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MONTANA'S ATTORNEYS SINCE 1870

July 29, 2019

**VIA EMAIL ONLY**

Mayor Engen, City of Missoula  
Bryan von Lossberg, Council President  
Missoula City Council  
435 Ryman  
Missoula, MT 59802  
council@ci.missoula.mt.us

RE: Hillview Crossing Townhome Development

Dear Mayor Engen, Mr. von Lossberg, and Council Members:

We write today to demand the City Council place the Hillview Crossing TED Conditional Use Request on the next Land Use and Planning Committee Agenda and take action on the application as required by the City's zoning regulations, Title 20.

Section 20.85.070 of the City's ordinance defines the review procedure for Conditional Uses. Subsection D requires the landowner to file an application that includes all materials required by the zoning officer. Subsection E requires the City to provide public notice of the required public hearing. Subsection F requires the zoning officer to prepare a report and recommendation that evaluates the proposed conditional use.

Subsection G requires the Council to hold a public hearing and take action as follows:

G. Hearing and Final Action—City Council

1. The City Council must hold at least one public hearing on a proposed conditional use.
2. Following the close of the hearing, at the same or subsequent meeting, the City Council must take action to approve, approve with modifications or conditions or deny the conditional use based on the review criteria of 20.85.070.H. The City Council's decision must be supported by written findings of fact.
3. The City Council may act by a simple majority vote of those City Council members present and voting.

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At present, the Council refuses to follow its ordinance, resulting in damages to our client. The demand for our client to provide additional information as a prerequisite to getting back on the LUP agenda is an ad hoc, arbitrary and capricious action that has no legal basis under the Council's adopted zoning regulations. The Council's recent actions to adopt emergency zoning related to TEDs makes this abundantly clear.

As we explained in our previous correspondence, the list of demands was not created by the Council, or even by a vote of the LUP Committee. It appears to have been created by Councilman DiBari in coordination with staff. We understand the LUP Committee did vote to require additional geotechnical information prior to taking final action, but the demand presented by Councilman DiBari is impossible to achieve. It incredulously requires the applicant to evaluate geotechnical impacts from decisions the Council has not yet made. Further, no development project in Missoula has been required to provide final site designs prior to obtaining any subdivision or townhouse conditional use permit.

Effectively, the Council has denied the application by presenting arbitrarily derived barriers to a full and complete consideration of the application.

In accordance with Section 20.85.070, Development Services staff received the application and determined it contained all required information for review. As required by Section 20.85.070, staff prepared a report and recommendation which evaluated the required criteria. Staff recommended approval of the conditional use permit request with conditions. As required by Section 20.85.070, the City provided public notice of the hearings. Now, after an astounding ten meetings in the LUP Committee, the Council has not and cannot comply with the final requirements of Section 20.85.070 because it refuses to place the application on its agenda and complete the process.

As confirmed by Development Services staff, our client has submitted more than sufficient information to allow for a full review of the application and corresponding conditional use criteria. Our client has submitted substantial information related to geotechnical and stormwater issues that demonstrate the property is suitable for development in both regards. Our client has agreed to conduct final geotechnical review and stormwater designs as a condition to obtaining zoning compliance permits. Some of this work cannot be completed until after mass grading is done.

Staff has provided the Council with proposed conditions of approval requiring the final geotechnical and stormwater designs to be completed before issuing a zoning compliance permit. Such conditions are acceptable to our client, are reasonable, and are consistent with the manner in which the Council has treated all other development projects.

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For the reasons stated above, we demand the Council place the Hillview Crossing TED Conditional Use Request on the next LUP Committee meeting and promptly complete the review process and take final action on the request. Please let us know at your earliest convenience if the Council is unwilling to do so, as our only remaining option is to file litigation to compel the Council's compliance with its Title 20 requirements.

Sincerely,

GARLINGTON, LOHN & ROBINSON, PLLP



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