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October 1, 2021

Scott D. Albertson
Holley, Albertson & Polk, P.C.
1667 Cole Boulevard, Suite 100
Lakewood, Colorado 80401

Via Email to: sda@haplaw.net

RE: Grand Park Willows Apartments

Dear Scott:

I am writing on behalf of the Town of Fraser in response to your September 28, 2021 email concerning the proposed Willows Apartments project at Grand Park. To begin, we disagree with your characterization of the course of events and the Town's obligations under the Court's preliminary injunction order. First, even if Fraser had not exercised its contractual remedies under the Annexation Agreement, the Willows project could not have proceeded to the July 28th Planning Commission meeting because Grand Park failed to send correct notice to the surrounding property owners. Second, the Court's preliminary injunction requires the Town to follow its normal process with regard to Grand Park's building and development matters. It does not require that your client be accorded any special process.

The Willows Application could not have been heard at the September Planning Commission meeting. For that to happen, notice was required to be published on September 9th for the September 22nd meeting. The deadline for publication submission passed at 12:00 noon on September 3rd, before the Court entered its preliminary injunction order. Following entry of the order, Catherine Trotter reached out to Mr. Lipscomb on September 9th to discuss rescheduling the Willows project for a Planning Commission meeting. She received no response until Grand Park's planner contacted her on September 14th to discuss the upcoming October 27th meeting. This is the earliest meeting at which the Planning Commission can consider the project because of the publication requirements set forth in the Municipal Code.

Despite having no obligation to conform its processes to Grand Park's financing schedule, the Town will process the Willows Apartments application as follows:

10/8/21	Notice of the Planning Commission hearing will be sent to be published on October 14, 2021
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10/22/21	In anticipation of a potential Planning Commission meeting on November 10, 2021, notice of hearing on the final plat will be sent to be published on October 28, 2021
10/27/21	The preliminary plat and FPDP will be scheduled for the Planning Commission hearing
11/3/21	The preliminary plat and FPDP will be scheduled for the Board of Trustees meeting
11/10/21	If the Board approves the preliminary plat and FPDP on November 3 rd , the final plat will be scheduled for Planning Commission hearing on November 10 th if a quorum is available. The Planning Commission meeting regularly scheduled for November 24 th will not be held because of the Thanksgiving holiday. If a quorum cannot be present on November 10 th , the final plat will not be heard until the December meeting.
12/1/21	The final plat will be scheduled for the Board of Trustees meeting if the Planning Commission conducts its hearing on November 10 th . If the Planning Commission does not hear the matter until the December meeting, then the final plat will be scheduled for the Board of Trustees meeting in January 2022.

In order to accommodate the above schedule, Grand Park must provide all required notices, including correct notice to adjacent property owners within 200 feet of the legal descriptions on both the FPDP and preliminary plat. That notice must be provided by certified mail, return receipt requested and mailed no later than October 13, 2021. Further, staff will recommend denial of the application by the Planning Commission and Board of Trustees unless the following matters are corrected and the plans resubmitted no later than October 14, 2021. As you are aware, all of the following deficiencies previously were noted to you and your client last spring and summer, yet remain unaddressed:

1. The portions of Planning Area 23W included in the development area of the preliminary plat and FPDP must be removed to preserve the Cozens Meadow open space in accordance with the Annexation Agreement and PDD Plan.
2. The areas shown as 2W.3 and 2W.4 on the FPDP must be removed because they are not part of the current development plan and they will not be approved as future development sites until actual development plans, consistent with the PDD, are submitted.
3. Grand Park must agree to provide a dedicated right-of-way for and construct Old Victory Road from the existing terminus at Mountain Willow Drive to Kings Crossing Road as part of the subdivision improvements for this project. The timing for completing certain segments should be addressed in the SIA.
4. Grand Park must agree to construct the Highway 40 sewer crossing to provide the capacity necessary to serve the Willows project, as well as future development. The proposed Willows project will exceed the capacity of the current system. Construction of these sewer improvements must be included in the SIA, or in a separate improvements agreement, and must be completed before any Certificates of Occupancy will be issued for the Willows Apartments.

