

From: Lord, Patricia
Sent: Wednesday, January 27, 2021 1:54 PM
To: Michael.Roth@icemiller.com
Cc: Laff, Allison; DiSanto, Michael
Subject: RE: CityGate West

Mike,

As requested, I have forwarded your emails from today to Mike DiSanto and he has discussed them with the City Manager's Office.

Please be advised that as a result of your email we will send City Council only an ordinance approving the CGW development. Staff will recommend denial of the ordinance.

Thanks, Pat

Pat Lord
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(630) 420-4172 | lordp@naperville.il.us

From: Michael.Roth@icemiller.com <Michael.Roth@icemiller.com>
Sent: Wednesday, January 27, 2021 11:47 AM
To: Lord, Patricia <LordP@naperville.il.us>
Cc: Laff, Allison <LaffA@naperville.il.us>
Subject: RE: CityGate West - Condition F

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Pat,

I've spoken with my client about your proposed ordinance language regarding phasing.

The phases of the City Gate West project are planned to be developed in the order within timeframes dictated by financing approval and the marketplace – provided however, the owner and developer, Inter-Continental, has committed to firm outside deadlines for final platting and buildout of **all** of the

phases. We've presented and included in the petition what we believe are reasonable and realistic deadlines, as the business world struggles to come out of the COVID pandemic.

Staff's concern is that the residential component could be built with nothing more. But while there is a real possibility there is by no means any certainty, that Lot 4 will be developed first. Second, there is no possibility that residential development with nothing more will be built because Lot 4 itself will include over 65,000 s.f. of non-residential development. Third, staff's concern that the development could result in nothing more than residential uses is as if Top Golf and WhirlyBall are non-existent. Those are thriving and dynamic non-residential uses that exist now, and that are integral to the City Gate West project. Fourth, my client has been upfront about the timing issues and has agreed to the 5 year/3 year deadlines for final platting and construction, which would be in the ordinance and development agreement, would be legally binding, and would put the entire development at risk if those deadlines were not met.

For these reasons, we ask that the ordinance include a phasing condition for the project as presented in our petition.

Mike



Michael Roth

Partner

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From: Roth, Michael

Sent: Wednesday, January 27, 2021 9:55 AM

To: Lord, Patricia <LordP@naperville.il.us>

Subject: RE: [EXTERNAL] CityGate West - Condition F

Pat, thanks for your email. Thanks for your proposal. I forwarded it on to my client this morning and asked them to review and advise regarding your proposed language. This is not a decision that I can make, and I may need a little more time than 10:00 a.m. to get you a response. I know you're under the gun to get your submittals in on time. Do you still want me to call you at 10:00 a.m.?

As for the request for confirmation that my client will not proceed with the CityGate West development if the hotel on Lot 11 is not approved by City Council, again, my client has carefully planned and petitioned for a complex and cohesive development with a defined mix of uses. My client does not plan to proceed with the project in some other fashion, and does not consent to the subject property being rezoned otherwise. We request that the City Council vote the application with the hotel on lot 11 up or down.

Mike



Michael Roth

Partner

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From: Lord, Patricia <LordP@naperville.il.us>
Sent: Tuesday, January 26, 2021 7:17 PM
To: Roth, Michael <Michael.Roth@icemiller.com>
Cc: Laff, Allison <LaffA@naperville.il.us>
Subject: [EXTERNAL] CityGate West - Condition F
Importance: High

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Mike, in follow-up to our conversation late this afternoon, below please find: (i) Condition F as set forth in the ordinance we sent for your review on Friday and which you advised this afternoon that you could not agree to (in black); (ii) a similar condition approved by the PZC (in green);

and (iii) a proposed replacement Condition F and G (in blue). We thought it might be helpful to have a concrete alternative to discuss with your clients.

The language in the proposed blue F and G provisions reflects a response to your statement today that the residential phase of the CityGate West development will be the first phase of the CGW development to proceed and that it will likely take at least 5 years to construct.

As you are aware, it has always been a significant concern of staff that the proposed mixed-use development for CGW could (for financial, market conditions, or other reasons) devolve into simply a 410 unit apartment complex with some retail or office on the first floor. As you know, staff's support of the residential component for CGW has always been contingent upon its existence within a mixed-use development.

*Finally, when we talk tomorrow, could you please confirm whether it is your clients' position that they will not proceed with the CityGate West development if the hotel on Lot 11 is not approved by City Council as you indicated was likely the case during our call.

Thanks Mike. Talk to you tomorrow at 10. Pat

Condition F in the CGW Ordinance:

- F. Petitioner has submitted a conceptual phasing plan for the Development. A final phasing plan for the entire Development shall be submitted for review and approval by the City with the first Final PUD Plat for the Subject Property which shall specify which Phases of the Development will be constructed in which order and the timeframe for each to be completed ("**Phasing Plan**"). Any changes to the Phasing Plan shall require the written approval of the City Manager who may refer the proposed changes to the City Council for approval.

The Phasing Plan shall include access points, driveways and utilities, which shall be subject to review and approval by the City Engineer, that will be required to be constructed prior to issuance of an occupancy permit for any use contained within the first final PUD Plat. The City Engineer shall review each subsequent Final PUD Plat to determine additional access points, driveways and utilities which shall be required to be constructed prior to issuance of an occupancy permit for that portion of the Development.

Financial surety, in an amount approved by the City Engineer and in a form and from a source approved by the City Attorney, shall be submitted with for each Final PUD Plat.

PZC CONDITION APPROVED:

5. A phasing plan for the entire PUD shall be submitted with the first Final PUD Plat for the Subject Property which phasing plan shall specify which phases will be constructed in which order and the timeframe for each. The phasing plan shall include those access points, driveways and utilities, which shall be subject to approval by the City Engineer, that will be required to be constructed prior to issuance of an occupancy permit for any use contained within the first final PUD Plat. The same process shall

be repeated with each subsequent Final PUD Plat. Financial surety, in an amount approved by the City Engineer and in a form and from a source approved by the City Attorney, shall be submitted with for each Final PUD Plat.

POSSIBLE REPLACEMENT CONDITION F (which we broke into 2 conditions: F and G):

F. Petitioner has submitted a conceptual phasing plan for the Development. A final phasing plan (“**Phasing Plan**”) for the entire Development shall be submitted with the first Final PUD Plat for the Subject Property. The Phasing Plan shall include access points, driveways and utilities, which shall be subject to approval by the City Engineer, that will be required to be constructed prior to issuance of an occupancy permit for any use contained within the first final PUD Plat. The City Engineer shall also review each subsequent Final PUD Plat to determine whether additional access points, driveways and utilities will be required to be constructed prior to issuance of an occupancy permit for that portion of the Development.

Financial surety, in an amount approved by the City Engineer and in a form and from a source approved by the City Attorney, shall be submitted with for each Final PUD Plat.

G. In order to ensure a mixed-use Development, Petitioner shall not submit a final PUD plat for the residential phase of the Development until such time as fifty percent (50%) of the occupancy permits for a commercial and/or retail phase of the Development have been issued. Alternatively, Petitioner may submit a final PUD plat for the residential phase of the Development concurrently with a final PUD plat for a phase of the Development which includes retail and or restaurant uses provided that no residential occupancy permit shall be issued until such time as fifty percent (50%) of the occupancy permits for the retail and/or restaurant uses for that phase have been issued.

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Thank you.

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