



Date: November 7th, 2024

To: Colleda Monick, HLA
City's Contract Planner

Fm: Marc K. Kirkpatrick
Encompass Engineering & Surveying

Dear Colleda,

We appreciate your efforts in keeping this project moving along. Please see below in bold for applicants response to City comments provided October 8th, 2024:

- Section 3, *Term* and Section 4.3, *"Agreement Term"*: The current draft does not incorporate or respond to the City's prior comments, which stated as follows:
 - [T]he city proposes the following changes:
 - A 10-year limit to the agreement.
 - **Applicant acknowledges City's proposal, but wishes for 15-years limit to the agreement. Development environment is very susceptible to change due to economy, politics, nature occurrences, pandemic, and etc.**
 - A start clock stipulation that if no permits are submitted within a 3-5 year period, the Development Agreement (DA) will become null and void.
 - **Applicant acknowledges City's proposal, but wishes DA to not have these added time restrictions.**
 - Explicit language stating that no extensions of the term will be granted, except for those based on issued permits. The current language allowing extensions based on "approval" is confusing and misleading and should be removed.
 - **Applicant acknowledges City proposal, but extensions are a common request and applicant wishes leave language in.**
- Section 4.8, *"Exhibits"* and Section 7.4, *Latecomers Agreement*: The draft identifies Exhibit 6 as a "Latecomers Agreement." A draft of this document was not provided. Further, a latecomers agreement is not required as part of a development agreement. At this stage the City cannot address whether a latecomers agreement may be appropriate for the proposal.
 - **Rather than providing a draft latecomers agreement, the applicant would like to keep this language in the DA as a place holder. Applicant understands that this can be further discussed after final civil plan approval.**

- Section 7.2, *Future Mitigation or Fees*: Please refer to the City’s July 15, 2024 comments – “Future fees shall be based on the fee structure at the time of the submittal, including permits and connection fees.”
 - **Section 7.2 has been removed from DA**

- Section 8.1, *Permitted Uses*: The City proposes the following language: “Permitted uses shall include single family and common wall dwellings. Other permitted and conditional uses authorized in the zones may be permitted by the minor or major modification process as applicable.”
 - **Section 8.1 has been revised accordingly.**

- Section 8.2, *Setbacks*: This section should include the applicant’s proposal for a 20-foot garage setback.
 - **Section 8.2 has been revised accordingly.**

- Section 8.5, *Lot Coverage*: Please refer to the City’s July 15, 2024 comments. The City proposes the following language: “The lot area covered by single family and structures accessory thereto shall not exceed sixty percent (60%) of lot area for and eighty percent (80%) for common wall units. Lot coverage shall be based on the total impervious area of the lot.”
 - **Section 8.5 had already been revised to comply.**

- Section 8.7, *Development Standards-Stormwater*: Please refer to the City’s July 15, 2024 comments. The City proposes replacing the last sentence of Section 8.7 with the following language: “Stormwater design shall be based on Washington Department of Ecology’s Stormwater Management Manual for Eastern Washington that is in effect on the date the civil stormwater plans are submitted for each phase.”
 - **Section 8.7 has been revised accordingly.**

The applicant’s proposed language contemplates vesting the project to the Stormwater Management Manual in effect on the date the civil stormwater plans are submitted for the first phase, regardless of the timing of the subsequent phases. Please note that vesting principles do not apply to stormwater regulations. *Snohomish County v. Pollution Control Hearings Board*, 187 Wn.2d 346, 386 P.3d 1064 (2016).

- **Section 8.7 has been revised accordingly.**
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- Section 8.8.d, *Alley*: The City requires additional information on what the applicant is proposing in lieu of alleys. It is unclear what is contemplated by “private open space between new development and neighboring parcels,” what standards will apply to such open space, and how the open space will be owned and managed.
 - **Open space and storm drainage tracts will be owned and managed by an HOA. A draft HOA agreement will be provided for review during the final plat approval process. Additional reasoning for the alley removal is to allow a more efficient, more dated concept that is also consistent with other plats the City has processed in recent years.**





- Section 9, *Phasing of Development*: The City is unable to provide comments as the current submittals do not provide sufficient information regarding the applicant's phasing plan or proposal. Please note that all amenities and improvements required to service a phase must be installed at the time of the phase.
 - **Exhibit 4 – Phasing Plan has been added to the submittal.**

- Section 10, *Acknowledgement of Sufficient Water and Sewer Capacity*: As discussed with the applicant, the parties understand that preliminary plat approval will require an assessment of water and sewer capacity. Comments on this subject are premature, as the assessment of capacity has not yet been conducted. Further, the approval process will identify any infrastructure improvements or other mitigation necessary to serve the project.
 - **Applicant acknowledges that assessment of water and sewer capacity will occur at preliminary plat approval.**

- Section 12, *Minor Modifications*: The agreement will require specific definitions and standards for minor and major modifications. Additional language regarding the processing of minor and major modifications may be necessary as well. This language may be developed as the City's review of the application progresses.
 - **Proposed minor and major modifications language has been added to Section 12.**

- Other general comments:
 - The development agreement is drafted to assume that the applicant will be able to obtain approval of the preliminary plat, including compliance with all relevant laws and decisional criteria and provision of adequate mitigation. For example, Section 10 is drafted to assume adequate water and sewer capacity to serve the project. The City's review is ongoing, and nothing herein should be construed as acceptance or approval of any aspect of the project proposal.
 - **Applicant understands.**

 - The development agreement will require additional provisions regarding dispute resolution and termination. The City will provide draft language when the agreement is further advanced. It is likely that subsequent review will identify other substantive or procedural aspects that require resolution in the development agreement.
 - **Applicant looks forward to reviewing City's proposed language.**

Sincerely,

Marc K. Kirkpatrick