


2-16-17

original Agreement

Original Agenda Sheet with Resolutions

		Agenda Sheet for City Council Meeting of:		Date Rec'd	11/28/2016
12/12/2016				Clerk's File #	RES 2016-0101
				Renews #	
Submitting Dept	PLANNING	Cross Ref #	OPR 2016-0987		
Contact Name/Phone	L KEY/M FAGAN 6187/6257	Project #			
Contact E-Mail	LKEY@SPOKANECITY.ORG	Bid #			
Agenda Item Type	Resolutions	Requisition #			
Agenda Item Name	0650 - BEACON HILL DEVELOPMENT AGREEMENT				
Agenda Wording					
A Resolution Approving A Development Agreement Between the City and Beacon Hill Spokane, Inc.					
Summary (Background)					
On December 14, 2005 the City of Spokane Hearing Examiner granted preliminary approval of a plat and planned unit development (PUD) in order to allow subdivision of certain property into 35 lots for multi-family development. The property is located east of Havana Street and north of Longfellow Avenue, formerly known as "the Camel Farm". The project is known as Vistas at Beacon Hill and the preliminary approval was granted a one-year time extension, extending expiration of the preliminary					
Fiscal Impact			Budget Account		
Neutral	\$		#		
Select	\$		#		
Select	\$		#		
Select	\$		#		
Approvals			Council Notifications		
Dept Head	KEY, LISA		Study Session		
Division Director	MALLAHAN, JONATHAN		Other	PED 11/21/16	
Finance	KECK, KATHLEEN		Distribution List		
Legal	RICHMAN, JAMES		Engineering Admin		
For the Mayor	SANDERS, THERESA		jrichman@spokanecity.org		
Additional Approvals			mfagan@spokanecity.org		
Purchasing			pete@beaconhillevents.com		
			sbjordahl@pblaz.biz		
			hwaley@spokanecity.org		
			sms@witherspoonkelley.com		

ADOPTED BY
SPOKANE CITY COUNCIL:

12/12/2016
Leri L. Roberts
CITY CLERK

When recorded return to:
City of Spokane
Attn: Planning Services Department
808 W Spokane Falls Blvd
Spokane, WA 99201

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into by and between the CITY OF SPOKANE, a Washington Municipal Corporation (the "City") and BEACON HILL SPOKANE, Inc., a Washington Corporation (the "Owner"), referred to collectively as "Parties."

RECITALS

A. WHEREAS, Owner owns that certain real property which is located in the Beacon Hill area of Spokane, generally located east of Havana Street and north of Longfellow Avenue, which property is further described in Exhibit "A," attached hereto and incorporated by reference herein (hereafter the "Property");

B. WHEREAS, the Property was formerly known as the Camel Farm or the Hillyard Zoo, and was used to raise exotic animals and miniature rodeo stock, with as many as 500 head of livestock living on the Property as well as breeding camels, zebras, 4 species of ostrich and a variety of other miniature farm animals, all of which needed to be removed before the Property could be developed;

C. WHEREAS, pursuant to Findings, Conclusions, and Decision dated December 14, 2005, File No. Z2005-68-PP/PUD, the City of Spokane Hearing Examiner granted preliminary approval of a plat and planned unit development (PUD) in order to allow subdivision of the property into 35 lots for multi-family development (the "Project" or "Preliminary Approval"). The Project is known as Vistas at Beacon Hill and the preliminary approval has been granted a one-year time extension, extending expiration of the preliminary approval until December 14, 2016;

D. WHEREAS, the Property consists of a west facing hillside composed primarily of granite and partially decomposed granite, requiring substantial earthwork to prepare the site for residential development;

E. WHEREAS, the initial earth moving required to terrace the rock hillside was undertaken in 2008 to facilitate 130 townhome lots; however, construction would start

and was forced to stop for blasting to occur. Five levels of sewer were installed, as well as water mains and water vaults;

F. WHEREAS, the Property is difficult to develop because of the granite present, topography, location, and other factors including availability of necessary infrastructure;

