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February 25, 2022

Mayor Benjamin Huseman and City Council Members
City of Commerce City
7887 E. 60th Avenue
Commerce City, CO 80022

Re: Reunion Filing 38 – Final Plat Application

Dear Mr. Mayor and City Council Members,

On March 7, 2022, the City Council (“Council”) will hold a public hearing to consider the Reunion Filing 38 Final Plat Application (the “Application”). Spencer Fane LLP represents Clayton Properties II, Inc. dba Oakwood Homes (“Oakwood”) regarding the Application. During a special meeting on February 10, 2022, the Commerce City Planning Commission voted to recommend Council approve the Application. As discussed below, it is Oakwood’s position the Application meets all final plat approval criteria contained in the Commerce City (“City”) Land Development Code (“LDC”); addresses all applicable resident comments and objections of the Planning Commissioners voting against approval; and therefore should be approved by Council.

Application Background & Timeline

On May 12, 2020, Oakwood submitted a Sketch Plat application for Planning Area 7-A designated as Reunion Filing 38.¹ The City provided comments on August 10, 2020, which identified no major issues with the Sketch Plat, and specifically stated “a neighborhood meeting will not be required for this development.”² The City then authorized Oakwood to submit a Final Plat application incorporating the City’s comments.

On September 3, 2020, Oakwood submitted the Application to which the City’s Development Review Team (“DRT”) provided comments on January 20, 2021. Oakwood resubmitted the Application on March 9, 2021, and received additional DRT comments on May 21, 2021. The City’s Public Works Department did not provide comments on the initial submittal until July 21, 2021, over ten months after Application submittal. Oakwood responded and provided revised and additional information to the City on September 3, 2021.

The majority of the DRT’s substantive comments addressed the proposed golf course cart path and trail connections. Throughout spring and summer 2021, Oakwood met with City Staff to

¹ Planning Area 7-A is part of Village 7, and is also known as Filing 38.

² See, Exhibit A – Sketch Plat – DRT Comment Letter, page 2.

determine the best alignment for the new cart path between Filing 38 and Hole 18 of the Buffalo Run Golf Course.³ Oakwood’s required payments of cash in-lieu for park dedication, traffic impact fees, and drainage impact fees were also determined by Staff.

There were no comments addressing the Application’s compliance with zoning and land use criteria for Filing 38, or the adequacy of schools. Further, there are no school site dedications included in the Application.⁴

During the review period, and as part of the regional improvements agreed to by the original developer in the Consolidated Development Agreement (“CDA”), Oakwood and the Reunion Metro District completed the widening of Phase 1 of 112th Avenue from Chambers Road to Parkside Drive, which included:

- (a) 112th Avenue and Chambers Road intersection improvements, including a new traffic signal;
- (b) Construction of a multi-use trail and sidewalk;
- (c) Widening of the bridge and underpass for Buffalo Run Golf Course;
- (d) Drainage improvements, including a new pond south of 112th and stormwater infrastructure through Buffalo Run Golf Course; and
- (e) Conveyance of property to the City for expansion of the parking lot for Buffalo Run Golf Course, and construction of the parking lot.⁵

Many of these improvements preemptively addressed the Public Works Department’s July 21, 2021 and October 15, 2021 comments regarding mitigation of traffic impacts associated with the new high density residential development contained in the Application.

Oakwood also provided written responses to the Public Works Department’s comments on October 15, 2021. Finally, on November 29, 2021 – 18 months after submittal of the Sketch Plat - Oakwood was informed the Application was scheduled for public comment, the last step prior to administrative approval of a final plat. The public comment deadline was set for December 13, 2021, with final administrative approval scheduled on December 14, 2021.

On December 6, 2021, at a regular City Council meeting, the Application was considered for call up for public hearings pursuant to LDC §21-3241(4)(d). City Staff recommended approval

³ The cart path will eventually be placed into a separate tract to be owned and maintained by the Reunion Metro District.

⁴ The school fees exaction requirement contained in LDC §21-9200 was satisfied through an earlier plat approval.

