

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

March 20, 2023

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

Dear Mr. Connelly:

As we have shown in our March 10<sup>th</sup> submittal, the Development Agreement foresaw that these two offsite considerations may well need to be addressed after final plat and Section 7 articulated what needed to be provided for each final plat phase. There is no question as to whether the water main can be built and secondary access provided for. The work now involves only matters of timing, routing and construction – all appropriate bonding considerations expressly recognized in Section 7. The MOU is consistent with the Development Agreement, and recognizes that final plat is appropriate under these circumstances. Cle Elum is trying to build in new pre-conditions to final platting that just do not exist in the Agreement.

Cle Elum must process all Implementing Approvals, including this final plat, within the bounds of the Development Agreement. City Heights has relied on the Development Agreement to stage its development phasing. Cle Elum was well aware in 2011 that other reviews/permits would be needed – this is not unique to land development. Likewise, it is fully common for a project to be final platting while the developer is completing those review/permitting processes. Here, the Phase 2 final plat is essential to keep the project financially on track; City Heights is doing so in a manner fully consistent with the terms of DA and 2022 MOU.

Bonding is not a bar to final platting under these circumstances; certainly if Cle Elum cannot coordinate with City Heights in that respect, we could agree to a work session with the Special Master to complete that task. There is no legal basis for the City's novel restriction on bonding here, this idea that the situation requires bonding for "legal entitlements." There are myriad cases where a subdivision may well require permit from or reviews by other agencies and still be final platting. For example, if an HPA or Corps permit is needed to build or widen a road with an existing culvert. Or, if a project needs to underground overhead electrical wires. Finishing BPA/PSE review of the water main route and Cle Elum finalizing its own utilities right of way is no different. Nothing in chapter 58.17 precludes final platting under these circumstances.

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The only actual other agency permit that City Heights would need for the current secondary access route is a grading permit from Kittitas County (assuming City Heights continues with the same secondary access route) – which Cle Elum knew about and recognized in the 2011 Development Agreement. Yet, Cle Elum did not tie final platting to the County’s permitting. Section 7 of the Agreement only requires one main access for final plat. Secondary access can be bonded for. Cle Elum now asks for far more than what it agreed to require for final platting under the Development Agreement.

A city has no legal right to hold back approval of a final plat on any basis not authorized by statute or the plat conditions. RCW 58.17.70; *see Halverson v. City of Bellevue*, 41 Wn. App. 457, 704 P.2d 1232 (1985). Cle Elum recognizes that RCW 58.17.170 requires approval if preliminary plat conditions are met and state statutes complied with. Here, the Phase 2 final plat complies with all conditions of preliminary plat approval and all state statutes.

We do feel compelled to respond to the City’s selective use of certain materials. For example, with respect to secondary access route, Cle Elum fails to explain that the reason City Heights filed legal action regarding the easement was because a burdened property owner (Lancaster) had physically blocked the easement and involved law enforcement. City Heights agreed with Kittitas County that the best way to concretely resolve the burdened property owners’ actions would be through a declaratory judgment action, i.e. formal judicial order. This process is ongoing now, but matters of private easements, covenants and the like are not legal basis for Cle Elum to hold up the platting process. *See e.g. Viking Props., Inc. v. Holm*, 155 Wash.2d 112, 130 118 P.3d 322 (2005) (City had no right to either enforce or invalidate private covenants).<sup>1</sup>

There is no question of the ability to provide water and secondary access. The EIS studied and Development Agreement allows for multiple water and secondary access routes, any of which would be acceptable. City Heights is confident in the water and secondary routes it has chosen. But as noted in our submittal, there are other routing options for each if necessary. The City’s bargain under the Development Agreement to allow City Heights the time to finalize these routes and construct the water main and secondary access road after final plat endures. Cle Elum cannot lawfully backtrack from the Agreement now.

Sincerely,



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Letter.docx

2023-03-20 Special Master Reply

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<sup>1</sup> We are also concerned about Cle Elum’s use of excerpts from various documents without providing the full context and dialogue between the engineers. We can respond further if the Special Master sees necessary.