In addition to the foregoing, the review and hearing process may identify other issues which need to be resolved and may result in conditions being attached to any approval.

Finally, concerning Grand Park's objections to the comments issued by Public Works, at the appropriate time the Fraser Board of Trustees will determine whether an extension of American Willow Drive will be permitted. That decision will be made in accordance with the Annexation Agreement, the PDD Plan and the applicable regulations. As indicated above, Old Victory Road must be completed and dedicated as part of the Willows project, although the timing for paving different sections can be addressed in the Subdivision Improvement Agreement.

Sincerely,

A handwritten signature in black ink that reads "Kent H. Whitmer". The signature is written in a cursive style with a horizontal line underneath the name.

Kent H. Whitmer
Town Attorney

HOLLEY, ALBERTSON & POLK, P.C.

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October 15, 2021

EMAIL ONLY

Kent H. Whitmer, Esq.
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kent@whitmerlawfirm.com

Re: Grand Park - Willows Apartments

Dear Kent:

This will respond to the four numbered paragraphs on Page 2 of your October 1, 2021 correspondence concerning Willows Apartments. I will repeat the statements in your letter verbatim, followed by a response on behalf of Grand Park Development LLC, the applicant and property owner.

1. The portions of Planning Area 23W included in the development area of the preliminary plat and FPDP must be removed to preserve the Cozens Meadow open space in accordance with the Annexation Agreement and PDD Plan.

RESPONSE: There is nothing within the Annexation Agreement or the applicable 2005 PDD Plan that precludes the inclusion of portions of Planning Area 23W within the FPDPs or plats for other planning areas. If you disagree with that statement, please point out the specific provisions of the Annexation Agreement or the 2005 PDD that you are relying on in articulating this position. Section 4.3 of the Annexation Agreement specifically states, "The 2003 PDD has not been configured based upon surveyed acreages for the various Planning Areas. In the event the boundaries of a Planning Area are adjusted at the time of subdivision or FPDP, then the approved number of residential units or the approved commercial square footage provided for in the 2003 PDD shall be the controlling factor and the designated acreage or density will be adjusted from that constant." Note 15 in the 2003 PDD states, "The character descriptions [of

the Planning Areas] are a guide only and may change based on market conditions and other “difficult to predict” factors that may affect the land use mix, intensity, and character of planning areas over the projected twenty-five year development period.” Similarly, Note 16 in the 2005 PDD states, “The character descriptions [of the Planning Areas] are a guide and may change based on market conditions and other factors that may affect the land use mix, intensity, and design of the Planning Areas over the projected twenty-five year development period.”

There are not any provisions in the Annexation Agreement that contemplate that open space Planning Area 23W would be a single, large, contiguous parcel during the development of Grand Park and remain under single ownership. There is nothing in the Annexation Agreement or PDD that prohibits the inclusion of portions of 23W in subdivision plats as development proceeds, as long as PA 23W remains open space.

Prior FPDPs and plats for Planning Areas within Grand Park have included Tracts that are part of PA 23W. Specifically, Tract H1 in Elk Creek Filing 3 (Note 6), Tracts H2 and H3 in Elk Creek Filing 4 (Note 6) and Tract C in the Meadows (Note 16) are within PA 23W, just as the Tracts included within proposed Willows Filings 1 and 2 will remain part of PA 23W and be limited to use as open space. In addition, for the most part, the situation with the PA 23W open space Tracts in the Willows is identical to that resulting in the creation of 23W Tracts in Elk Creek and Meadows. Each of the Tracts is defined by the roadways adjacent to or within the Willows, i.e., Old Victory Road to the southwest, American Willow Drive at the entry to the Willows Apartments Filing 1 from Old Victory Road and Mountain Willow Drive as the main access road bisecting PA 2W.