⁵ At the City’s request, Oakwood facilitated the City’s purchase of planning area 7-A-2 from the property owners (Fulenwider and Shea), at cost (\$143,800) and constructed the Buffalo Run Golf Course parking lot expansion as part of the 112th Avenue improvements. The sale closed in August 2021, but the City requested the property deed be placed in escrow pending execution of a Final Plat for Filing 38, creating a legal tract, eligible for transfer. The City, however, commenced use of the parking lot in spring 2021 prior to closing. Oakwood’s accommodation of the City’s request eliminated 1.14 acres of developable area from Filing 38, equating to approximately 10 Carriage House lots.

of the Application,⁶ and after extensive discussion, the motion to call up the Application for public hearings failed.

At the conclusion of the public comment period, the City had received 109 comments. Only fourteen comments were from the neighborhoods surrounding Filing 38, and of those fourteen, only four (4) comments were from property owners within 300 feet of Filing 38. None of the comments specifically requested a public hearing.

On December 16, 2021, the City’s Community Development Director informed Oakwood the Application would be referred to the Planning Commission and City Council for public hearings.⁷ On February 10, 2022, the City’s Planning Commission held a public hearing on the Application and voted 3-2 to recommend City Council approve the Application.

Final Plat Approval Process

Section 21-3241(2)(a) of the LDC provides, “except where public hearings are required pursuant to paragraph 4, the director and DRT review applications for final plats and the director is authorized to approve, approve with conditions, or deny such applications based upon the approval criteria outlined below.”⁸ (“Approval Criteria”). In the case of the Application, the DRT reviewed the Application, determined it met the Approval Criteria, started the public comment period, and scheduled administrative approval.

The City’s Community Development Director and DRT are subject matter experts on the Approval Criteria and the LDC, in general. Their expertise is reflected by the fact the standard LDC process for final plat approval is an administrative process. The LDC only allows for plat approval to become a quasi-judicial process under very specific circumstances.⁹

Public Hearing Call-up Process

City Council - LDC §21-3241(4)(d) permits City Council to request a final plat be reviewed through a quasi-judicial public hearing process as long as the request is made before the date scheduled for department approval. While Council need not provide a basis for requesting a public hearing process, Council nonetheless must always act in an unbiased and impartial manner,¹⁰ free from any conflicts of interest¹¹ and uninfluenced by any ex parte contact.¹²

For the Application the “date scheduled for department approval” was December 14, 2021. As mentioned above, City Staff provided Council its recommendation of approval on December 3, 2021, outlining exactly why the DRT – the subject matter experts – determined the Application

⁶ See, Exhibit B – December 03, 2021 Staff Communication to City Council.

⁷ See, Exhibit C - December 16, 2021 Jim Tolbert Plat Determination Email.

⁸ See, LDC §21-3241(3).

⁹ See, LDC §21-3241(4).

¹⁰ See, City Council Policy #CP-14.A. and #CP-20.E.

¹¹ See, City Council Policy #CP-14.C.

¹² See, City Council Policy #CP-14.J.

meets all Approval Criteria. During Council’s December 6, 2021 regular meeting, after extensive discussion, Council failed to call up the Application.

Property Owners within 300 feet - In addition to Council’s opportunity to call up a final plat for the public hearing process, LDC §21-3241(4)(a) provides property owner’s within 300 feet of the property to be subdivided the right to submit a written objection that forms the basis for review of a final plat pursuant to the public hearing process. Such an objection, however, must be “directly related to the proposed subdivision”. Section 4(a) further provides, “issues unrelated to the subdivision will not be considered valid objections”.

Despite having an opportunity to call up the Application as part of Council’s failed attempt, and despite living almost a mile away from Filing 38, Council Member Susan Noble felt compelled to publish a “Public Service Announcement” on the Reunion Facebook page about the Application addressing the public’s opportunity to “comment on the project, or request a public hearing or denial or approval”.¹³ On December 13, 2021, the last day for public comment, Council Member Noble felt further compelled to submit a comment on the Application, this time emailing City Manager Roger Tinklenberg with ten (10) reasons why Council Member Noble felt the Application does not meet the Approval Criteria.¹⁴ While Council Member Noble’s social media post was posited as a “Public Service Announcement”, it was clear her intent was to cause the Application to be called up for public hearings and subvert the decision of the entire Council, the body politic of the City, on which Council Member Noble serves. Further, rather than emailing Jennifer Jones, the planner designated to receive public comments on the Application, Council Member Noble emailed the City Manager, from her official email account, and concluded by stating, “I would prefer that the community have the opportunity to address adverse impacts at a public hearing.”^{15,16} Clearly, Council Member Noble improperly attempted to influence the City’s decision to call up the Application for public hearings during the public comment period.¹⁷

The City eventually received 109 comments; most, if not all, arriving after Council Member Noble’s Facebook post. Only four (4) were from residents within 300 feet and none requested a public hearing.

