

Mr. Mike Connelly
Special Master
Etter, McMahon, Lamberson, Van Wert &
Oreskovich, P.C.
Via Email: mfc@ettermcmahon.com

March 10, 2023

Re: City Heights – City of Cle Elum
City Heights Phase 2 Final Plat

Dear Mr. Connelly:

On behalf of the applicant, City Heights, we submit this statement regarding engagement of the Special Master to complete the final plat for Phase 2 of the City Heights project. We appreciate the commitment to an expedited review and decision-making process.

The two outstanding project components that require resolution by the Special Master in order to complete the Phase 2 final plat approval involve water service and establishment of secondary road access. I address the project background and each component below. Based on that review, our requested resolution from the Special Master is a decision that would allow Cle Elum to complete final plat review and place Phase 2 on the City Council's next consent agenda for approval. To do so, we propose the Special Master issue a decision that would instruct Cle Elum to complete bonding worksheets with City Heights, and proceed with final plat approval based on two, straightforward notes to be included on the face of the final plat:

- Offsite Zone 3 water main design to be consistent with PSE and BPA easements prior to issuance of the first certificate of occupancy.
- Completion of secondary road access is required prior to issuance of the first certificate of occupancy.

We have simplified these conditions from earlier suggested language since City Heights continues to work on offsite infrastructure, including review with BPA and PSE (bonding to support for final plat does not delay City Heights' infrastructure development). In addition, these notes are written to address what Cle Elum has stated as their primary concern, namely notice to any buyers of the lots while infrastructure work is ongoing. For convenience, City Heights has attached a copy of the final plat map with these notes inserted in blue line.

Summary of Development Agreement, Memorandum of Understanding and Settlement Agreement Related to Phase 2 Final Platting.

The parties entered into a Development Agreement in 2011 based on extensive, project specific planning and environmental review (planned action). Cle Elum conducted open record public hearings with the express purpose of using those to review the specifics of the platting process so as not to use a more fractured process over the course of the Agreement's term. As a result, the parties set up an "Implementing Approval" process that provides for a very expeditious review process for all applications that are based on the plans and specifications reviewed under the Development Agreement.¹ As designed, the Development Agreement operates as the overarching entitlement and the further permitting implements that entitlement.

In 2022, the parties entered into a follow-up Settlement Agreement and Memorandum of Understanding that, in part, addressed Phase 2 of the City Heights subdivision. The settlement agreement and memorandum provided the terms for the remainder of processing for Phase 2. Based on those, the City issued preliminary plat approval for Phase 2. There are no separate conditions of preliminary plat approval because, again, all planning aspects of the project were handled through the Development Agreement. Likewise, SEPA tied back to the Development Agreement, except for a small portion of roadway that is outside city limits (located in Kittitas County). The only condition in the settlement agreement and memorandum tied to the final plat for Phase 2 follows:

City Heights is developing, and the City will review, infrastructure plans for the "Zone 3" extension of water service, and the extension of an interim access road to the plat ("Offsite Scope"). The City's review of the Offsite Scope shall not include any conditions beyond those expressly allowed under the DA and any applicable conditions in the Phase 1 Settlement Agreement dated July 2021. The City will issue a decision on the Offsite Scope within 45 days of submission. Final plat approval for Phase 2 will be contingent upon (a) City approval of the Offsite Scope plans within the terms of the DA and (b) construction of the improvements contemplated under the Offsite Scope plans, provided that the applicant may choose to provide a financial guarantee in lieu of construction for all or part of the required improvements.

Essential to the above are two points. First, the City's review of the Offsite Scope must comply with the terms of the Development Agreement. Second, as City Heights has not yet constructed the Offsite Scope, City Heights has the right to proceed with the final plat using a financial guarantee.

Beyond this, the Development Agreement expressly ties infrastructure considerations (including water and access) to certificates of occupancy, not final platting. *See*, Development Agreement, section 7. The Agreement provides that each final plat must have (1) access from one collector

¹ Final plat are also governed by RCW 58.17.140, which requires a 30-review and decision process.

road for access, *or financial assurances therefore* and (2) off-site utility infrastructure improvements built *or adequate financial assurances therefore*.

The Ridge Entities [City Heights] may proceed with development of the Property according to whatever phasing or parcel development plan the Ridge Entities deem appropriate, provided that: (a) any phase of development includes a complete Development Pod, (b) prior to final plat approval of any plat of or within a Development Pod, a Collector Road sufficient to access the Development Pod from outside of the Project has been completed or adequate financial assurances given therefore; and (c) prior to final plat approval of a Development Pod or Development Area, the off-site utility infrastructure improvements necessary to serve the Development Pod or Development Area at issue have been completed or adequate financial assurances given therefore in accordance with applicable CEMC provisions for sureties and financial assurances.

Development Agreement, Section 7.

Under that section, provision of the access road is evident in that there must be at least one access to the phase. Secondary access is not a required final plat component at all under the Development Agreement. City Heights, though, it is reasonable that secondary access is tied to occupancy as well.

