

RESOLUTION NO. 970

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AUTHORIZING THE EXECUTION OF AMENDMENT NO. 1 TO THE DEVELOPMENT AGREEMENT WITH MCCORMICK CREEK, LLC RELATED TO AN APPROVED PLANNED RESIDENTIAL DEVELOPMENT AND PRELIMINARY PLAT (FILE NOS. PL-PPLAT-09-0003 AND PL-PRD-09-0002); APPLYING TO 52.16 ACRES OF PROPERTY, GENERALLY LOCATED EAST OF BURNHAM DRIVE NW AND WEST OF HARBOR HILL DRIVE IN THE CITY OF GIG HARBOR, PIERCE COUNTY, WASHINGTON.

WHEREAS, RCW 36.70B.170 authorizes a local government and a person having ownership or control of real property within its jurisdiction to enter into a development agreement; and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, the City of Gig Harbor has adopted development regulations for development agreements in Chapter 19.08 of the Gig Harbor Municipal Code; and

WHEREAS, the Developer has a fee simple or other substantial beneficial interest in the real property located east of Burnham Drive NW and west of Harbor Hill Drive, Gig Harbor, Washington, which is legally described in Exhibit A of the Development Agreement, attached hereto and incorporated herein by this reference; and

WHEREAS, pursuant to Resolution No. 885 adopted by the City Council on November 8, 2010, the City and McCormick Creek, LLC entered into a Development Agreement dated March 29, 2011, which was recorded in the real property records of Pierce County, Washington, under Auditor's File No. 201104040155; and

WHEREAS, on February 18, 2014, McCormick Creek, LLC filed with the City a complete application for an Amendment No. 1 to the Development Agreement dated March 28, 2011 (File No. PL-DEV-14-0001); and

WHEREAS, the City's SEPA Responsible Official has determined that the Determination of Non-Significance (DNS) issued on December 17, 2009 for the original Development Agreement and underlying Plat/PRD are sufficient for the Amendment No. 1 to the Development Agreement; and

WHEREAS, on July 14, 2014 the City Council held a public hearing on Amendment No.1 to the Development Agreement during a regular public meeting and after considering the application, the staff report and all public testimony presented, approved Amendment No. 1 to the Development Agreement attached hereto as Exhibit A; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. The City Council hereby authorizes the Mayor to execute Amendment No. 1 to the Development Agreement attached hereto as Exhibit A, with McCormick Creek, LLC.

Section 2. The City Council hereby directs the Planning Director to record Amendment No. 1 to the Development Agreement against the Property legally described in Exhibit A to Amendment No. 1 to the Development Agreement, at the cost of the applicant, pursuant to RCW 36.70B.190.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor this 28th day of July, 2014.

CITY OF GIG HARBOR



Mayor Jill Guernsey

ATTEST/AUTHENTICATED:



Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney



Angela Summerfield

FILED WITH THE CITY CLERK: 07/11/14
PASSED BY THE CITY COUNCIL: 07/28/14
RESOLUTION NO. 970

**AMENDMENT NO. 1
TO
DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF GIG HARBOR AND
MCCORMICK CREEK LLC FOR THE
MCCORMICK CREEK DEVELOPMENT**

THIS AMENDMENT NO. 1 to that certain Development Agreement by and between the City of Gig Harbor and McCormick Creek LLC for the McCormick Creek Development dated March 29, 2011 (the "Development Agreement") is made and entered into this ___ day of _____, 2014, by and between the CITY OF GIG HARBOR, a Washington municipal corporation (the "City"), and MCCORMICK CREEK LLC, a Washington limited liability company ("Developer"), collectively referred to as the "parties."

RECITALS

WHEREAS, after a public hearing, by Resolution No. 858, the City Council authorized the Mayor to sign the Development Agreement and the Development Agreement was executed and recorded at Pierce County Auditor's File No. 201104040155; and

WHEREAS, since the effective date of the Development Agreement, the Developer has determined it would like to reduce the number of lots in the Project, and has submitted an application for a minor plat revision, file number PL-PPLATR14-0001, the approval of which is being held in abeyance until the City Council takes action on this Amendment No. 1 in accordance with section 19.08.040(B) of the Gig Harbor Municipal Code; and

WHEREAS, in addition, the Developer is requesting to undertake a different phasing schedule and update its contact information; and

