

September 19, 2022

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VIA E-MAIL

Mr. Scott Stierle, Chair
City of Hubbard Planning Commission
3720 Second Street
P.O. Box 380
Hubbard, Oregon 97032

RE: Planned Unit Development PUD 2021-001/11984 for Broadacres Road NE,
Hubbard, known as the Bear Creek Planned Unit Development

Dear Chair Stierle and Commissioners:

This office represents ICON Construction & Development, LLC (the “Applicant”) in the above-referenced application. The Applicant appreciates staff’s hard work on the project and concurs with most of the conclusions and proposed conditions of approval in the Staff Report. However, there are a number of conditions that the Applicant does not agree with and will be unable to satisfy based on current market conditions.

1. Compliance with Conditions

a. Condition 11 “Multi-Family Development”

Condition 11 requires the Applicant to reduce the overall number of multi-family units prior to site plan approval. It also requires the Applicant to add overflow and guest parking to Lot 204 and requires “substantial changes to the proposed multi-family development site plan” in order to increase the area and amenities within a play area that staff wishes to be dedicated solely to the use of residents of this particular multi-family housing lot. The Applicant objects to Condition 11 for two reasons. First, it is not feasible for the Applicant to satisfy this Condition with the proposed Application. Second, compliance with the requirements of the condition is not currently required by the Hubbard Development Code.

Within Lot 204, the Applicant proposes a 1060 square foot outdoor picnic area with benches and grills, as well as an additional outdoor play area provided directly to the south less than 200 feet from the proposed apartment complex. The Application also includes an 8,350 square foot proposed play structure and recreation field within the proposed public park, which will be accessible to the proposed apartment complex via a series of pathways that are accessible both to the east and west of the proposed apartment complex. Condition 11 would require both a reduction in density and an increase in the amount of open space on Lot 204 specifically in order to,

according to staff, better meet the intent of the multi-family open space requirements. However, there is no basis in the Hubbard Code for the conclusion that the provision of a future public park, which is to remain private until full build-out, cannot count toward the “Outdoor Play Area Requirements.” Lot 204 has significant topographical and natural resource constraints that prohibits substantial increase in play areas on Lot 204 specifically, especially when coupled with the additional parking that staff is requiring for residential visitors.

In addition, staff is proposing to defer compliance with the play area requirements and allows staff to determine an appropriate number of units to comply with these requirements. Condition 11(e) states as follows:

“Significant changes to the proposed multi-family development site plan on Lot 204, beyond revisions required for compliance with these conditions of approval, will require a new Site Development Review land use application, pursuant to the procedures in Section 3.105.”

On the contrary, the number of units should be determined by Planning Commission during this process to give the Applicant some level of assurance how to prepare a Site Development Review application. Given the short time between staff’s release of this proposed condition and the Sep. 19 hearing, the Applicant is not yet able to offer a proposal for unit reduction at this time.

b. Condition 4(a) “Street A Improvements”

The Applicant is unable to comply with this Condition as proposed and requests that only a gravel road base for emergency access be required prior to platting Phase 1. As proposed, this Condition pushes the cost of a base lift, curbs, gutters, and hydrants for the full section from Broadacres to 3rd Street to the beginning of the project, at a time when it is not financially feasible for the Applicant.

c. Conditions 5(a) “Broadacres Road Improvements”

While the Applicant is agreeable to constructing Broadacres Road frontage improvements, these improvements should be limited to the “Alternate Phasing Plan #P4-A,” Phase 1 only, or whenever the north end of the project develops.

d. Condition 6 “Off-Street Sidewalk SDC Credit”

Condition 6 as proposed is not proportionate to the Applicant’s proposed development. While System Development Charge (“SDC”) credits will cover a portion of the construction cost of offsite sidewalk connections, requiring the Applicant to construct these connections, particularly along 3rd Street, is not “roughly proportional” to the degree of impact of the proposed development. *See Dolan v. City of Tigard*, 512 U.S. 374, 391-395 (1994).

e. Condition 7 “Public Park SDC Credit” and Condition 8 “Park Open Space Dedication”

Condition 7 does not provide SDC credits for parking that is required for public parks. While SDC credits are provided for “active” park purposes, the parking provided by the Applicant for the public park is required parking. Also, there are over 7 acres of “active” park area and the

condition limits the SDC credit to 2.5 acres. As a result, this Condition is not “roughly proportional” to the degree of impact of the proposed development.

f. Condition 8 “Track D”

Condition 8 requires the HOA to own and maintain Tract D (i.e. the proposed public park) until the PUD is 100% built out. The Applicant proposes to revise this condition such that transfer of the Tract D would occur at 65% of the PUD build out, which will provide the City with ample tax revenue to support the City’s ongoing maintenance expenses and obligations with respect to the park. Requiring the HOA to hold and maintain this portion of property until full build out of the PUD will result in property taxes that are greater than the expense of maintaining the park. Thus, as proposed, this Condition is not “roughly proportional” to the degree of impact of the proposed development.

g. Condition 9(b) “Stormwater Basin Tracts”

The Applicant is unable to comply with this Condition as proposed. Specifically, the City will eventually own the public park space. As a result, the HOA require easements from the City to maintain any stormwater basins within the public park. Moreover, there are public stormwater facilities located upstream and downstream from the proposed stormwater facilities in the public park, which makes it logistically difficult for the HOA to maintain these facilities. Similar to the public park space in Condition 8 above, the Applicant respectfully requests revisions to this Condition such that the City takes ownership of the stormwater facilities after 65% buildout of the PUD.

h. Condition 10 “Proportional Shares”

The Applicant is unable to comply with this Condition until such time as the actual proportionate share of these improvements is determined. The Applicant cannot commit to an undetermined expense for the widening of Woodburn-Hubbard Road and Boones Ferry Road.

i. Condition 12 “Overflow Townhouse Parking”

As proposed this Condition is not “roughly proportional” to the degree of impact of the proposed development because there is ample on-street parking to satisfy any overflow townhouse parking in the proposed development.

j. Condition 13 “Accessible Trails”

The Applicant is unable to comply with this Condition. The subject property is a plateau with the parks and open spaces located of the approximately 15 to 25 feet lower than the main, flatter areas of the subject property. As a result, in order to meet the ADA requirements extensive switchbacks would be required, which are not only financially infeasible, but also may not be possible based on the steep slopes located on the subject property. As a result, this Condition is not “roughly proportional” to the proposed development.

k. Condition 21 “Easements”

The Applicant is unable to commit to compliance with this Condition because, as proposed, it is unclear how wide and where these easements are proposed. As a result, the Applicant is unable to determine the impacts of any proposed easements.

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2. Conclusion

While the Applicant appreciates the staff's continued review and hard work on this Application, for the reasons outlined above, the Applicant cannot comply with the aforementioned conditions of approval and respectfully requests that these conditions be removed or revised as described above.

Best regards,



Garrett H. Stephenson

GST:jmhi

cc: Ms. Holly Byram, City Planner, MWVCOG (*via email*)
Mr. Harlon Borow (*via email*)
Mr. Joseph O. Gaon (*via email*)
Mr. Steve Kay, AICP (*via email*)

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