Provision of the utility infrastructure is tied to certificates of occupancy.

No certificate of occupancy may be issued for any structure until all final plat conditions necessary to protect the public health, including specifically those pertaining to sewer, potable water, and stormwater, have been satisfied. The foregoing notwithstanding, a certificate of occupancy may be issued where sewer, water, and stormwater improvements have been completed but certain road improvements or other conditions have not been satisfied, as long as bonding or adequate assurance of the performance of such conditions has been provided.

Id.

Public Water

The technical design for extending water service is not at issue, Cle Elum has advised City Heights that has no further comments on the water main extension design. Therefore, the only issue is proceeding with financial guarantees.

The necessary offsite private easement is in place for the water main (the “Deneen easement”). The Deneen easement provides outright easement rights for utilities and roads, with a provision allowing the grantor to review the road design with approval not to be unreasonably withheld. City

Heights has provided the water and roadway design to Deneen. Construction on the water can begin any time with maintenance roadway to proceed subsequently.²

City Heights has demonstrated and produced to Cle Elum all necessary property rights (easement; right of way) to install the Zone 3 water main to serve Phase 2. Cle Elum has indicated it would prefer a different route for the water main which would involve negotiations with private properties (Deneen and Deneen entities). City Heights can run the water line in the route Cle Elum prefers, but Cle Elum must complete its negotiations with Deneen prior City Heights installing the water main this spring. Otherwise, City Heights has a ready water line route over right of way and existing easement grants directly to serve Phase 2 with no further need for action from Deneen or Cle Elum.

Finally, Cle Elum has expressed concern that City Heights coordinate its water plans with BPA and PSE. Both entities are actively reviewing the water plans; BPA provided comments this week and we are waiting on PSE comments. However, both agencies are notoriously slow in performing their review. As a result, offsite review of plans is entirely common territory for final plat notes.

Secondary Road Access

The technical design for extending secondary access is also not at issue, Cle Elum has provided some further design comments to City Heights and City Heights anticipates addressing those in the next few business days. Therefore, here too the only issue is proceeding with financial guarantees.

The road that needs to be built at this point is a secondary road access to the plat that extend Montgomery Avenue from its existing terminus to the City Heights subdivision. Cle Elum and City Heights previously agreed the Montgomery Avenue extension would be built as an interim gravel surface to support fire vehicles until the City's issuance of the 70th certificate of occupancy.³ The current road design involves a segment of Montgomery Avenue running through Kittitas County, i.e. outside Cle Elum's city limits. The City has been aware of this and noted in the Development Agreement that this section of road would be subject to Kittitas County permitting. Development Agreement, Section 2.2. But Cle Elum did not tie this secondary access to any final platting under any of the agreements with City Heights.

Nonetheless, City Heights is cognizant that Cle Elum is concerned that any homebuilder that City Heights might engage with be aware of the need for this secondary access. Therefore, consistent with the other provisions of the Development Agreement, City Heights has proposed the condition listed above, tied to certificate of occupancy.

² While Deneen has agreed to the road design via email, ongoing discussions continue regarding the easement property and potential for conveyance or other transactional considerations.

³ The 70th certificate of occupancy is anticipated to be issued part way through Phase 2 final plat (this assumes all homes in Phase 1 are build and occupied prior to Phase 2 homes).

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Bonding

Turning to the financial assurances, under the settlement agreement and memorandum of understanding, Cle Elum agreed to the following timelines for review:

The City shall promptly complete its review of any such Worksheets and provide comments or approval within ten business days of submission of the Worksheets to the City. If the Worksheets are not approved within ten business days, review of any updated Worksheets shall be completed within seven business days of City Heights' submission to Ben Annen of such updated Worksheets.

City Heights has submitted bonding forms along with its technical designs. To date, Cle Elum has not approved the bond worksheets. City Heights is updating the worksheets based on the last round of Cle Elum comments and asks for Cle Elum's prompt review consistent with the above deadlines.

Conclusion

Based on the terms of the Development Agreement alone, as well as the applicable bonding provisions cited above, City Heights does not see a legal need for its proposed plat notes. However, City Heights understands Cle Elum's desire to put any homebuilder on notice in a simple manner. As such City Heights proposes these two plat notes, again:

- Offsite Zone 3 water main design to be consistent with PSE and BPA easements prior to issuance of the first certificate of occupancy.
- Completion of secondary road access is required prior to issuance of the first certificate of occupancy.

Apart from Cle Elum completing the bonding worksheets and any smaller details that must be performed immediately before approval (updated title), there should be no bar to final plat approval.

Our specific request to the Special Master is to instruct Cle Elum to proceed expeditiously with final plat approval based on these plat notes and completed bonding worksheets. We ask the Special Master instruct Cle Elum to set the final plat on the next City Council consent agenda once bonding is established. Finally, we ask the Special Master require the parties to report back individually or jointly regarding the status of the final plat approval process.

Sincerely,



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