



HATHAWAY LARSON

Koback · Connors · Heth

February 14, 2024

VIA EMAIL

Mr. Nate Palmer
President
City Center Development Partners
1233 Cherry Lane
Lake Oswego, OR 97034
natepalmer@gmail.com

Re: Heron's Rest PUD Application

Dear Nate:

I've reviewed all of the information that you've provided. I also reviewed the City's Zoning Ordinance regarding Planned Unit Development's ("PUD") and Variances. It is my opinion that if you can make adequate findings regarding Section 4.136 (1) (Purpose) and Section 4.136 (3)(c)(1) (Planned Development Procedure) as it relates to your PUD Cluster Development, you are better off not filing for a Variance to deviate from the City's standard Off-Street Parking Requirements.

As we discussed last week, the purpose of a PUD is to provide design flexibility where there is a special site that can accommodate a unique design that is not beholden to the typical development standards of the City. The Purpose Section of a PUD states this clearly: "The purpose of 'planned development' is to permit the application of greater freedom of design in land development than may be possible under a strict interpretation of the provisions of this Ordinance." The Planned Development Procedure clearly states that a PUD is appropriate if: "[T]here are special physical conditions

Gregory S. Hathaway
1125 NW Couch Street, Suite 550
Portland, OR 97209
greg@hathawaylarson.com
(503) 303-3103 Direct
(503) 303-3101 Main

Nate Palmer
February 14, 2023
Page 2

of objectives of development which the proposal will satisfy to warrant a departure from the standard ordinance requirements.”

Your Supplemental Findings addressing the Purpose Section and Planned Development Procedure are adequate in explaining that your proposed development requires “greater freedom of design” warranting a departure from the City’s standard Off-Street Parking Requirements. In my opinion, if these findings are adopted by the City, they would be legally defensible if appealed to the Land Use Board of Appeals (LUBA). The City has the authority to adopt such findings and conclude that the Purpose Section and the Planned Development Procedure are met if those findings are supported by substantial evidence. It’s all about your unique facts supporting a PUD and that your design requires a departure from the standard Off-Street Parking Requirements.

While applying for a Variance is certainly an option, circumstances for granting the Variance, in my opinion, are more difficult to prove and would make you legally vulnerable should the City’s decision be appealed to LUBA. In other words, the City’s Zoning Ordinance is more “wired” to depart from the standard Off-Street Parking Requirements via the PUD process rather than through a Variance.

Please let me know if you or the City have any questions.

Very truly yours,

HATHAWAY LARSON LLP

/s/ Gregory S. Hathaway

Gregory S. Hathaway

GSH/ep