Community Development Director – Finally, LDC §21-3241(4)(c) allows the Community Development Director the authority to determine a final plat should be reviewed through a public hearing process. After reviewing all comments, and as further discussed below, it’s clear the subjects of the comments - Schools, High Density Use, Grocer/New Commercial Development, Traffic and Views – are either not part of the Approval Criteria or address Approval Criteria the DRT already determined were met by the Application. Despite the Application’s clear conformance with the Approval Criteria, on December 16, 2021, the Community Development

¹³ See, Exhibit D - Reunion Facebook Post by Susan Shirk Noble (December 13, 2021).

¹⁴ See, Exhibit E - Susan Noble email, dated December 13, 2021.

¹⁵ See, Exhibit E - Susan Noble email, dated December 13, 2021.

¹⁶ While City Council Policy #CP-17.A. requires City Council to direct all contacts with City administrative staff through the City Manager, Mr. Tinklenberg serves at the pleasure of Council.

¹⁷ In a separate letter to the Interim City Attorney, Oakwood has requested that Council Member Noble recuse herself from consideration of the Application at the March 7, 2022 public hearing due to her prejudgment of the Application and lack of impartiality, as required by City Council Policy #CP-22.

Director informed Oakwood the Application would be referred to the Planning Commission and City Council for public hearings based on public comments.¹⁸ One of those comments was filed by Mr. Steven Douglas.¹⁹

Planning Commission Hearing

On February 10, 2022, the City’s Planning Commission held the first public hearing on the Application. Despite having eight (8) appointed Members, Mr. Steven Douglas, an alternate, was necessary to ensure a complete five (5) member Commission for the hearing. Oakwood was unaware Mr. Douglas would be serving on the Planning Commission for the Application’s hearing until just before the Commission opened its meeting.

Mr. Douglas owns two properties in Reunion; one approximately 1.25 miles from Filing 38 and the other approximately 1.4 miles from Filing 38. Despite knowing he could potentially be called to serve on Planning Commission for a public hearing on the Application, and his spouse, Council Member Kristi Douglas, would be a quasi-judicial decision maker if the Application was called up for public hearings, Mr. Douglas submitted comments during the public comment period in opposition to the Application.²⁰ In Mr. Douglas’s email during the public comment period, he listed multiple reasons why he objected to the Application, most of which were not related to the Approval Criteria, but all of which reflect his prejudgment of the Application.²¹ Like Councilmember Noble, Mr. Douglas also posted a Facebook comment during the public comment period.²² Mr. Douglas’s post, however, didn’t try to hide under the cover of a “Public Service Announcement”; rather he urged residents to “Stop Adverse Growth” and encouraged “Movement: Meet the Deadline to Demand No High-Density Residential Development at the SE Corner of 112th & Chambers”.

Oakwood objected to Mr. Douglas serving on the Planning Commission and requested he recuse himself. Due to the lack of notice of Mr. Douglas’s service, Oakwood did not have copies of Mr. Douglas’s Facebook post and email, and Mr. Douglas insisted he had no “financial interest and no prior information” so should not be recused as having a conflict of interest pursuant to Council Policy CP-14.²³ Oakwood vehemently disagrees with Mr. Douglas’s self-serving statement regarding “no prior information”. Not only did he have sufficient prior information about the Application to post his Facebook comment and send an email listing the reasons why the Application should be denied, he presented these same reasons as the basis for his vote against the Planning Commission’s recommendation of approval.²⁴ Clearly, Mr. Douglas did have “prior

¹⁸ See, Exhibit C - December 16, 2021 Jim Tolbert Plat Determination Email.

