



## THE WHITMER LAW FIRM, LLC

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### MEMORANDUM

**TO:** Ms. Catherine, Trotter, Fraser Town Planner

**FROM:** THE WHITMER LAW FIRM

**DATE:** March 15, 2022

**RE:** Elk Creek Condos Preliminary Plat and FPDP Legal Review

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Catherine,

We have reviewed the following documents from the Alpenglow Subdivision submittal:

1. Grand Park 4w.1 and Meyer Lot 2 Final Planned Development Plan, Development Permit, and Preliminary Plat Application and Narrative
2. Title Commitment No. 0304060-C2 effective January 25, 2021
3. Final Planned Development Plan and Development Permit for Condos at Elk Creek, dated February 1, 2022
4. Preliminary Plat for Elk Creek Condominiums

From our review, we have the following comments and concerns. Please let us know if you would like to discuss anything in more detail.

1. The submitted title commitment is outdated under Town Code § 19-1-410, which requires an effective date not earlier than 30 days prior to the date the commitment is tendered to the Town. The Town is aware of a *lis pendens* recorded December 7, 2021 at Reception No. 2021013626 encumbering some of the site, which overlaps a portion of the west side of the submitted development. An updated title commitment would disclose such an encumbrance.

The litigation described in the aforementioned *lis pendens* will need to be resolved before approval of the 4w.1 submittal. Alternatively, the boundaries for the 4w.1 submittal will need to be adjusted to lie outside of the area covered by the *lis pendens*.

2. FPD Note 2 says that several structures may have a 0' setback, including "garages, driveways, sidewalks, roof and deck overhands, retaining walls, recreational amenities and utilities . . . ." Applicant should state under what authority it relies for this assertion. Town Code § 19-2-610 does not include such exceptions.
3. The site chart on FPD page 3 includes three one-bedroom units per building. Since there are four buildings, there would be a total of 12 one-bedroom units, not 10 as stated on the chart, which would equate to 48 total units. Applicant should include which of the buildings will not have one-bedroom units to comply with the 46-unit density requested.
4. The Narrative says that Meyer Lot 2 has been included "to dedicate the required 60' John Drive ROW." As such, the Town is expressly not approving any development in that Lot, including Lots 5, 6, and 7 labeled as "Future Development." The Town cannot make any representations as to the suitability of that future development and should condition any approval of the submitted property with a disclaimer that it in no way approves of developing Lots 5, 6, or 7.
5. FPD pages 8 and 9 and the Construction Drawings, throughout, depict "FUTURE ELK CREEK CONDOS" off-site of the submitted property. These references and depictions should be removed.
6. The plat dedicates "ALL THE STREETS, ALLEYS AND OTHER PUBLIC WAYS AND PLACES SHOWN ON THE ACCOMPANYING PLAT FOR THE USE OF THE PUBLIC FOREVER" but Plan Note 8 states that "ALL ROADS SHALL BE PRIVATE." In addition, the Narrative says that Meyer Lot 2 has been included only "to dedicate" Johns Drive. Does applicant intend for the roads to be public or private?
7. The FPD checklist reflects inclusion of draft HOA documents, but no such documents were received.
8. The FPD checklist also reflects inclusion of a draft development timeline, but no such timeline was included. Moreover, this timeline should include expected time schedules for each phase shown on FPD Page 11.
9. FPD Note 7 indicates that open space will be *owned* by Grand Park HOA. As such, a deed or dedication should be included to the HOA.
10. Under Code § 19-3-230(d), "The final plat shall include a plat note, in form approved by the Town Attorney, which advises purchasers and owners of any lot, parcel or tract shown thereon that, while building permits may be issued prior to final completion of subdivision improvements, no certificate of occupancy may be issued for a structure on any lot, parcel or tract until all such improvements, as required by the SIA, have been completed and preliminarily accepted by the Town pursuant to Section 19-3-445." It does not appear that the preliminary plat is required to have a note, but since the final plat must include it because this is a phased development. We should remind applicant of this requirement for the final plat.

11. Page 3 of the FPDP denotes Conservation Easement as all unmarked areas, which includes Lots 5, 6, and 7, as well as parking and driveway areas. FPDP Page 4 denotes Conservation Easement with rectangular hash marks, but the map does not appear to include any such marks. It is not clear where conservation easements are intended on either of these pages.
12. The submitted Subdivision Improvements Agreement does not include its Exhibits (other than their titles). These will need to be reviewed to ensure compliance with applicable regulations.
13. Under Annexation Agreement § 4.2, “Densities may be transferred between Planning Areas up to 30% of the receiving Planning Area with a transfer application if sufficient roadway capacity and water and sewer capacity is available, and subject to amendment of the PDD Ordinance. . . . Any density transfer to a Planning Area with an approved FPDP will require an amendment to the FPDP under the provisions of the PDD Ordinance.” Although the 2005 PDD states that no plan amendment is required if a density transfer does not exceed 30%, the First Amendment to the Annexation Agreement states that any conflicting provision found in “written documents approved as part of the” PDD is trumped by the terms of the Annexation Agreement. Therefore, references to density transfers for an additional 30 units need to be removed from the FPDP until a transfer application is submitted and approved with sufficient showing of roadway, water, and sewer capacity, along with amendments to the PDD Ordinance and the FPDPs of Cozens Pointe and Elk Creek at Grand Park.
14. The Roadway Master Plan which is a part of the Grand Park PDD Plan states that a permanent public roadway and trail access will be provided between County Road 72 and Old Victory Road. The plans do not address this requirement.
15. The submittal did not include a plan which estimates the number of employees needed to serve all or portions of the development and how they will be provided housing. Applicant must provide details as to how the submittal satisfies the Cornerstone Attainable Housing Plan of April 20, 2005, and the Cornerstone Attainable Housing Plan Audit of December 2021.

Sincerely,



CC: Ed Cannon