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MONTANA'S ATTORNEYS SINCE 1870

May 23, 2019

**VIA EMAIL ONLY**

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

RE: Hillview Crossing Townhome Development

Dear Bryan and Council Members:

We have received and reviewed the attached email from John DiBari outlining the conditions necessary for our client to satisfy before the Land Use and Planning Committee will place the Hillview Crossing TED Conditional Use Request back on the agenda. We are perplexed by this request.

The email refers to votes taken at LUP meetings and follows with a list of items requested of the development team to be reviewed for completeness by staff before any further action will be taken.

Having witnessed the discussions and votes taken at LUP meetings, we do not recognize this list of items as originating from any actions taken by the Committee.

For example, the first item requests a variety of information regarding pedestrian access. The LUP Committee voted to approve the development team's compromise proposal on April 3. The newly requested information could easily be part of a required condition of approval, as has been common for prior development projects.

The second item requires information related to stormwater facilities, but does not comport to any request for information made during an LUP meeting. At the April 3 LUP meeting, Territorial Landworks provided information which we believe corresponded to earlier requests made during LUP meetings which the development team agreed to provide.

The third item requires additional geotechnical information, but the request acknowledges the information must address decisions the Council has not made. We have previously pointed out the constantly shifting sands make it impossible to satisfy the Council's requests. At the April 3

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RE: Hillview Crossing Townhome Development  
May 23, 2019  
Page 2

LUP meeting, Territorial Landworks provided additional geotechnical information. To our knowledge, no additional LUP meetings have been held to discuss the submitted information and determine whether it represents a reasonable approach to the Council's concerns.

Further, the email states it "is not true" that the development team cannot talk with staff. We have several emails from City staff that use consistent language informing us that all discussions must take place in front of the Council. For example, one states "once a project goes to Council all communications must be through the Council to be included in the public record." We apologize if we have misinterpreted these communications and are pleased to know the development team can discuss relevant issues with staff. We hope City staff has been apprised of this permission as well.

The issues discussed above raise the following questions: Who made the decision to request the additional information and impose these new conditions as a pre-requisite for any further action on the application? When was this decision made? What authority exists for making these demands? And what records exist of communications among Council members regarding this decision?

Finally, on April 3, 2019, I sent a letter to Council explaining various errors in the process and erroneous findings of fact, particularly concerning city standards for road width, and asked the Council to reconsider its decisions in light of this information. We have not received a response to our letter or any discussion of the issues raised therein and renew our request to do so.

We respectfully request the LUP Committee place the application back on the agenda to complete the review process at its next regularly scheduled meeting.

Sincerely,

GARLINGTON, LOHN & ROBINSON, PLLP



Alan F. McCormick

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Enclosure

**From:** [John DiBari](#)  
**To:** ["Jason Rice"](#); [Paul Forsting](#); [Alan F. McCormick](#); [Grp. City Council and City Web Site](#)  
**Cc:** [Mike Haynes](#); [Mary McCrear](#); [Troy Monroe](#)  
**Subject:** Hillview Crossing TED  
**Date:** Tuesday, May 7, 2019 5:26:42 PM  
**Attachments:** [TMonroe\\_memo\\_20190501.docx](#)

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Good afternoon,

All parties -- staff, the public, council and the development team -- have been diligently working to move the proposed Hillview Crossing TED conditional use permit application forward to resolution. I appreciate that effort.

As discussions have progressed, LUP has voted on several items in the effort to provide direction to the development team. The LUP's actions are as follows:

- March 13, 2019, LUP voted for revised conditions 11 and 13 in Memo #3.
- March 20, 2019, LUP voted for Option A (Geotech Report updated before Council decision) and proposed conditions 25 and 26 in Memo #4, and Option A (Storm Water plan updated before Council decision) and revised conditions 2 and 3 in Memo #4.
- April 3, 2019, the committee voted for a concept drawing entitled Proposed Trail Exhibit Secondary Option proposed by the development team.

Jason Rice left with the committee and staff several documents relating to the Geotechnical and Storm Water reports at the April 3, 2019 LUP meeting. Troy Monroe, Assistant City Engineer, reviewed the items left by Jason as they relate to the above committee actions and prepared an email memo (see attached). Similarly, a review by staff of the Proposed Trail Exhibit Secondary Option brought to light some questions, the answers to which would help everyone better understand whether the trail meets standards and would achieve its intended purpose.

What follows is a list of items I am requesting from the development team. Once those items have been submitted and reviewed for completeness by staff, we should be ready to meet again and carry on the process. Thanks to all for your patience.

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**Pedestrian access:**

A fully detailed version of the concept drawing known as Proposed Trail Exhibit Secondary Option, vetted by city staff to ensure the proposed trails can meet applicable standards and regulations. Once complete, and provided it meets city standards, the plan will need to be distributed for committee and public review in advance of any subsequent meeting.

This revised concept drawing needs to include:

1. A description of the width and construction materials for the proposed pathway and stairs between units 58 & 59 and between units 8 & 9.
2. Slope calculations and widths for all segments of the proposed trails.
3. Grading plans describing side slopes for areas adjacent to the trails, including side slopes along the east boundary of the parcel.

**Storm Water:**

A storm water plan, complete with details regarding site-wide grading and drainage as articulated in Option A and revised conditions 2 and 3 in Memo #4 as approved by the LUP.

Please update the storm water plan to address:

1. Storm water discharge calculations associated with the 35-foot wide roads.
2. Location of retention facilities relative to the slopes.
3. Calculations and discussion of how the offsite storm water flow will be handled along the