WHEREAS, Section 6 of the Development Agreement requires the Developer to keep soccer fields available to the Peninsula Athletic Association for a period of two years from the effective date of the Development Agreement, and the Developer wishes to extend such availability through the Peninsula Athletic Association's 2015 outdoor soccer season; and

WHEREAS, Section 14 of the Development Agreement requires the Developer to dedicate a park tract to the City but the City has determined that the public will benefit if the park tract remains the property of the homeowner's association; and

WHEREAS, after a public hearing, by Resolution No. 970, the City Council authorized the Mayor to sign this Amendment No. 1 Development Agreement with the Developer;

NOW, THEREFORE, the parties agree to amend the Development Agreement as follows:

1. Section 1. The Project. Section 1 of the Development Agreement is hereby amended to read as follows:

Section 1. The Project. The Project is the development and use of the Property contemplated in this Agreement. The preliminary plat and PRD application and Hearing Examiner Decision ~~describes~~ originally described the Project as a preliminary plat and planned residential development resulting in a total of 185 lots, 18 individual wetland, stormwater and open space tracts and associated roads. ~~One hundred eighty two~~ As revised, and in addition to the wetland, stormwater, open space tracts and associated roads, the Project now results in 160 lots, with 157 of the lots are proposed to be residential, and three of the lots ~~are~~ proposed to be non-residential: one for office use, one for a mini-storage type of development to serve the residents of the plat, and one lot that contains an existing church.

2. Section 4. Exhibits. Section 4 is hereby amended to delete Exhibit B and replace it with Exhibit B-1, attached hereto and incorporated herein by this reference.

3. Section 6. Term of Agreement. Section 6(G) of the Development Agreement is hereby amended to read as follows:

G. Developer acknowledges and agrees that the existing soccer fields located on the area identified as ~~Phase 3~~ Phase 1 on ~~Exhibit B~~ Exhibit B-1 shall be kept open to Peninsula Athletic Association use ~~for a minimum of 2 years from the effective date of this Agreement~~ until at least the end of their 2015 outdoor soccer season.

4. Section 11. Financing of Public Facilities. Sections 11(A) and 11(C) of the Development Agreement are hereby amended to read as follows:

A. Developer acknowledges and agrees that it shall participate in the granting of a non-exclusive wetland and public use easement over all of the areas shown as Tract I and J on Exhibit B.

The easement over the areas shown as Tract I and Tract J shall be dedicated to the City within 60 days of the effective date of the Adopting Resolution approving this agreement.

The City acknowledges that portions of Tract I contain an existing vehicular access easement ~~that will remain until Road 1 is complete.~~ The Developer shall remove and relocate the existing vehicular access no later than September 15, 2014 consistent with the plans set forth in Developer's clear and grade permit #EN-14-0011 issued on June 4, 2014. The Developer hereby acknowledges that such relocation is necessary as the City will be constructing the Cushman Trail Phase 4. In the event Developer fails to move the road in a timely manner and such failure causes the City to suffer construction delay damages or other damages, the Developer shall be responsible for all costs associated with such damages, including but not limited to the City's reasonable attorneys fees associated with such damages.

The Developer acknowledges that wetland mitigation for Road 1 improvements will continue to be the Developer's responsibility and must be completed prior to recording the final plat for phase 1. The City's easement over tracts I and J shall not restrict the Developer's plans for wetland mitigation of Road 1 as depicted in the approved conceptual wetland mitigation plans.

The Developer acknowledges that the wetland monitoring and maintenance will continue to be the Developer's responsibility until such time that the wetlands are deeded to the city.

....

C. Within 90 days of final plat recording for ~~Phase~~ Phase 3, Developer shall grant fee ownership of Tract J to the City.

5. Section 13. Phasing of Development. Sections 13(B) and 13(D) of the Development Agreement are hereby amended to read as follows:

B. Phasing.

1. **Phase 1:**

a. Street Improvements. The Developer shall construct Road 1 from Burnham Drive to the intersection of Road 8 and dedicate this roadway to the City. The Developer shall dedicate all of Road 1 as shown on ~~Exhibit B~~ Exhibit B-1, including any portion remaining undeveloped as part of the phase 1 improvements, to the City. The Developer shall construct Road 4 and Road 5 and dedicate them to the City. The Developer shall design and construct left turn lane improvements, as acceptable to the City, on Burnham Drive. The Developer shall complete the required wetland mitigation necessary for the construction of Road 1, per the Hearing Examiner Decision (Exhibit E). Developer shall clear and rough grade the remainder of Road 1 (as shown on ~~Exhibit B~~ Exhibit B-1) from the easterly property line of the property to the improved section of Road 1. The cleared and rough graded section of Road 1 shall be signed by the developer "Future Road Connection to Harbor Hill Drive".

