

March 31, 2021

VIA E-MAIL

Mr. Kelly O'Neill, Jr., Director
City of Sandy Planning Department
Sandy City Hall
39250 Pioneer Blvd.
Sandy, OR 97055

Michael C. Robinson
Admitted in Oregon
T: 503-796-3756
C: 503-407-2578
mrobinson@schwabe.com

RE: Application by Roll Tide Properties Corporation for Approval of the Deer Meadows Tentative Residential Subdivision Application (the "Application") for 32 Lots in the R-1, R-2, C-3 Zoning Districts on 15.91 Acres; March 31, 2021 Submittal Date

Dear Mr. O'Neill:

This office represents the Applicant.

Enclosed with this letter is a completed City of Sandy (the "City") land use application form signed by the property owners and a check in the amount of \$5,543.00 made payable to the City. Sandy Development Code ("SDC") 17.18.30.A. The Applicant will submit the remainder of the required application materials within 180 days of this submittal date of March 31, 2021, or by September 27, 2021. The application form and check are sufficient to start the City's thirty-day completeness review period for the Application under ORS 227.178(2).

The relevant approval criteria for the Application are those in effect on the date of the Application submittal. ORS 227.178(3). Subsequently enacted land use regulations will not be applicable to the Application as long as it is made complete within 180 days of the submittal date.

The Application is both a limited land use application ("LLUA") and a residential application within the City's Urban Growth Boundary (the "UGB"). The statutes described below are not the opinion of the Applicant but represent decisions made by the Oregon Legislature that require Oregon cities to apply the statutes to a housing or residential application in order to remove all discretion from review and approval of such applications.

The Application is a LLUA as defined in ORS 197.015(12) because it requests approval of a tentative subdivision application within the UGB. LLUAs are subject to ORS 197.195(1). This statute provides that the City may apply Comprehensive Plan (the "Plan") policies, including elements of the Plan, such as a Parks Master Plan or a Transportation System Plan, to an application only if the Plan policies are expressly incorporated into the land use regulations. The relevant approval criteria in the SDC, the City's land use regulations, for this Application include only Plan policies that have been specifically incorporated into the SDC. *Paterson v. City of*

Mr. Kelly O'Neill, Jr., Director
March 31, 2021
Page 2

Bend, 201 Or App 344 (2005); *Oster v. City of Silverton*, __ Or LUBA __ (LUBA No. 2018-103, July 7, 2019).

The Application is also a residential application within the UGB. The Application seeks approval of a tentative subdivision application to create lots for single family detached and attached dwellings. ORS 197.303(1). The residential application is for property located in the UGB. The City has only a single approval path for tentative subdivision applications, so the Applicant does not have a choice of application paths. ORS 197.307(6). *See also* ORS 227.175(4)(b)(iii). Because only a single path is available to the Applicant, the City may apply only clear and objective approval procedures, standards and conditions to the Application. ORS 197.307(4). The City may apply conditions to an application but the conditions must be clear and objective. ORS 197.307(7). The Application narrative will explain which SDC standards are clear and objective and may be applied to the Application and which SDC standards are not clear and objective and may not be applied to the Application.

The exceptions in ORS 197.303(5) and (6) and 197.307(5) do not apply to this Application.

In the event that the City finds that a relevant approval criteria is not met, the City must offer the Applicant an opportunity to either amend the Application, or to offer a condition of approval to satisfy the approval criteria. ORS 197.522(3).

Finally, ORS 227.175(4)(b) provides that the City may not deny an application for a housing development within the UGB if the application complies with clear and objective approval criteria. The City may not approve a housing development application within the UGB conditioned upon a reduction in density or height unless necessary to resolve a health, safety or habitability issue, or to comply with a protective measure adopted pursuant to a Statewide Planning Goal. ORS 227.175(4)(e). The City did not identify any such protective measures in the pre-application conference with the Applicant on March 17, 2021.

The Applicant held the required pre-application conference on March 17, 2021 after the Planning Director cancelled the first pre-application conference scheduled for February 10, 2021. SDC 17.18.20.

This Application is not prohibited by SDC 17.18.90, "Re-Application Following Denial." The Planning Director told the participants at the pre-application conference that he found this Application not to be prohibited by this standard. Notwithstanding the Director's finding, this standard is not clear and objective because it contains non-clear and objective standards and requires a non-clear and objective procedure for determining compliance and may, therefore, not be applied to the Application.

Please provide me, Mr. Dave Vandehey (dave.vandehey@accessmax.com) and Mr. Brown with the City's completeness determination, all correspondence to and from the City concerning this Application and all notices of public hearings for this Application.

Mr. Kelly O'Neill, Jr., Director
March 31, 2021
Page 3

Very truly yours,



Michael C. Robinson

MCR:jmhi
Enclosures

cc: Mr. Dave Vandehey (*via email*) (*w/enclosures*)
Mr. Carey Sheldon (*via email*) (*w/enclosures*)
Mr. Alex Reverman (*via email*) (*w/enclosures*)
Mr. Tracy Brown (*via email*) (*w/enclosures*)
Mr. Ray Moore (*via email*) (*w/enclosures*)
Mr. Mike Ard (*via email*) (*w/enclosures*)
Ms. Shelley Denison (*via email*) (*w/enclosures*)
Mr. David Doughman (*via email*) (*w/enclosures*)

PDX\126769\255102\MCR\30488479.1