G. WHEREAS, completion of the Project has been delayed because site conditions, market factors and low housing demand; however, the Project is within a target area for growth and the Owner desires to pursue and complete the Project as the market demand has recovered since the Project was approved;

H. WHEREAS, the Project, given its size, scope and location, requires additional time to comply with the conditions of the approval and install necessary infrastructure;

I. WHEREAS, the City and the Owner desire to enter into this Development Agreement to extend the time frame for the filing of a final plat of Vistas at Beacon Hill as set forth herein;

J. WHEREAS, this Agreement will provide increased predictability to both the Owner and the City for the future development of the Property;

K. WHEREAS, the City is a Washington Municipal Corporation with land use planning and permitting authority over all land within its corporate limits and has the authority to enter into Development Agreements pursuant to RCW 36.70B.170(1);

L. WHEREAS, The City has promulgated regulations for Development Agreements in Section 17A.060 of the Spokane Municipal Code (SMC) and this Agreement is prepared in accordance with those provisions; and

NOW, THEREFORE, based on the foregoing Recitals, the Parties agree as follows:

TERMS

1. Development Agreement: This Agreement is a Development Agreement to be implemented in accordance with SMC 17A.060 *et seq* and RCW 36.70B.170 through RCW 36.70B.210. It shall become a contract between the Owner, their successors and assigns, and the City upon the City's approval by ordinance or resolution following a public hearing.
2. Effective Date and Duration of Agreement: This Agreement shall take effect immediately upon its adoption by the City Council and execution by all parties, provided that any time periods specified in this Agreement shall be tolled pending final resolution of any appeal of any city or state or federal land use decisions necessary to commence or complete development on the Property consistent with this Agreement ("Effective Date"). Unless terminated earlier as provided herein, this

Agreement shall remain in effect until amended in writing by the Parties or until December 14, 2021 (hereinafter, "Term").

3. Expiration Date of Project: Unless this Agreement is terminated earlier as provided herein, the expiration date (or the time by which the Owner must submit a final plat and PUD meeting all of the requirements of the Preliminary Approval) of the Project is extended until December 14, 2021. Provided, pursuant to RCW 36.70B.170, the City reserves the right to impose new or different regulations to the extent required by a serious threat to public health and safety.
4. Project Modification. Any proposed modifications to the Project shall be reviewed under the applicable sections of the Spokane Municipal City Code, and certain changes may constitute a substantial change to the Preliminary Approval and may be required to be processed as a new application and vested rights may be impacted.
5. Miscellaneous

6.1 Effect of Delay. In addition to any specific provisions of this Agreement, performance by either party of its obligations hereunder shall be excused during any period of delay caused at any time before termination or expiration of this Agreement by reason of acts of God or civil commotion, riots, strikes, picketing, or other labor disputes, national shortages of materials or supplies, or damage to work in process by reason of fire, floods, earthquake, or other casualties or any other cause beyond the reasonable control of the delaying party. Further, if any City approvals required hereunder shall be unreasonably delayed beyond the normal time period through no fault of Owners or their assigns, the term of this Agreement shall be extended by a period equal to the time of the delay.

6.2 Covenants Run with the Land. During the term of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law. Each covenant to do or refrain from doing some act on the Property hereunder, (a) is for the benefit of such properties and is a burden upon the Property, (b) runs with the Property, and (c) is binding upon each successive owner during its ownership of Property or any portion thereof, and each person having any interest therein derived in any manner through any owner of the property or any portion thereof, and shall benefit such party and the Property hereunder, and each other person succeeding to an interest in such Property.

6.3 Recordation of Agreement. Owner shall cause this Agreement and any amendment(s) or termination to it to be recorded with the Spokane County Auditor.

6.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of Washington. If any portion of the Spokane Municipal Code is deemed to be inconsistent with any provisions of this Agreement, the provisions of this Agreement shall prevail.

6.5 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and shall constitute one and the same instrument. All Exhibits hereto are hereby incorporated by specific reference into this Agreement, and their terms are made a part of this Agreement as though fully recited herein.

