



The City Of Kenmore

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

January 30, 2003

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 December 18, 2002 requesting an extension of the Lake Pointe Commercial Site Development Permit (CSDP). In your letter, you request an 18-month extension to August 14, 2004 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.

Background

The current deadline for submittal of a building permit application for some portion of phase I of the LakePointe project is February 14, 2003. This date was set by the City following the receipt of a six month extension request by the applicant. That extension was issued on June 26, 2002.

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. Vacancy rates for existing office developments in the Puget Sound 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 rate declines in the multifamily market has complicated the prospect of securing financing for that type of development. Each component of this mixed-use project has suffered considerably in the past year at a market level, at the same time as 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.

In early 2002, the adverse economic conditions resulted in the departure of First Wellington Crown Corporation, the joint-venture developer for the Project. The applicant does not have the resources to pursue this project on his own and indicates that he is now searching for a new joint-venture partner for development of the Project.

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, the applicant and his ex-partner expended significant resources in defending the project against appeals, securing a consent decree from the Department of Ecology and developing revised transportation plans. The applicant also indicates that during this time much effort was expended in the areas of architecture, engineering, and environmental services associated with the development of detailed plans for the Project. The City has met with or spoken to the applicant or other representatives of the development team on numerous occasions regarding various details of the project. The applicant also indicates that significant efforts have been made to secure financing commitments for the Project and tenant commitments for the Project.

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. Ron Loewen of Jones and Stokes determined that it would be appropriate to extend the permit by the requested 18 months. Mr. Loewen noted that traffic growth is occurring at much lower levels than anticipated in the traffic analysis performed in 1999 and 2000. He indicated that in order to meet the traffic projections for 2005 analyzed in those studies, growth would need to average 3% to 6% per year (depending upon location) between now and 2005. 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.

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 three 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 2003. 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 18 months or more.

The requested 18-months extension (to August 14, 2004) 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.

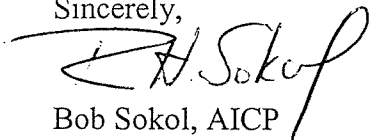
Determination

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, your request to extend the deadline to August 14, 2004 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 your request and hereby grants an 18-month extension (to August 14, 2004)** 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 Lake Pointe 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