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August 24, 2016

Boise City Council
c/o Susan Riggs
150 N Capitol Blvd
Boise, ID 83702

RE: CAR16-00002, PUD16-0005, & SUB16-00006/Ben's Crow Inn Subdivision

Dear City Council Members:

At the July 12, 2016 hearing, the Council tabled DevCo's pending applications for 60 days for the applicant to further develop the Project's public amenities. This letter details DevCo's efforts to address the Council's concerns.

Petersen Property

Brant and Krista Petersen testified at the hearing that they would not support continued public use of the existing Greenbelt access pathway that crosses their property. Following the hearing, DevCo commissioned a survey to determine how much land is at issue to support an offer to buy the land from the Petersens. The survey, included as Attachment A, shows the Petersens' strip of land is only 1.8 inches wide at the historic public access point. The Petersens' property is so narrow at this location that they would be physically unable to block public access without trespassing on DevCo's private property or Ada County's property.

DevCo also researched the viability of a prescriptive easement over the Petersens' land. Idaho law provides that a prescriptive easement is created where property is used openly, continuously and adversely and for the statutory period (at that time, five years).¹ Beginning in approximately 1980, Ben Hamilton began dozing and widening the existing public access pathway connecting the Project site with the Greenbelt. Mr. Hamilton paved the pathway in 1987 and has continually used and maintained the pathway since 1980. Consistent with the

¹ In 2006, the Legislature extended the period to 20 years but this did not impact existing easements.

requirement for “adverse” use, Mr. Hamilton never sought or received permission from the Petersens’ predecessors to use or improve the path. These facts strongly support the existence of a prescriptive easement prior to the Petersens’ purchase of the property four years ago, who would take the property subject to the easement.

After gathering this information, DevCo approached the Petersens and offered to purchase the northern portion of the Petersens’ property, depicted in yellow on Attachment A. DevCo offered the Petersens \$10,000 for this narrow strip located predominately on a steep hillside. This is the same strip of land that Mr. Petersen testified is “of no value to them.”² DevCo also offered to convey to the Petersens the land at the southern end of the Project site where the Petersens’ driveway and landscaping encroaches. Finally, DevCo offered to accept a condition to allow only single-level homes on Lots 23–25. Mr. Petersen inquired whether DevCo would swap Lot 24 for the Petersens’ northern strip even if at some cost to the Petersens to make up the difference in land values. DevCo agreed to forego the development potential for this lot and added to the original offer a three-year option for the Petersens to purchase the finished and subdivided lot for \$80,000 (current market value of finished lots). The Petersens did not respond to DevCo’s offers.

Public Parking Lot Site

At the conclusion of the hearing, Councilwoman Jordan expressed concerns that the Project did not offer an adequate public benefit in accordance with the PUD statement of purpose provision. Councilwoman Jordan encouraged DevCo to propose a redesign with an additional amenity providing a public benefit.

The City’s Code lists five specific amenities to satisfy the PUD approval criteria and requires a PUD applicant to provide two of them; these are: (1) energy or water conservation measures; (2) private recreational facilities; (3) landscaped open space of a least 10% of development area; (4) public access to the Greenbelt; and (5) a public bicycle circulation system.³ As noted by the City Staff’s Project Report, the Project satisfies this requirement by incorporating “±32,307 sq. ft. or 18.11%” of common open space and providing “a public pathway from the sidewalk on Warm Spring Avenue through the subdivision connecting to an existing pathway that connects to the Boise Greenbelt system.”⁴

DevCo proposes an optional redesign to provide another public amenity in accordance with the neighbors’ and Council’s comments at the hearing. The new amenity is donation of land for a public parking lot for Boise residents accessing the Greenbelt through the Bens Crow

² July 12, 2016 Public Hearing at 3:44:47.

³ BCC § 11-07-06.5.B(1).

⁴ Staff Report, p. 16. DevCo’s application also meets the energy and water conservation measures by installing low-water landscaping, as described in the initial application narrative.

Inn Subdivision. The proposed parking lot (shown in Attachment B) would be located at the southernmost end of the 4.2-acre project site and would accommodate six parking stalls for Greenbelt users. DevCo would improve the road access to the parking area and provide water service to Lot 26. Following recordation of the final plat, DevCo would donate the site to Boise Parks and Recreation.

This option requires DevCo to reduce the size of Lots 23–25 as shown in Attachment C. The proposed parking lot would constitute a new non-buildable Lot 26. Lots 24 and 25 would have rear alley access and provide a 30-foot setback from the Petersens' property (compared to the previous 5-foot setback). Due to the additional improvements and size reduction of Lots 23–25 required for this option, DevCo cannot agree to construct single-level homes on Lots 23–25. The lot sizes and building height will comply with applicable zoning. In the event the Council chooses this option, DevCo will accept the following additional conditions of approval:

1. Lots 23–25 will be reduced in size in accordance with the proposed revised preliminary plat to accommodate a new, non-buildable Lot 26;
2. Lots 24 and 25 will be accessed from a new rear alley and will have 30' minimum rear setbacks; and
3. Applicant will improve the road access to Lot 26 and will provide Lot 26 with water service. Upon final plat recordation, Applicant will donate Lot 26 to Boise Parks and Recreation who will own, improve and maintain the property as a public parking amenity.⁵

Thank you for your consideration of this additional information. We look forward to discussing it with you at the September 13th hearing.