6.6 Voluntary Agreement. The Parties hereby represent and acknowledge that this Agreement is given and executed voluntarily and is not based upon any representation by any of the Parties to another Party as to the merits, legal liability, or value of any claims of the Parties or any matters related thereto.

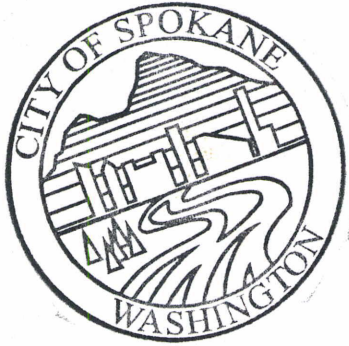
6.7 Conflicts. No officer, employee or agent of the City who exercises any function or responsibilities in connection with the authorization, permitting, or approval of the Project, nor any member of the immediate family of any such officer, employee or agent, shall have any personal financial interest, direct or indirect, in this Agreement, either in fact or in appearance. The Owner shall comply with all state conflict of interest laws, statutes and regulations as they shall apply to all Parties and beneficiaries under this Agreement, as well as to officers, employees or agents of the City.

6.8 Authority. The undersigned covenant and represent that they are fully authorized to enter into and to execute this Agreement.

6.9 Termination. This Agreement shall be deemed terminated and of no further effect upon the entry of a final judgment (and the exhaustion of all appeals setting aside such final judgment), voiding this Agreement, if appealed, or on December 14, 2021, whichever occurs first. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder.

6.10 Non-Enforcement not Waiver. Failure by any one of the Parties to enforce this entire Agreement or any provision of it with regard to any provision contained herein shall not be construed as a waiver by that party of any right to do so.

6.11 Appeal. Without limiting any appeal rights, and subject to SMC 17G.060.210, a person with standing, as defined in Washington land use case law, may appeal to the hearing examiner a project permit or project permits issued pursuant to this Agreement by filing with the permit application department a written appeal within fourteen days of the date of the written decision on the project permit.



CITY OF SPOKANE, WASHINGTON

David A. Coudou

By _____
Title MAYOR

Attest:

Laura Sorenson
Clerk (Acting)

Approved as to form:

Pat Dahl
Assistant City Attorney

Spokane
BEACON HILL, INC.

[Signature]

Peter D. Rayner pro

STATE OF WASHINGTON)
) ss.
County of Spokane)

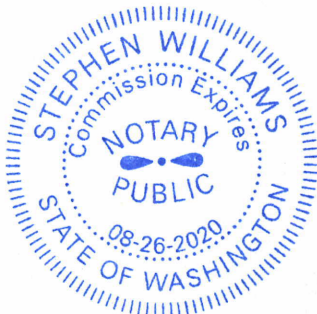
Laurie Farnsworth

I certify that I know or have satisfactory evidence that DAVID COUDOU and TERRIL PFISTER, are the persons who appeared before me and said persons acknowledged that they signed this document, on oath stated that they were authorized to sign it and acknowledged it as the MAYOR and the City Clerk, respectively, of the CITY OF SPOKANE, a municipal corporation, to be the free and voluntary act of such party for the uses and purposes therein mentioned.

DATED: 12-29-16

Stephen Williams
Notary Public in and for Washington State,
residing at Spokane WA

My appointment expires 8-26-2020



STATE OF WASHINGTON :
: ss.
County of Spokane :

I hereby certify that I know or have satisfactory evidence that, on this _____ day of _____, 20____, _____ signed this instrument,
(Print name)
on oath state that (she/he/they) is/are authorized to execute the instrument as a _____ of _____
(Position/Title) (Name of entity)
and acknowledge it to be (her/his/their) free and voluntary act of such party for uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Notary Public in and for the State of
Washington, residing at Spokane

My commission expires: _____

STATE OF WASHINGTON :
: ss.
County of Spokane :

I hereby certify that I know or have satisfactory evidence that, on this 6th day of February, 2017, Peter Rayner signed this instrument,
(Print name)
and acknowledge it to be (her/his/their) free and voluntary act of such party for uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



[Signature]

Notary Public in and for the State of
Washington, residing at Spokane

My commission expires: 1/9/20