek to reduce the interdependence of internal Project phases, thereby increasing the potential for phased development of the Project. At the same time, the applicant is exploring alternative construction scenarios for the Project, in order to reduce overall Project cost. These market-related construction and design problems were not anticipated by the applicant, and warrant the granting of the requested extension.

The economic conditions of the market and the project resulted in the departure earlier in this decade of First Wellington Crown Corporation, the original joint-venture developer for the Project. Wellington had expended two years and millions of dollars in pursuit of the development of the Project. Wellington's departure necessitated the search for a new joint-venture partner for development of the Project. The applicant has worked with several developers in the last four years. More than one of these prospective developers devoted several months to its investigation of project feasibility, each reaching the conclusion that current local market conditions do not support development of the project at this time. The applicant continues to look for joint venture partners for the Project, though credit market and general economic conditions make such investment unlikely in the next 18 to 24 months.

These economic hardships are significant, are beyond the control of the applicant, and warrant the granting of the requested extension.

2. Good Faith Effort. As you are aware, the CSDP approval for the Project is not a "construction level" approval (i.e., development of more detailed schematic and construction plans are required prior to project development). In the last several years (since initial issuance of the CSDP), the applicant and its original partner (and other prospective developers since) have expended millions of dollars for architectural, engineering, consulting, environmental, and legal services associated with the development of such schematic plans for the Project. In addition, during this period of time significant efforts have been made to secure financing commitments for the Project and tenant commitments for the Project. Unfortunately, as noted above, the

intervention of adverse market conditions, both at the national and regional level, interrupted this process and led to the departure of the applicant's original joint venture partner. Because of these conditions, and the due diligence review currently underway by the applicant's new development partner, it would be imprudent and ineffective to devote further resources to completing construction permit drawings for the Project, since those drawings will need to be generated and approved by such development partners.

Nevertheless, the applicant and its team have made significant good-faith efforts in the last several years (and previous to that) to commence the Project construction permitting within the time allotted in the CSDP. These efforts included the completion in 2004 of the Phase 1 shoreline enhancement work along the Sammamish River shoreline of the project site.

3. Appropriateness of Conditions. As you are aware, the CSDP includes some 20 pages of specific conditions (and several additional appendices setting forth further 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 millions of dollars 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. General Condition B. The City has reserved authority to require additional review if trip generation levels from the Project are anticipated to exceed this level. No new or modified uses are proposed for the Project that would be likely to increase such traffic levels.

Additional traffic analysis for the Project was conducted subsequent to the CSDP issuance, during the extensive Hearing Examiner proceedings in 1999 and 2000. This analysis is in the City's Project files. In particular, the May 26, 2000 Notice of Decision from the City includes several of these additional reports. This additional analysis updated Project traffic review for full build-out. 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, beyond those incorporated in the original CSDP decision.

In 2006, the applicant engaged The Transpo Group to evaluate existing conditions on the SR-522 corridor and to compare those conditions to the then-existing traffic volumes (from 1995) on which the project EIS and mitigation was based. A copy of this report is on file at the City. It indicated that 2006 traffic volumes on the SR-522 corridor were actually lower than the 1995 volumes which formed the basis for EIS and mitigation review for the project. For this reason, the City determined that additional mitigation in the area of transportation was not necessary in connection with the proposed permit extension. In the two years since, there has not been a

significant increase in background traffic volumes. At the same time, the City has undertaken substantial improvements to the SR-522 corridor. The effect of these improvements will be to facilitate traffic operations throughout the corridor. Thus, the City's conclusion that additional mitigation for Project-related traffic impacts is not required remains true today.

Shoreline Enhancement. No modifications to the Project are proposed that would alter the existing Project conditions, nor have background conditions changed significantly since issuance of the CSDP (other than the applicant's implementation of certain shoreline enhancement improvements in 2004). Thus, existing project conditions are appropriate to address Project impacts.

Drainage. The Project review determined that, as mitigated, the Project would not result in adverse impacts in this area. The Project does not propose any 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, existing conditions are appropriate to address Project impacts.

Hasardous Waste. Since the issuance of the CSDP, the applicant has obtained consent decree approval (with Ecology) from the courts. In addition, no new or modified uses are proposed that would alter the scope of impacts addressed in the Project review. Thus, existing conditions are 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. No new or modified uses are proposed that would alter the conclusions reached in the Project review. Thus, existing conditions are appropriate to address Project impacts.

Other Issues. The extensive conditions applicable to the Project more than adequately mitigate any anticipated impacts in other areas. Thus, existing conditions are appropriate to address Project impacts.

4. Period of Extension. Given the collapse of credit markets internationally, the conditions warranting the requested extension are likely to require two years to correct itself. Any new developer identified by the applicant will also 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.

Thus, it is anticipated that market conditions will not adequately improve so that new development planning can occur for approximately two years. On this schedule, the applicant is hopeful that such development planning can occur in year three, with another year devoted to preparation of the complex construction permitting documents the project will require. Thus, initial building permit applications are not likely to be prepared for submittal much before the end of calendar 2012. The applicant therefore

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requests an extension of the period within which the first building permit application for the Project must be submitted to December 31, 2012. All Project review, including the updated transportation review, is current through this date.

We would therefore appreciate it if the City would grant an extension of the period within which the first building permit application for the Project must be submitted to December 31, 2012, pursuant to Section G.1 of the CSDP and KCC Sec. 21A.41.100 (as amended). Please also confirm that the concurrency certificate for the Project will also automatically be extended through this date. Thank you for your attention to this request.

Sincerely;


John C. McCullough

JCM:lhc

cc: LakePointe, Inc.