

Supplemental Packet for City Council Hearing on January 25, 2010

Exhibit E

Re: File No. LDC-14-09, Revisions to Chapter 17.70 of the BMC, Master Plan Development District

Enclosed: two page email from Catherine Wiley, One page letter from Pat Sherman

Doc. ID	Received:	From	# pgs	Description
	1/22/2010	Catherine Wiley	2	Email regarding File # LDC-14-09
	1/22/2010	Pat Sherman	1	Letter regarding File # LDC-14-09

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JAN 22 2010

DC

Dianne Morris

From: Catherine Wiley [cwileywoods@hotmail.com]
Sent: Friday, January 22, 2010 10:02 AM
To: Joyce Heffington
Cc: Dianne Morris; Gary Milliman; Cameron La Follette; Courtney Johnson; James D. Brown
Subject: File LDC-14-09 Continued hearing to consider revisions to 17.70
Importance: High

CITY OF BROOKINGS

Good morning, Joyce; I am requesting that this email and my comments below be submitted as testimony to the City Council regarding File LDC-14-09-Continued hearing to consider revisions to Chapter 17.70, Master Plan Development District (MPD). In addition, it is noted that staff's memo of 1/14/2010 states, "On January 25th this hearing will be continued. The public testimony portion of the hearing is still open. Written or oral testimony can still be given at that time." It is of concern that the Council will receive written or oral testimony, "... at that time" which may not allow for due deliberation and/or consideration. I am, therefore, requesting an extension of time for a noticed public hearing which would provide the opportunity for interested persons to respond.

Mayor Anderson, President Hedenskog, and Council Members;

I am requesting that the first point of order regarding LDC-14-09, proposed revisions to the Brookings City Master Plan Development District (MPD), 17.70, clearly indicate that these revisions apply only to future applications.

With that caveat, the only two additional recommendations relate to the issue of time extension and the stated primary purpose for revision, the "conditions have not changed" component. In order to simplify, clarify, and, hopefully, save future time and costs, I respectfully submit the following:

In order for an extension to be granted, the developer be required to show good cause, shown by substantial evidence of one of the following:

1. An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control;
2. An inability to secure all required governmental agency approvals by the expiration date of the Council's order because of delays that are beyond the applicant's reasonable control; or
3. The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control.

For purposes of meaningful clarification, it is requested that the Council consider the option of when conditions *have* changed, for example:

1. The property has been rezoned; or
2. There are circumstances related to potable water supplies, sanitary sewer services, and/or other public utilities, requiring changes.

As commentary to "Response" regarding the "conditions have not changed" language

1/25/2010

proposed by staff, "That interpretation is stated in this revision as proposed by Mr. Spickerman." It should be noted that Mr. Spickerman provided his opinion, after the fact, to a written statement given by staff regarding the legal parameters of 17.70.120, "... within four years from the date of approval...". As subsequently documented in City records, a contradictory legal precedent had been established in the prior year.

Thank you for due consideration of these issues, requests and recommendations.

Sincerely, Catherine Wiley

96370 Duley Creek Rd. Brookings, OR 97415

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CITY OF BROOKINGS

Pat Sherman
PO Box 1546
Roseburg, OR 97470

January 22, 2010

City Council
c/o Planning Director Dianne Morris
City of Brookings
898 Elk Drive
Brookings, OR 97415

Sent via Fax on Friday January 22, 2010

Mayor and Councilors:

Please include this as testimony for public hearing on January 25, 2010 regarding revision of the Master Plan Ordinance.

My comments are limited to the section of the ordinance having to do with extension of a master plan. This section of the ordinance as currently written is fundamentally flawed as follows:

- First, we live in a dynamic world in which conditions are constantly changing. Therefore, to require the applicant to prove that conditions have not changed puts the applicant in the position of having to prove the impossible.
- Second, the section requires the applicant to prove a negative, which is more cumbersome than proving a positive.
- Third, Planning Commissioners and City Councilors usually are not lawyers and yet they are the people who will make the decisions based on this ordinance. The current section of this ordinance is difficult for lay people to interpret and the proposed revision is just as difficult, if not more so.

The solution to this problem is to correct the fundamental flaw, namely, eliminate the phrase *conditions have not changed* and instead insert positive language. The requirement could be for the applicant to show that something has happened that requires an extension. (*Conditions have changed.*) What the positive requirements would be should be a subject of further in-depth discussion by the committee that is drafting the revisions. The positive requirements could be narrowly or broadly stated, as the Council chooses.

Hopefully, the idea in revising the Master Plan ordinance is to come up with an ordinance that is better than the current ordinance and is readably understandable by the decision makers and other involved parties.

I suggest that the City Council remand the proposed ordinance revision back to the Land Development Code committee for further in-depth discussion and work. If the intent is to have an ordinance that endures, then the additional time spent will be inconsequential.

Sincerely yours,



Pat Sherman