b. Potable Water and Fire Flow Facilities. The Developer shall construct an extension of a water line from Burnham Drive to the proposed lots within Phase 1.

c. Sewer Facilities. The Developer shall construct an extension of the sewer line from Burnham Drive to proposed lots within Phase 1.

d. Utilities. The Developer shall construct the Phase 1 storm facility shown on the plans as Tract A, and all associated appurtenances per the preliminary plan set attached as Exhibit 2 to the Hearing Examiner Decision (the "Preliminary Plan Set"). The Developer shall extend

other utilities as necessary to the proposed lots within the phase.

e. Parks and Open Space. ~~The Developer shall construct physical improvements and the public trail linking the park to the Cushman Trail and the adjacent Little League Fields.~~ The Developer shall construct physical improvements to Open Space Tracts ~~D, E, F, J and Q-B,~~ C, D, F, and H, as shown in the ~~preliminary plan set attached as Exhibit 2 to the Hearing Examiner Decision (the "Preliminary Plan Set").~~

2. Phase 2:

a. Street Improvements. The Developer shall construct and dedicate to the City Roads 6, 7, 8 and 9, and the remainder of Road 1.

b. Potable Water and Fire Flow Facilities. The Developer shall construct an extension of the water line to the proposed lots within the phase.

c. Sewer Facilities. The Developer shall construct an extension of the sewer line to proposed lots within the phase.

d. Utilities. The Developer shall extend other utilities as necessary to the proposed lots within the phase.

e. Parks and Open Space. The Developer shall construct improvements, as shown in the Preliminary Plan Set, to Tracts G, I, K, L, M, N and O.

3. Phase 3:

a. Street Improvements. The Developer shall construct and dedicate to the City Roads 2 and 3.

b. Potable Water and Fire Flow Facilities. The Developer shall construct an extension of the water line to the proposed lots within the phase.

c. Sewer Facilities. The Developer shall construct an extension of the sewer line to proposed lots within the phase.

d. Utilities. The Developer shall extend other utilities as necessary to the proposed lots within the phase. Developer shall construct the storm facility shown on the plans as ~~Tract R~~ Tract Q, and all associated appurtenances per the ~~preliminary plan set attached as Exhibit 2 to the Hearing Examiner Decision (the "Preliminary Plan Set")~~.

e. Parks and Open Space. The Developer shall construct improvements, as shown in the Preliminary Plan Set, to Open Space Tracts E, J, P, and R ~~and S~~.

....

D. All improvements shall be constructed in accordance with the ~~underlying approval for the McCormick Creek preliminary plat~~ Preliminary Plan Set, the City of Gig Harbor Public Works Standards and engineering industry standards approved by the City of Gig Harbor. Construction of the street, potable water, sewer and utility improvements shall not be considered complete until the improvements have been accepted by the City in writing. Phases referred to above are to be as shown on the phasing plan, attached as ~~Exhibit B~~ Exhibit B-1 to this Agreement.

6. Section 14. Dedication of Public Lands. Section 14(A) of the Development Agreement is hereby deleted.

7. Section 23. Notices. Section 23 of the Development Agreement is hereby amended to update the Developer information as follows:

McCormick Creek LLC
Attn: Bryan Stowe
PO Box 1054
Sumner, WA 98390

EXCEPT AS EXPRESSLY MODIFIED BY THIS AMENDMENT, ALL TERMS AND CONDITIONS OF THE DEVELOPMENT AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to be executed as of the dates set forth below:

McCORMICK CREEK LLC

CITY OF GIG HARBOR

By: _____
Its: _____

By: _____
Mayor Jill Guernsey

ATTEST:

Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Angela G. Summerfield

[Notaries on following page.]

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this _____ day of _____, 2014, before me personally appeared _____, to me known to be the _____ of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2014.

Printed: _____
NOTARY PUBLIC in and for the State
of Washington, residing at _____
My commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this _____ day of _____, 2014, before me personally appeared Jill Guernsey, to me known to be the Mayor of Gig Harbor, the entity that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2014.

Printed: _____
NOTARY PUBLIC in and for the State
of Washington, residing at _____
My commission expires: _____