

CLAYTON PROPERTIES GROUP II, INC.
4908 Tower Road
Denver, Colorado 80249

L.C. FULENWIDER, INC.
1125 17th Street, Suite 2500
Denver, Colorado, 80202

December 28, 2020

City of Commerce City
Mayor Ben Huseman
And Members of City Council
7887 East 60th Avenue
Commerce City, CO 80022

Mayor and City Council,

Clayton Properties Group II, Inc. dba Oakwood Homes ("Oakwood") and L.C. Fulenwider, Inc. and its affiliates ("Fulenwider") appreciate this opportunity to respond to (a) the City's recent feedback on Oakwood's Village Plan – Reunion Ridge South (the "Village Plan") submittal and (b) the proposed amendments to the City Land Development Code posted on December 23, 2020 regarding oil and gas regulations.

In considering this letter, please keep in mind that Oakwood and Fulenwider have worked cooperatively with the City on an on-going basis to ensure the balanced planning and development of Reunion, beginning with the Buffalo Hills Ranch PUD Zone Document in 2000 and continuing with the 2001 Consolidated Development Agreement and, most recently, the Reunion PUD Zone Document, Amendment No. 5. approved by the City in 2019. We understand the importance of considering oil and gas operations in land development and would like to continue with our joint spirit of cooperation in meeting these challenges in a manner consistent with recent regulatory trends, and current best practices for the industry and the vested property rights of Oakwood and Fulenwider ("vested property rights").

We appreciate the time you and your staff have spent discussing the potential regulatory changes with us. However, we are concerned that the City's comments regarding the application of the new City regulations to our planned developments do not appropriately reflect our vested property rights. It is these vested property rights, rather than potential requirements of future City code changes, that govern the City's review of the Village Plan and other development plans arising out of our vested property rights in Reunion, including any future development plans for Reunion PUD Village 1-Reunion Center (collectively, the "Development Plans"). Further, the City's consideration of the regulatory changes should also take into account the vested property rights of owners affected by those changes.

In that regard, we note that the new Colorado Oil and Gas Conservation Commission (“COGCC”) rules are not applicable to our Development Plans. These rules apply to the permitting and location of oil and gas operations, not the location of home sites for development with residential structures. Therefore, the new COGCC regulations do not govern the siting of residential lots under our Development Plans. In addition, we do note that Section 21-6280 establishes reverse setbacks from well sites applicable to developers when platting lots. However, under Section 21-6280, the setback rules apply only to permitted well sites. To our knowledge, the Extraction Oil & Gas, Inc. “Extraction”) wells have yet to be permitted and, therefore, Section 21-6280 on reverse setbacks does not currently apply to the City’s review of our Development Plans. We are in any event providing the analysis below to demonstrate the adverse impacts to our development as if the Extraction wells were permitted.

With regard to the proposed City code regulations released on December 23, 2020, we believe that these may be applied to our Development Plans only to the extent they do not interfere with our vested property rights and the vested property rights of other landowners. This is, in fact, recognized by the City Code and consistent with state common law and statutory law.

The source and scope of the vested property rights applicable to our Development Plans are derived from two primary sources: (i) formal entitlement approvals granted by the City for Reunion as described below and (ii) several private agreements between the Fulenwider and Extraction, two of which have also been executed by Oakwood. The City has been a partner in the negotiations on these matters and the Reunion Ridge community has been designed around these agreements and current City and State oil and gas ordinances. Also, Oakwood and Fulenwider have made substantial investments in engineering and planning documents based on this coordination with the City. As discussed in more detail below, the City’s interpretation of the potential future requirements, as expressed in the comments, are a substantial impairment to our vested property rights. The appropriate basis for review continues to be the standards set forth in the entitlements and private agreements described below.

With regard to the entitlements, there have been several formal entitlement approvals granted by the City for Reunion, as follows:

Consolidated Development Agreement for Buffalo Hills Ranch PUD dated December 17, 2001
Reunion Overall PUD Amendment – Approved March, 2019
Reunion Metro District Service Plans/IGAs – Approved November, 2019
Reunion Natural Resources District
Reunion Ridge Metropolitan District Nos. 1-4
Reunion Ridge Filing No. 1 Final Plat– Approved March, 2020 (included herewith)
Includes Potomac Parkway alignment – access to oil and gas site
Grading, Erosion and Sediment Control Plan for Reunion Ridge Filing No. 1-Approved December 2019

It is important to note that the City-approved Reunion Ridge Filing No. 1 Final Plat actually provides rights for the location and development of the subject oil and gas site, along with an adjacent roadway

for access thereto, on which we have relied. Tracts "Y" and "Z" shown on such plat are actually designated thereon for oil and gas operations use. In addition, the City has accepted the dedication on the plat of the adjacent public right of way and has issued permits for grading work in this area, which is now on-going. During the approval process for the Reunion Ridge Filing No. 1 Final Plat, the City required Oakwood to design Potomac Parkway from 104th Avenue to 96th Avenue so that the edge of the right-of-way aligned with the boundary of the oil and gas site to ensure a 400-foot setback to the nearest structure.

