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April 29, 2022

Sent via: email and US Mail, Certified, Return Receipt requested

Mr. Jim Tolbert
Community Development Director
City of Commerce City
7887 East 60th Avenue
Commerce City, CO 80022
jtolbert@c3gov.com

***Re: Reunion Ridge, Filing 1, PA-1 Application for Lot Line and Terminology Adjustments –
Community Development Director Decision – Oakwood Homes Appeal***

Dear Mr. Tolbert,

On August 9, 2021, Clayton Properties II, Inc. dba Oakwood Homes (“Oakwood”) submitted an application for Lot Line and Terminology Adjustments for Tracts C and X of Reunion Ridge, Filing 1, PA-1 (the “Application”). On April 19, 2022, Oakwood received a letter from Ms. Jennifer Jones, on your behalf, informing Oakwood of your decision the Application for a lot line adjustment for Tract X could be processed, but the requested terminology adjustment for Tract C could not be processed and was therefore denied (the “Decision”). Ms. Jones further informed Oakwood it could either resubmit the Application as a new application for a final plat of the entire PA-1 area, or appeal the Decision pursuant to Section 21-3245(3) of the Commerce City (“City”) Land Development Code (“LDC”).

Spencer Fane LLP represents Oakwood regarding the Application, the Decision and this appeal of the Decision (the “Appeal”). As discussed below, the Decision is incorrectly based on criteria contained in LDC §21-3244(a), that applies to Lot Line Adjustments, not Terminology Adjustments. Further, the Application meets all criteria contained in the LDC for terminology adjustments. Therefore, the Decision was a misinterpretation of the LDC, which resulted in an incorrect denial of the Application, and which exceeded the City’s jurisdiction to regulate land uses within the City. Further, it appears the LDC was applied to the Application in a discriminatory, arbitrary and capricious manner. By this letter, Oakwood is appealing the Decision to the Planning Commission and City Council as provided for in LDC 21-3245(3).

History of Reunion Ridge Filing 1 Plat –

The Reunion Ridge Filing 1 Plat was administratively approved by City Staff on January 10, 2020 and recorded on January 17, 2020. At that time, Filing 1 was subdivided into several Parcels. Parcel 2 was further subdivided into single family Lots, while Parcels 1, and 3 were divided into Tracts. Parcel 1 contained several tracts, including Tract C, which was designated as “Future Development”, and Tract X, which was designated as “Open Space, Utilities, Drainage, Park”, in the Land Summary Chart.

Tracts C and X are considered PA-1. Tract X is planned to be a detention pond. The Application consisted of a requested Lot Line and Terminology Adjustment to retitle Tract C as a Lot and to adjust the lot line between Tracts C and X to reflect the final detention pond size. Oakwood plans to develop Tract C as a single lot with a group of single family for-rent homes on such lot. Therefore, no further subdivision of Tract C is necessary for Oakwood’s planned future development, which is a use by right under the Reunion Planned Unit Development (the “Reunion PUD”).

Applicable Land Development Code Provisions –

Definitions - LDC §21-11200 contains defined terms used in the land development code. Subsection (324) defines a “Parcel” as “a plot of land of any size that may or may not be subdivided or improved.” Subsection (468) defines a “Tract” as “a unit of subdivided land not occupied or designed to be occupied by a primary building, such as open space or drainage.” Subsection (248) defines a “Lot” as “a unit of subdivided land occupied or designed to be occupied by a primary use or building or a group of such buildings and accessory buildings.” (*emphasis, added*).

Lot Line and Terminology Adjustments - LDC §21-3244 provides an administrative process for adjusting lot lines and adjusting terminology on a previously recorded plat. While the criteria for a lot line adjustment includes a requirement in subsection (3)(a) that “the adjustment does not increase the number of lots or parcels or create new lots or parcels”, this criteria does not apply to terminology adjustments, and there are no criteria contained in this section for terminology adjustments.