In addition to the above quoted provisions from the Annexation Agreement and PDDs, Section 19-4-165 of the Municipal Code articulates the following criteria for open space: “Avoidance of concentrating open space into large areas with the subsequent “packing” of residential areas” and “Open Space and/or landscape accompanies all types of developments.” In other words, the municipal code recognizes that it is beneficial to disburse open space rather than pack it into a single contiguous area.

In short, the inclusion of the PA 23W Tracts within the Willows Apartments is not a “deficiency” as suggested in your letter. Rather, it is consistent with the concepts articulated in the Annexation Agreement, the PDD, and the Town Code.

2. The areas shown as 2W.3 and 2W.4 on the FPDP must be removed because they are not part of the current development plan and they will not be approved as future development sites until actual development plans, consistent with the PDD, are submitted.

RESPONSE: Grand Park Development recognizes that 2W.3 and 2W.4 will require the submission and approval of future additional FPDPs and plats for those areas, however, in the past, Fraser has required that the entirety of a Planning Area should be reflected on and included within the FPDP for any portion of a Planning Area. As such, 2W.3 and 2W.4 are included to conform with historic practice.

3. Grand Park must agree to provide a dedicated right-of-way for and construct Old Victory Road from the existing terminus at Mountain Willow Drive to Kings Crossing Road as part of the subdivision improvements for this project. The timing for completing certain segments should be addressed in the SIA.

RESPONSE: Old Victory Road has already been constructed and completed from American Willow Drive to Kings Crossing Road pursuant to plans previously submitted to and approved by Fraser. Pursuant to the Second Amendment to Annexation Agreement entered into between Cornerstone, Winter Park, and Fraser, Old Victory Road from Grand Park Drive south to Kings Crossing Road will be conveyed in the form of an easement to Fraser in order to avoid the right-of-way dedication being considered a subdivision of property. Dedication of that segment of Old Victory Road will occur in conjunction with the development of the Planning Areas contiguous to that segment of Old Victory Road. Grand Park Development will dedicate the portion of Old Victory Road adjacent to Planning Area 2W to Fraser upon completion of the Willows Apartments. A separate SIA may appropriately include a requirement for the paving and completion of the segment of Old Victory Road between Mountain Willow Drive and American Willow Drive in connection with the completion of Phase II of the Willows Apartments project. As previously discussed with Fraser staff last spring, the portion of Old Victory Road between Mountain Willow Drive and American Willow Drive will be used as a staging and storage area for construction of the Willows Apartments project and doing so at that location will minimize any impact to the existing homes within the Willows. In the event the Willows Apartments are not constructed, that section of Old Victory Road will remain gravel until Planning Area 2W is built so that construction impacts to adjacent homeowners is minimized by utilizing that portion of Old Victory Road for staging.

4. Grand Park must agree to construct the Highway 40 sewer crossing to provide the capacity necessary to serve the Willows project, as well as future development. The proposed Willows project will exceed the capacity of the current system. Construction of these sewer improvements must be included in the SIA, or in a separate improvements agreement, and must be completed before any Certificates of Occupancy will be issued for the Willows Apartments.

RESPONSE: Grand Park Development agrees that construction of these sewer improvements will be the subject of a separate improvements agreement and not part of the SIA.

Finally, while there is no intent or desire to extend American Willow Drive to Highway 40 as part of the Willows Apartments project, that roadway extension and connection will occur in the future and, with all due respect, the Board of Trustees does not have the prerogative to deny that roadway extension. It is reflected on the approved Roadway Plan in both the 2003 and 2005 PDDs, as well as the traffic studies required and approved by Fraser.

Kent H. Whitmer, Esq.
October 15, 2021
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Thank you for your consideration and understanding.

Sincerely yours,

HOLLEY, ALBERTSON & POLK, P.C.



Scott D. Albertson

SDA/dp