

ORDINANCE NO. NS-2208

AN ORDINANCE CANCELLING A STATUTORY DEVELOPMENT AGREEMENT PURSUANT TO BEND DEVELOPMENT CODE SECTION 4.1.1500 AND ORS 94.504-528 BY MUTUAL CONSENT OF THE CITY AND PAHLISCH HOMES INC., THE SUCCESSOR IN INTEREST TO THE ORIGINAL DEVELOPER ELK HORN DEVELOPMENT, INC.

Findings:

- A. On August 30, 2007, the City and Elk Horn Land Development, Inc. entered into a statutory 15-year Development Agreement ("Development Agreement") pursuant to ORS 94.504, which related to Condition 15 of the 2006 Land Use Approval for the Shadow Glen Development, PZ 06-261 and PZ 06-262. Pahlisch Homes has since applied for and received approvals for modified development proposals (PZ 09-234 and 13-69), with a new phasing plan and set of lot standards for the subdivision development (the "Development").
- B. Pahlisch Homes, Inc. is the Successor in Interest to Elk Horn Development, Inc., in connection with the Development Agreement, and has represented to the City that has assumed ownership of this development with full authority to bind the applicant.
- C. In connection with satisfying the condition of development, Pahlisch Homes agreed to various mitigation improvements to mitigate off-site transportation improvements relating to the Reed Market & 15th Street Roundabout as further articulated and described in the Development Agreement. At the time of the land use approval, the City did not have any immediate plans to construct the Reed Market and 15th Street Roundabout, and Pahlisch Homes wished to proceed with the development of Shadow Glen Development, which would require the construction and financing of a roundabout to accommodate the increased traffic produced by the Shadow Glen Development and satisfy the transportation infrastructure concurrency requirement of the Bend Development Code. In the meantime, the economic downturn occurred and the original development stalled.
- D. In 2011, the voters of Bend approved a bond measure that included funding for the roundabout at Reed Market and 15th Street. The roundabout and other improvements within the Reed Market corridor have been finally designed and construction of the roundabout is planned to commence in May or June 2014.
- E. Because the Parties disagree as to the legal obligation of Pahlisch Homes under the Development Agreement to fund a portion of the roundabout given that it is being funded by the public and is planned for 2014 construction, and believe they have legitimate legal positions regarding the funding of the roundabout, they entered into a Settlement Agreement rather than spending time and resources litigating the dispute.

- F. The City Council finds that the settlement is a fair and equitable resolution that protects the public's interest and resources and allows Pahlisch Homes to timely move forward with its Development. The intent of the settlement is to implement the original intent of the Development Agreement and the City's development code and, most importantly, to adequately and legally mitigate the traffic impacts of the Development. There is a public need for the improvements set forth in Section G below.
- G. Pahlisch Homes agreed to pay a proportionate share towards the construction of a future roundabout at Murphy Road and 15th Street and/or the impacted corridor (the "Alternate Improvements"), consistent with the formula set forth in Section 4.7 of the Bend Development Code. This condition is typically embodied in the Land Use Approval (PZ 13-492), making the Development Agreement unnecessary; therefore, the Parties desire to cancel the Development Agreement. However, the City wants to ensure that the decision with the condition is not challenged by Pahlisch Homes, which is agreeable to Pahlisch Homes, so the Settlement Agreement further provides that the condition cannot be challenged in any legal forum.
- H. Pursuant to ORS 94.522, a development agreement may be cancelled by mutual consent of the parties to the agreement or their successors in interest. The governing body of a city shall cancel a development agreement by adoption of an ordinance declaring cancelation of the agreement.
- I. On August 15, 2013, the City mailed a notice of public hearing to all property owners within 250 feet of the subject property, and published a notice of a public hearing on August 17, 2013. The public hearing was held on September 4, 2013 and continued to September 18, 2013.
- J. City staff and Dennis Pahlisch met with the Old Farm Neighborhood Association on August 8, 2013 and explained the proposal; staff has reported that the Neighborhood Association responded favorably to the modified condition. Dennis Pahlisch has also met with Bridges at Shadow Glen Homeowner's Association and reported they were supportive of the proposal.

THE CITY OF BEND ORDAINS AS FOLLOWS:

SECTION ONE. The Bend City Council has held a duly noticed public hearing, considered the above findings and record, and has found that there is a public need and benefit associated with the cancellation of the Development Agreement.

SECTION TWO. The Bend City Council cancels the Development Agreement effective upon the approval of the modification to the land use approval, requiring the payment of \$317,667 as a pro-rata contribution to mitigate transportation impacts of the development as further set forth in the Land Use Decision (PZ 13-492), the applicant's agreement to a modified condition of approval requiring payment of that amount, and the resolution of all land use appeals, if any, related to the modified approval.

SECTION THREE. The Findings set forth above are adopted as findings in support of this decision.

First Reading Date: September 4, 2013

Second Reading Date: September 18, 2013

Adopted by roll call vote of the Bend City Council on September 18, 2013

YES: Mayor Clinton
Councilor Jodie Barram
Councilor Victor Chudowsky
Councilor Scott Ramsay
Councilor Sally Russell

NO: none



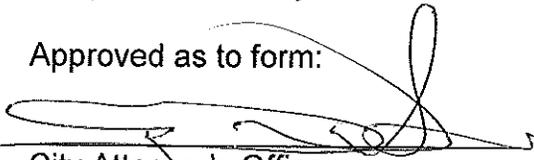
Jim Clinton, Mayor

ATTEST:



Robyn Christie, City Recorder

Approved as to form:



City Attorney's Office