City’s Denial -

Oakwood and the City have been working on the Application for approximately one year. Staff accepted the Application and never informed Oakwood the Lot Line and Terminology Adjustment process was not the correct development process under the LDC to accomplish the requested adjustments to the previously recorded Reunion Ridge Filing 1 plat. City Staff encouraged Oakwood to use this process, and in fact, the City’s “Facts to Know regarding Lot Line or Terminology Adjustments” (the “FAQs”) provides, “[t]erminology adjustments refer to the process for retitling lots from platted tracts to prepare for development. No additional *parcels* are created through a terminology change.” (*emphasis, added*). On April 19, 2022, however, Oakwood received a letter signed by Jennifer Jones, on your behalf, stating the Lot Line and Terminology Adjustment process could not be used to retitle Tract C as a lot because, pursuant to LDC §21-3244(3)(a), “the adjustment cannot increase the number of lots or parcels or create new lots or parcels.” The letter provided Oakwood the options of platting F1 PA-1 or appealing your decision within ten (10) days, pursuant to LDC §21-3425(3).

Basis for Oakwood's Appeal -

The basis for Oakwood's appeal is actually quite simple in that the criteria you cited for the Decision applies to Lot Line Adjustments, but not Terminology Adjustments. Further, there is no approval criteria for Terminology Adjustments contained in LDC §21-3244. Therefore, the Decision misapplied the LDC criteria resulting in an error in your decision to deny the Application.

While the criteria cited in the Decision makes sense for Lot Line Adjustments, since the City does not want a property owner to further subdivide a property using a lot line adjustment, this is not what Oakwood is doing. Oakwood is simply correcting the terminology on the Reunion Ridge Filing 1 Plat to retitle a Tract as a Lot, so the name of the Parcel – as a Lot - matches its designated use in the Reunion Ridge Filing 1 Plat Land Summary Chart¹ and its permitted use in the Reunion Ridge PUD. No additional parcels are being created by the Application.

Also, this Parcel could have been designated as a Lot during the initial Reunion Ridge Filing 1 plat, since it was designated for future development, which meets the definition of a Lot. The fact Oakwood waited to determine how Tract C would be developed and whether further subdivision of Tract C was necessary to accomplish the desired development is irrelevant to whether a Terminology Adjustment is the appropriate process. Oakwood neither desires nor needs to further subdivide Tract C to accomplish the planned development, therefore a plat application is unnecessary.

Further, the subdivision process is to ensure compliance with the statutory requirement that no parcel of land may be subdivided into less than 35 acre parcels without going through a subdivision process, for purposes of the legal conveyance of lots. Here, Oakwood will not be conveying any lots so no further subdivision is required. Therefore, any requirement by the City that Oakwood submit a plat application to develop this Parcel would be a further misapplication of the LDC and exceed the City's jurisdiction to regulate land use in the City.

Finally, based on the FAQs, it is clear the City designated the Terminology Adjustment as the proper process for retitling Tract C as a Lot, and it is Oakwood's understanding the City has approved the use of a Terminology Adjustment by other property owners and developers for just such a purpose. To the extent this is true, and the City applied the LDC to the Application in a discriminatory manner, such a decision is an arbitrary and capricious decision not based on competent evidence in the record of the Application, and for which the City is subject to a reversal of the Decision by a District Court and such other further action Oakwood deems necessary.

Appeal Process -

Pursuant to LDC §21-3425, upon receipt of the Appeal, you, as the CD Director, are to forward the documents constituting the record of the action to the appropriate appellate body, in this case the Planning Commission and then the City Council. Oakwood is hereby requesting a copy of such record, including copies of any and all correspondence between, or directions received by, you, your staff and

¹ See, LDC §21-11200 (248) – Lot shall mean a unit of subdivided land occupied or designed to be occupied by a primary use or building or a group of such buildings and accessory buildings.

Mr. Jim Tolbert

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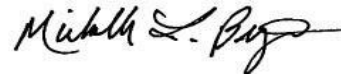
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any other parties within or outside the City, other than your legal counsel, and including the Mayor and any City Council members. Oakwood is also requesting a copy of any rules of procedure adopted by the Planning Commission or City Council for the administration of appellate matters, adopted pursuant to LDC §21-3445.

Oakwood and I look forward to promptly receiving the requested information and the schedule for the required Planning Commission and City Council hearings. Please don't hesitate to have the City Attorney contact me should you have any questions regarding this Appeal.

Very truly yours,

SPENCER FANE LLP

A handwritten signature in black ink, appearing to read "Michelle L. Berger".

Michelle L. Berger

cc: Bruce Rau, Oakwood Homes, President, Land, BRau@OakwoodHomesCo.com
Scott Thorson, Oakwood Homes, Chief Operating Officer, SThorson@OakwoodHomesCO.com
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