Further, based on the plat approval, Fulenwider has taken additional steps to plug and abandon four well sites in Reunion for the express purpose of consolidating the well field in the approved area located in the southwest corner of the community. This not only allows for superior community design, but represents substantial investment by Fulenwider in implementing the overall mineral extraction plan.

Additionally, the City's comments are inconsistent with the terms of multiple agreements between development parties and the mineral operator, which agreements were negotiated in partnership with the City. In particular, the Surface Use Agreement ("SUA") among Fulenwider, Oakwood and Extraction establishes a 1000-foot buffer zone for platting of lots during the initial four-year period, measured by the distance between the well pad and the nearest existing or planned residential unit, as opposed to the parcel boundary. The measurement for the 400-foot setback was always intended to be measured from the well pad and not the fence/property line.

Under the proposed City regulations, the phased reverse setbacks applicable to land developers under Section 21-6280 and the oil and gas facility 1000-foot setback applicable to operators under Section 21-5266(6) are both measured from the edge of the "Production Site" to the residential unit boundary. The City definition of "Production Site" includes any fenced or enclosed area. In applying these measurement standards to the Village Plan, Oakwood would not be able to plat lots according to the 400-foot buffer because that buffer would be extended outward under the proposed measurement standard. If the 400-foot buffer is pushed out to meet the proposed measurement standard, a total of 35 lots would become ineligible for platting.

In addition, if Oakwood continues to plat in a manner consistent with the terms of SUA (i.e., no residential unit closer than 1000 feet to the well pad), our development plan would no longer be feasible because the fenced area around the planned oil and gas facilities location would no longer be 1000 feet away from the closest platted parcel boundaries. As result, Extraction would not be able to construct its facilities as previously laid out, or maybe not at all given the size and location of the facilities surface area. The SUA and other agreements were made to ensure safe and coordinated land development in conjunction with oil and gas operations, even before such conditions were mandated by state or local law. These agreed terms remain protective for the development proposed by the Village Plan and should be maintained.

We are also aware of certain pending applications for oil and gas development on property adjacent to Reunion, including, without limitation, one for Extraction's "Owl Site" to be located northeast of

112th Avenue and Tower Road near E-470. We are concerned that our future Development Plans for Reunion Center Property-Village 1 and other projects may be impaired by application of the reverse setback rules specified in Section 21-6280 if an oil and gas facility, like the Owl Site, is located on adjacent property within 1000 feet of any subsequently proposed residential lot boundary otherwise allowable under our vested property rights.

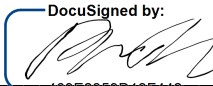
In short, we strongly encourage the City Council to consider the effect of these important policy matters on our vested property rights. As a remedy, we request that City recognize that our Development Plans will be exempted from the new City regulations (however they may be ultimately adopted) to extent they impair and infringe upon our vested property rights.

Oakwood and Fulenwider value our long history of working with the City, including proactive planning to ensure development is safely coordinated with mineral rights. We look forward to working with you to resolve any questions as we work towards the continued development of Reunion Ridge.

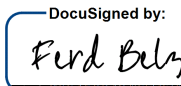
Thank you for your time and consideration on this matter.

Sincerely,

Clayton Properties Group II, Inc.

By: 
 DocuSigned by: 469E2338D13F442...
Name: Bruce Rau
Title: Secretary

L.C. Fulenwider, Inc.

By: 
 DocuSigned by: 962120313A274EA
Name: Ferd Belz
Title: President

Attachments:

Oil and Gas Offsets
Reunion Ridge Oil and Gas Detail
Reunion Ridge Filing No. 1 Final Plat (on file with City)

Cc: Commerce City Planning Commission
Roger Tinklenberg, Interim City Manager
Jason Rogers, Community Development Director
Domenic Martinelli, City Planner
Bruce Rau, Oakwood Land Company President
Kelly Leid, Executive Vice President, Oakwood Land Company
Ted Leighty, Metro Denver HBA

Blake Fulenwider, L.C. Fulenwider, Inc.