¹⁹ See, Exhibit F – Steven Douglas email, dated December 13, 2021.

²⁰ Mr. Douglas also spoke in opposition to the Application at the December 6, 2021 City Council meeting where the call-up attempt failed.

²¹ See, Exhibit F – Steven Douglas email, dated December 13, 2021 (check citation).

²² See, Exhibit G – Reunion Facebook Post by Steve Douglas (December 13, 2021).

²³ See Exhibit H – February 10, 2022 Planning Commission Meeting Minutes, page 4.

²⁴ In his December 13, 2021 email, Mr. Douglas listed “No - Cluster Design”; “Build in an equivalent configuration to what already exists in the area”; and “There is high traffic using a two-lane road with no road widening through this corridor” as his objections to the Application, while his stated reasons for voting against a recommendation of

information” and prejudged the Application. Therefore, he had a duty to recuse himself from consideration of the Application. His failure to do so denied Oakwood its right to a fair and impartial Planning Commission hearing and further tainted Council Member Kristi Douglas’ ability to remain impartial at the upcoming City Council hearing on the Application.^{25,26}

Regardless of Mr. Douglas’s improper conduct, the Planning Commission voted 3-2 to recommend approval of the Application by City Council, based on Planning Commission’s determination the Application meets all Approval Criteria.

Final Plat Approval Criteria

LDC §21-324(3) provides nine (9) criteria that must be met for final plat approval, including consistency with any approved rezoning, concept plan or PUD Zone Document and the intent of the specific zoning district in which the plat is located. To be approved a final plat cannot violate any state, federal, or local laws, regulations or requirements, and must comply with all applicable City standards regarding the creation of lots or patterns of lots.

A final plat must also provide a general layout of lots, roads, driveways, utilities, drainage facilities and other services in a way that minimizes the amount of land disturbance, maximizes the amount of open space, and preserves existing trees, vegetation, and riparian areas. The final plat must not result in a substantial or undue adverse effect on adjacent properties, traffic conditions, parking, or public improvements, or to the extent there is an adverse effect, the applicant must show it has been or will be mitigated to the maximum extent feasible.

Additionally, there must be adequate and sufficient public safety, transportation, utility facilities and services, recreation facilities, parks, and schools available to serve the final plat area, while maintaining sufficient levels of service to existing development. Prior to approval, a development agreement must be entered into between the City and the applicant which addresses the construction of all required public improvements and finally, any proposed phasing plan for development of the subdivision must be rational in terms of available infrastructure capacity.

The Application is consistent with the approved PUD Zone Document and the intent of the Specific Zone District.

Consistency with the Reunion PUD Zone Document

In late 2017, Oakwood became the master developer of the Reunion development (“Reunion”). At that time, approximately 1700 acres of land in Reunion, including what’s now

approval were, “the general layout is not right”; “this will not compliment residential that is built”; and “should plan roads for this area first”.

²⁵ See, Exhibit I – City Council Policy #CP-22.

²⁶ In a separate letter to the Interim City Attorney, Oakwood has requested that Council Member Kristi Douglas recuse herself from consideration of the Application at the March 7, 2022 public hearing due to her contact with Mr. Steven Douglas, her husband, as required by City Council Policies #CP-14 and #CP-22.

known as Filing 38. The development of Filing 38 was subject to the requirements of the original 2001 PUD Zone Document, (the “Reunion PUD”)²⁷.

After becoming the Reunion master developer, Oakwood worked with the City to amend the Reunion PUD to account for changed economic conditions since 2001 while maintaining alignment with the City’s Comprehensive Plan²⁸ (the “Amended Reunion PUD Application”). No changes to Filing 38 were necessary, since its Mixed Use zone district designation, lot sizes and densities still aligned with the high density residential designation on the Comprehensive Plan Future Land Use Map, and the community’s needs.

In its report, City Staff acknowledged the Amended Reunion PUD Application land use table represented a *consensus* between Oakwood and the City as to appropriate land uses.²⁹ In the case of Filing 38, the consensus was High Density Residential, which is the type of use represented by the Cluster Homes in the Application.