Sincerely,

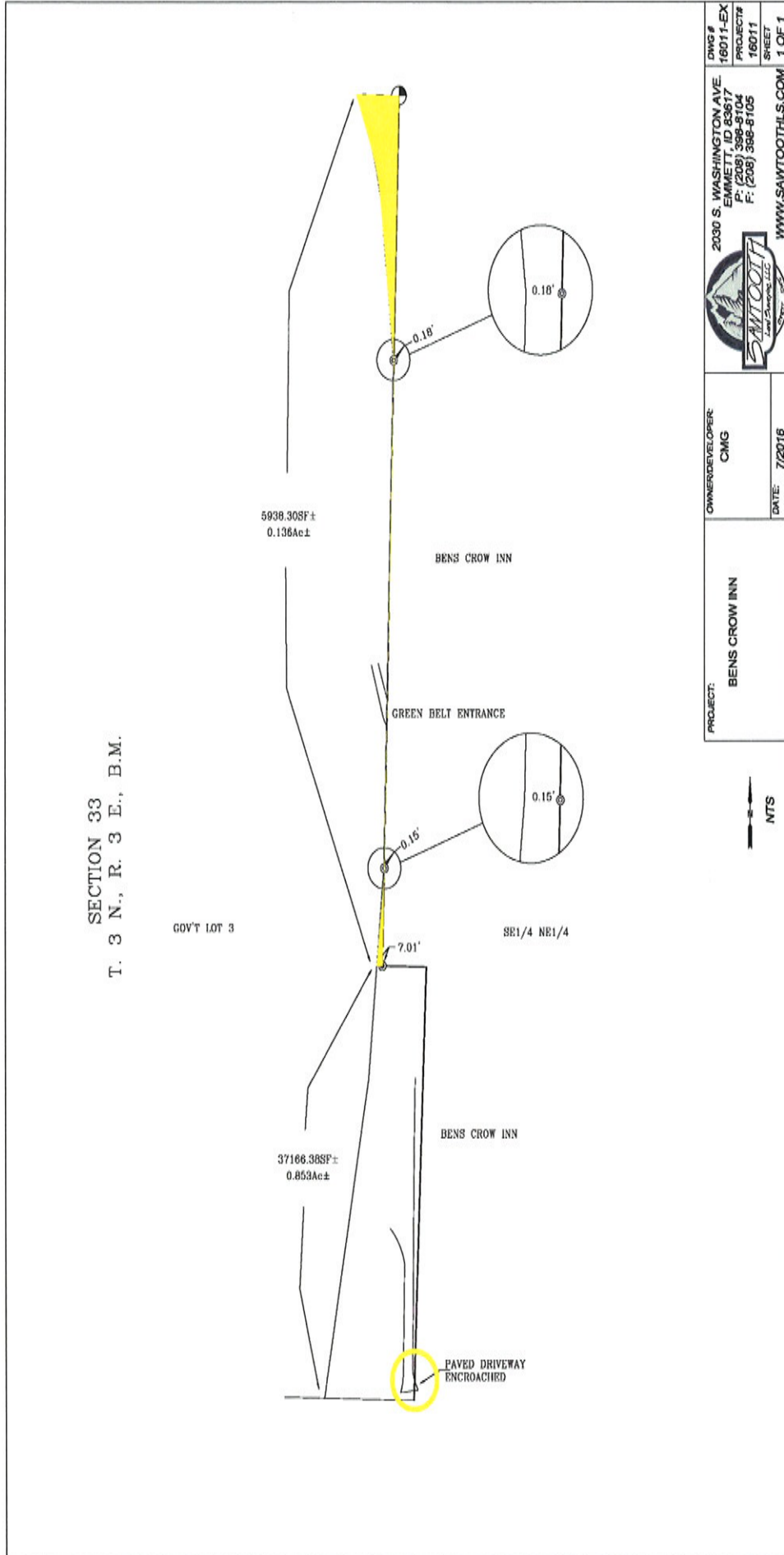


Deborah E. Nelson

cc: DevCo, LLC
Attachments DEN to City Council [12094-30]

⁵ Under BCC § 11-03-03.7.D, the Council has the authority to impose such conditions as are needed to ensure the approval is consistent with the purposes and standards in City Code. DevCo, however, reserves its right to withdraw consent to annexation in the event the Council imposes more onerous or restrictive conditions of approval than outlined here.

Attachment A – Survey



Attachment B – Proposed Parking Lot Site

