

# WILLIAMS · BRADBURY

A T T O R N E Y S A T L A W

March 9, 2020

Via Hand Delivery

Mayor Nissula and  
Cascade City Council  
105 S. Main  
Cascade, ID 83611

Re The River District

Mayor and Council

I have been asked to direct this letter to you by the applicant in view of the city attorney's advice that the applicant will not be permitted to participate in the tonight's workshop on the River District. This letter is sent in order that the council will be made aware of the applicant's and staff's activities over the past six weeks or so since the City council meeting of January 27, 2020. The applicant has become increasingly concerned that the city's staff is acting beyond the scope of the direction it has been given by council, has been withholding information from council and is slow-walking its processing of the application to the detriment of the applicant and in violation of the applicant's due process right to have its application fairly considered.

Given the repeated patterns of delay in processing the application (which the applicant has objected to on several previous occasions) and the last minute, piecemeal demands made by staff that applicant take additional actions and submit additional studies and materials, the applicant believes that if the city is to avoid legal action, the council will need to take control of the process. In fact, the applicant has thought this to be the case for quite some time which is why I delivered my January 24, 2020 letter and draft development agreement directly to council. Please understand that the applicant's primary purpose in directing that letter to council, and this one, is to assure that the council has been and is being fully informed about on the matters needing council consideration and direction.

You will recall that a fairly broad discussion of the application took place at the January 27 council meeting. From those discussions, the applicant concluded that the following matters required further input from the applicant, including the following:

- A revised fiscal impact analysis;
- Comments from the Idaho Transportation Department (ITD) about the applicants traffic study and the applicant's application for an approach permit;

- A determination of the proper flood plain development requirements for the application; and
- Further work on the city required development agreement, especially as it relates to sewer and water infrastructure improvements.

Since January 24<sup>th</sup> the applicant has done the following:

1. Fiscal Impact Report. In response to critical comments made by city staff about the applicant's fiscal impact analysis submitted in June 2019, which staff did not raise for over six months after applicant submitted it, the applicant hired Galena Consulting to prepare a new analysis. Galena immediately prepared its analysis and after several attempts made contact with the city clerk to review it with her. The city clerk directed Galena to make changes to the analysis which it did. The final analysis was delivered to the city clerk on March 4 with a request that it be delivered to the council. The applicant assumes it has been. The applicant offered to have Galena attend tonight's meeting to present the report to the council, answer questions and receive direction from council, but that offer was denied by the city attorney in apparent consultation with the mayor. The applicant remains willing to present the report to the council at the council's direction.

2. Traffic Impact Study/ITD Approval. An initial traffic analysis prepared by the applicant's consultant was delivered to city staff on December 20, 2019 and a completed study was delivered to the city and ITD on January 13, both prior to the city council meeting of January 27. In response to staff's recommendation that no action be taken on the application until after ITD had approved the applicant's approach permit and issued its conditions, Council elected to postpone action until ITD issued its preliminary comments. ITD issued those preliminary comments on February 7 at which time it approved the applicant's southerly approach as a roundabout and denied the northerly approach as being unnecessary to a development of the size proposed – that is, two approaches were not required to serve the project. The applicant responded to ITD that the city had required the second approach for fire/emergency purposes. On February 25, ITD approved the second (northerly) approach for emergency access only. The applicant assumes that this information and supporting materials have been delivered to the council.

Believing that it had done what the city asked of it, the applicant was shocked to receive the city's comments last Friday, March 6, in which city staff directed the applicant to prepare an additional, broader, city wide traffic/transportation analysis and to broaden the scope of and make changes to the traffic study submitted to and already approved by ITD. Please treat this letter as applicant's objection to staff's new directive. The time for staff make such a request has long since passed. If this is something staff believed was needed, it should and could have made the request long ago at any time during the 14 months that this application has

been pending. Staff has never suggested that it intended to require the applicant to prepare a citywide transportation study. Directing the applicant to prepare such additional reports and analysis now, at the 11th hour, when council is poised to finally make its decision on the application is unreasonable and unfair. It is clearly designed to further frustrate the applicant, delay the application and further staff's continuing effort to find reasons to recommend denial of the application. The applicant has not been informed and is not aware that council has directed staff to require this additional analysis from the applicant. Whether this is a result of staff's opposition to the project, or if staff is following the directive of someone else, the applicant does not know.

3. Floodplain Development Regulations. The applicant and staff have debated the appropriate floodplain development requirements which should be applied to the project. At the January 27 council meeting, the city engineer cited a certain provision of city code he claimed supported his notion that heightened requirements, beyond the norm in floodplain development in this state, be applied to the project. The applicant directed its engineer to determine if the position taken by the city engineer was correct, whether the provision of city code cited by the city engineer applied to this project site and to work with the city engineer to resolve the matter. We understand that the matter may now be resolved and that the two engineers are preparing (or will prepare) language for inclusion in the development agreement.

4. Development Agreement. Based on the direction given by council at the January 27 council meeting, I prepared another draft of the development agreement for council's consideration. I delivered that draft to the city attorney on Monday March 2 and offered to discuss with him the changes that the applicant was proposing. The city attorney was available to speak with me last Friday (March 6), but the city attorney had apparently only skimmed the agreement and had only a vague notion of what the applicant proposed. After discussing the development agreement with the city attorney I asked that it be delivered to the city council for its input at tonight's meeting. The city attorney declined to do so and instead has elected to provide the council with a selected portion of the development agreement tonight, precluding the council from making any advance review or offering any thoughtful consideration or input tonight. The applicant objects to the city attorney's withholding of the entire development agreement from council, the effect of which censors the applicant's submittals, in violation of the applicant's due process rights, and the applicant is prepared to deliver the entire document to council tonight.


City staff will likely argue that the applicant has refused to discuss these matters with staff at a face to face meeting between the applicant's team and the city staff team and that is what has interfered with progress on the development agreement. That would not be accurate. The applicant's position, which was conveyed to the city attorney, has been that such a meeting is premature, that the new fiscal impact study needed to first be prepared, that ITD

comments and approval needed to be received, that the engineers needed to work out the floodplain issues, a further proposal be developed on the sewer and water infrastructure needs, that this information be delivered to the council for its consideration and further direction be received from council. Then, if necessary, a face to face meeting could be held to work out any details. The city attorney seemed to agree and a meeting was pre-scheduled for March 12 in case it was needed.

Application Review Costs. It also appears that the applicant needs to address the matter of the application review costs that the city has asked the applicant to pay. Council will recall that the issue was raised by a council member at the January 27 council meeting. The issue was eventually discussed at the council's February 24 meeting and set over for further discussion and action at tonight's meeting. Before the council decided the matter, however, the city attorney advised me that the city might cease processing the application if the costs were not paid and that staff had been directed to hold off on any significant work on the application until the fee issue was resolved. Under that threat, the applicant mailed a check to the city paying the legal and engineering portions of the billed costs as contemplated by city code. In view of the status of council review of the cost issue, the applicant questions whether the council was aware of and had approved the direction apparently given to staff to slow or cease work on the application.

I regret that this letter has become necessary, but the applicant seeks assurance that the city staff is acting under and at council's direction. It seems to the applicant that this is not the case. Please include this letter and the development agreement in the record of this matter.

Very truly yours,

  
Stephen A. Bradbury

Cc:

Client (via e-mail)

Matthew Johnson (via e-mail)