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## MEMORANDUM

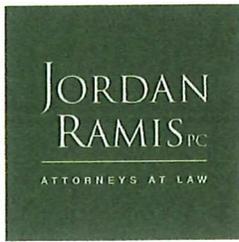
TO: Planning Commission  
FROM: Jana Fox, Associate Planner JCF  
DATE: January 26, 2016  
SUBJECT: Appeal of Sunset Station & Barnes Road PUD Time Extension (APP2015-0003)

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Staff have received the following letter from the applicant for the Time Extension application under appeal (EXT2015-0004).

### Exhibits

**Exhibit 1.3** Letter from Timothy V. Ramis, dated January 26, 2016



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**EXHIBIT** 1.3

January 26, 2016

Jana Fox, Associate Planner  
CDC Dept.  
City of Beaverton  
PO Box 4755  
Beaverton OR 97076-4755

Re: **Sunset Station – EXT 2015-0004**  
*Beaverton PUD Application*  
Our File No. 49966-71502

Dear Ms. Fox:

We represent the applicant, J. Peterkort & Company, L.P., and provide this letter in response to the appeal. Please include this letter in the record.

The appellant asserts the extension application does not satisfy criterion 50.93.6.B, which states: "There has been no change in circumstances or the applicable regulations or Statutes likely to necessitate modification of the decision or conditions of approval since the effective date of the decision for which the extension is sought." It believes there are two changes that require changes to the underlying PUD decision, and presents six arguments. As a threshold matter, the issues raised by the appellant are all outside the geographic area of the 2013 PUD approval and this application to extend that approval, and therefore the appeal lacks legal merit.

First, the appellant asserts transportation impacts were fundamental considerations in the 2013 PUD approval, and that the 2014 TSP Update that added the 95th Avenue Trail must be considered. The fatal flaw in this assertion is that the proposed future 95th Avenue Trail is not on, or even near, the subject property. As shown on the vicinity map which is Exhibit 4.1 to the staff report, the closest point of the trail is approximately 800 feet northeast of the subject property. Exhibit 4.1 is substantial evidence of the trail location, and there is no contrary evidence in the record that places the trail on or near the subject property. Therefore the 2014 TSP Update is not a change in regulations that affects the subject property.

Jana Fox  
January 26, 2016  
Page 2

Second, the appellant argues the City must account for paragraph 501-7.1.B of Washington County Ordinance 799, which states that regional trails are essential services. The applicant agrees that regional trails are essential services; however this trail is not on the subject property and this argument is irrelevant. Therefore the Ordinance 799 is not a change in regulations that affects the subject property.

Appellant's third point is that the City should consider the "applicant's repeated attempts to block the 95th Avenue Regional Trail with fences and signs." The appellant is incorrect for several reasons. Most importantly, the 95th Avenue Regional Trail is a planned trail that does not exist on the ground. In other words, there is no trail to block. Nor is there any legal prohibition on placement of the fence. Furthermore, the property with the fence is not owned by the same owner as the properties in this PUD extension application. The Trail is located on the property of Peterkort Centre III, LLC, a different entity having different ownership than the applicant. The city lacks legal authority to condition approval of the PUD extension on changes a different property owner makes to a different property. There is no substantial evidence in the record that this issue constitutes a change in circumstances regarding the subject property.

Fourth, the appellant insists the 95th Avenue Regional Trail runs along an existing trail corridor subject to common law doctrine. Because the trail location is far away from the subject property, legal disagreements regarding the status of the trail are not relevant to the extension of the approved PUD. Again, there is no substantial evidence in the record that this issue constitutes a change in circumstances regarding the subject property.

The fifth argument is that the 95th Avenue Regional Trail is actually "immediately adjacent" to the subject properties, because the conditions of the PUD approval require improvements to public right-of-way outside the boundaries of the PUD properties. It insists the trail is "directly connected to the PUD". The best evidence in the record on this point is Exhibit 4.1, showing the trail about 800 feet northeast of the subject property at its closest point. Much opponent testimony emphasizes the desire of residents northeast of the subject properties to use the trail for pedestrian access to the Sunset Transit Center. There is no evidence in the record that the trail would be used by residents and visitors for access to the transit center, because they would not. There is no substantial evidence in the record that the trail is "immediately adjacent" to the subject properties, or that the location some 800 feet away at its closest point is a material change in circumstances affecting the PUD approval or this extension.

Appellant's sixth and final argument is that the intergovernmental agreement between the city and county compels implementation of the 95th Avenue Regional Trail. Compliance with that agreement is not an approval criterion for this application, and implementation of the trail would be on other properties well away from the PUD area. Therefore this argument does not present a change in circumstances or regulations affecting the subject properties.

Jana Fox  
January 26, 2016  
Page 3

The 2015 extension application is for the same properties included in the 2013 PUD approval. Appellant's tireless efforts to link these properties to the proposed 95th Avenue Regional Trail fail because the trail location is on other properties 800 feet or more away, and what occurs 800 feet away is not a change in circumstances or regulations for the subject properties. The city lacks legal authority to deny the extension application based on a change in regulations affecting other property outside the 2013 approval. Any attempt to do so would clearly violate the applicant's constitutional rights. *Koontz v. St. Johns Water Management District*, 133 S.Ct. 2586.

In summary, there is no substantial evidence in the record of a material change in circumstances or the applicable regulations or statutes likely to necessitate modification of the decision or conditions of approval since the 2013 PUD decision for which this extension is sought. The applicant therefore requests that the city deny the appeal.

Thanks for your assistance.

Sincerely,

JORDAN RAMIS PC



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cc: James P. Draudt, Jensen Draudt LLP  
Lois Ditmars, J. Peterkort & Company