Consistency with the Intent of the Mixed Use Zone District

The Amended Reunion PUD designates Filing 38 as a mixed use (“MU”) zone district and provides a land use table indicating allowed uses in MU zone districts, and a Land Use Schedule providing allowable densities of residential and non-residential development in each Reunion Village.³⁰ The Cluster Home is an allowed use in the MU zone district and the residential densities for the Cluster Homes in the Application are in compliance with the Land Use Schedule.

Finally, the Amended Reunion PUD contains residential and non-residential development standard matrixes. Exhibit J provides a detailed Residential Land Use Development Standards Matrix showing a comparison of the Application with each of the bulk and performance standards set forth in the Amended Reunion PUD. The Application meets or exceeds each one of these standards, showing the Application is clearly consistent the intent of the MU zone district.

As discussed above, in its report on the Amended Reunion PUD Application, City Staff acknowledged the proposed land use table represented a *consensus* between Oakwood and the City as to appropriate land uses. In the case of Filing 38, the consensus was High Density Residential, which is the type of allowed use represented by the Cluster Homes in the Application. Thus the Application is consistent with the Amended Reunion PUD and meets the intent of the Mixed Use Zone District.

Several comments received during the public comment period and at the Planning Commission hearing objected to High Density Residential uses in this location as not compatible

²⁷ See, Buffalo Hills Ranch PUD Zone Document, recorded October 27, 2000 at Reception No. C0725646; Reunion PUD Zone Document Amendment #1, recorded December 9, 2002 at Reception No. C1064716, and December 17, 2002 at Reception No. C1068494.

²⁸ See, Exhibit K – Reunion PUD Narrative, page 1.

²⁹ See, Exhibit L – Reunion PUD Staff Report – Planning Commission, page 8.

³⁰ See, Exhibit M - Reunion PUD Zone Document.

with surrounding single-family homes.³¹ As discussed above, however, the Amended Reunion PUD allows exactly the type of High Density Residential Cluster Homes that are proposed in the Application. Further, the Amended Reunion PUD contains no minimum amounts of nonresidential development in a MU zone district. Therefore, objections regarding the need for another grocery store or additional commercial development in Reunion are not relevant to this Application and are not supported by the Comprehensive Plan’s Future Land Use designation for this property as High Density Residential. Finally, objections based on interference of the proposed Cluster Homes with adjoining property owners’ views are unsupported, since preservation of views is not an Approval Criteria, and there is no common law right to a view in Colorado.³²

The Application does not violate any state, federal, or local laws, regulations or requirements, and complies with all applicable City standards regarding the creation of lots or patterns of lots.

No evidence exists to suggest the subdivision violates any state, federal, or local laws, regulations or requirements as evidenced by the City Staff’s recommended approval of the subdivision. In addition, the City’s Public Works department approved the Filing 38 Grading, Erosion and Sediment Control (“GESC”) plans containing drainage facilities designed in accordance with City standards.

Construction documents for these facilities and road construction were also approved by the City. While the wet utility design for Filing 38 is under final review by the South Adams Water and Sanitation District, no referral agencies have provided unresolved objections to the Application.

Finally, despite Mr. Douglas’s stated concerns with Cluster Home lot layout, the design of these lots comply with all City standards and do not create patterns of lots that make compliance with the City’s standards difficult or infeasible. In fact, use of the Cluster Home lot layout reduces the number of driveway curb cuts, allowing for more on-street parking than in traditional single-family home developments.

The Application provides a general layout that minimizes land disturbance, maximizes open space, and preserves existing trees, vegetation and riparian areas.

The site contains no existing trees, shrubs, or riparian areas to preserve, and grading plans were approved by the City that minimize the amount of land disturbance required to adequately drain the site. Open space is maximized through the use of the Cluster Home lot layout resulting in a 0.624 acre neighborhood park, with a total of 4.8 acres of open space, and new trail connections for improved access to existing open space.

³¹ See, Exhibit H – February 10, 2022 Planning Commission hearing minutes.

³² *JJR I, LLC v. Mt. Crested Butte*, 160 P.3d 365, 370 (Colo. App. 2007).

The Application does not result in substantial or undue adverse effects on adjacent properties, traffic conditions, parking, or public improvements that are not mitigated to the maximum extent feasible.

LDC §21-11200 defines “adjacent” as “to physically touch or border upon, or to share a common property line or border. Adjacent shall include properties or uses that are separated by a street, sidewalk or other publicly-dedicated right-of-way, canal, or railroad right-of-way.” In the case of Filing 38, the only properties that are adjacent are the Buffalo Run Golf Course on the south and east sides, undeveloped land owned by Oakwood on the west side; the Downey Subdivision in unincorporated Adams County on the northwest corner and The Villages at Buffalo Run East on the north.

While the 300 foot limitation in LDC §21-3241(4)(a) for a property owner-based plat call-up does not use the word “adjacent”, clearly the intent was to provide an opportunity for “adjacent properties” to let the City know of any adverse effects they feel are not mitigated to the maximum extent feasible. As previously discussed, only four (4) comments came from “adjacent” properties within the 300 foot buffer. Three of those comments came from one residence. More importantly, the objections raised –inadequate regional infrastructure, inadequate schools (3), lack of grocery stores (4) and restaurants (2), objections to high density and concerns views (2) either are not applicable to the Approval Criteria, have been mitigated to the maximum extent feasible by the Application, or rest solely with the City and 27J to address.

Specifically, regional drainage facilities were previously constructed on the northeast corner of Filing 38 as part of the 112th Avenue improvements, and regional drainage and sanitary sewer infrastructure was constructed west of Chambers Road as part of a 2021 Reunion Metro District project. Further, during the Application review process, construction of 112th Avenue - on the north side of Filing 38 - was completed. This improvement was part of a joint project between the Reunion Metro District and the City, which will accommodate additional traffic created by the planned development of Filing 38. The 112th Avenue project included intersection improvements and a new traffic signal at 112th Avenue and Chambers Road. The Reunion Metro District also initiated design of Chambers Road from 112th Avenue to 104th Avenue and recently held a design kick-off meeting with the City’s Public Works Department. Final design plans should be completed and approved in 2022 and construction could commence in 2023, if the City agrees to enter into a cost-sharing agreement with the Reunion Metro District.

As noted above, the Amended Reunion PUD and the City’s Comprehensive Plan Future Land Use Map specifically identified Filing 38 as High Density Residential and provided development standards to address potential impacts and views are not a protected property right. Therefore, development of Cluster Homes at the proposed densities will not result in any substantial or undue adverse effect on adjacent properties that has not already been mitigated.

There are adequate and sufficient public safety, transportation, utility facilities and services, recreation facilities, parks, and schools available to serve the final plat area, while maintaining sufficient levels of service to existing development.

During the Amended Reunion PUD Application process, all appropriate referral agencies were notified of the proposed amendments to the Reunion PUD and provided input on that application. Through the City process any concerns with the adequacy of public safety, transportation, utility facilities and services, recreation facilities, parks, and schools were addressed in the PUD Zone Document for each of the referral agencies.

Compatibility of the revised school sites with the intent of the comprehensive plan was also addressed in the Amended Reunion PUD application.³³ At that time, Public School District 27J (“27J”) stated it, “supports the needs (sic) for various school sites within the development.”, and that “representatives from 27J have been meeting with members from Oakwood Homes during the last year to discuss issues related to school siting³⁴.

For schools and parks, specifically, the Comprehensive Plan provides for dedications of sites within walking distance of surrounding neighborhoods. District 27J supported the need for various school sites throughout the Reunion development and has worked with Oakwood to identify appropriate school sites.

LDC §21-9200(1) requires payment of a school fee for all new residential development located within the City. LDC §21-9200(2) provides the calculations for determining the land, in acreage required for dedication, and LDC §21-9200(3) provides the method for satisfaction of the school fee. Specifically, LDC §21-9200(3) states the school district affected by the proposed development plan, in this case 27J, should at the earlier of a PUD Concept plan, PUD sketch plan or PUD zone document application indicate its preference for a land dedication or fee-in-lieu payment.

If a land dedication is desired by the school district and City Staff determines a land dedication is appropriate, subsection (3)(a) requires the developer to designate on the final plat the land that will be dedicated for future school use. If fees-in-lieu are determined to be the appropriate means of satisfying the school fee, such fees are paid to the City at the time of a final plat.

In the case of the Amended Reunion PUD, 27J determined land dedication for schools was the appropriate means of satisfying the school fee. The Application, however, contains no parcel designated for school use, therefore, no dedication of land to 27J is necessary for approval of the Application. While there are no school site dedications included in the Application, school dedications will be made in future subdivision plats for Reunion Ridge (Village 9), as agreed to by 27J³⁵. Additionally, Oakwood is in active discussions with the City and 27J regarding dedication of a 48.6 acre parcel in Village 10 for a future high school.

³³ See, Exhibit K – Reunion PUD Narrative, page 3.

³⁴ See, Exhibit L – Reunion PUD Staff Report – Planning Commission, page 9.

³⁵ The proposed school site is south of Filing 1 and east of Potomac Parkway.

The objections regarding schools address the adequacy of funding for construction of new school buildings and hiring of school teachers and staff, not the adequacy of land or cash-in-lieu payments for school sites. The areas of “adequate schools” raised by the objectors are not within the authority or control of the City and do not form the basis for determining whether the Approval Criteria are met.

For traffic purposes, this site was originally planned as part of Village 7 in the Reunion PUD. Updated traffic studies were provided to the City and approved by Public Works prior to advertisement of the Application for public comment.³⁶ The SACFD requires at least two access points, and as noted above, access to the subdivision will occur from 112th Avenue on the north and Chambers Road on the west. Both access points will be full movement intersections to the adjacent arterials.

At the time of the public comment period there were no unresolved referral agency comments regarding infrastructure and during the review process City Staff provided no comments to Oakwood regarding adequacy of schools. Therefore, City Staff found this criteria was met when the Application was scheduled for public comment.

The objections of residents within 300 feet largely go to regional infrastructure, not infrastructure required for approval of the Application. As the master developer, Oakwood is extremely interested in partnering with the City to ensure adequate regional infrastructure is built to connect all of Reunion. After Council allowed the CDA to expire on December 17, 2021, however, there is no mechanism for such a partnership, and infrastructure development will, by necessity, be minimal, on a plat by plat basis and based on the City’s capital improvements budget until a new agreement can be reached.

A development agreement has been entered into between the City and Oakwood, which addresses the construction of all required public improvements for the F38 Final Plat, which will be constructed in two phases.

On December 17, 2001, the CDA was entered into between the City and Oakwood’s predecessors with an expiration date of December 17, 2021.³⁷ The CDA addressed construction of all required public improvements, including regional improvements. Due to the inordinate amount of time required for the City’s review and approval of the Application – over 18 months – the CDA expired prior to the plat call-up, and Oakwood was forced to enter into a standalone development agreement for this Application. The Filing 38 Development Agreement was approved as to form by the City Attorney and Staff, executed by Oakwood and delivered to the City prior to the Planning Commission hearing on the Application. Finally, the development will occur in two phases from east to west, and as noted above, sufficient transportation, drainage, and utility infrastructure capacity exists to serve each phase of the subdivision.

³⁶ See, Exhibit N – Oakwood traffic engineer’s responses to specific questions about the traffic study raised by an objector at the Planning Commission hearing.

³⁷ See, Consolidated Development Agreement for Buffalo Hills Ranch PUD, recorded January 23, 2002 at Reception No. C0917475.


Conclusion

As discussed above, the Application clearly meets the Approval Criteria. Further, the concerns expressed by the property owners within 300 feet of Filing 38, which formed the basis for the plat call-up, as well as those of the residents who testified at the Planning Commission hearing, and Planning Commissioners Douglas and Van Dijk, are either not part of the Approval Criteria, or a misapplication of the Approval Criteria.

For the reasons discussed above, Oakwood respectfully requests the City Council approve the Application. Oakwood and I look forward to the public hearing on March 7th and answering any questions you may have at that time.

Very truly yours,

SPENCER FANE LLP



Michelle L. Berger

Cc: Charlie Leder, Esq. Spencer Fane LLP
Bruce Rau, President, Land, Oakwood Homes
Scott Thorson, Chief Operating Officer, Oakwood Homes
Jim Hayes, Vice President of Land Acquisition and Entitlements, Oakwood Homes