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September 2, 2008

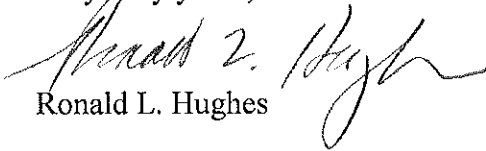
City of Ann Arbor
Attn: City Council
P.O. Box 8647
Ann Arbor, MI 48107

Re: 601 Forest Site Plan Approval Letter to City Attorney

Dear Mayor Hieftje & City Council Members,

Please see the attached correspondence to the City's Attorney on August 29, 2008.

Very truly yours,


Ronald L. Hughes

RLH/sth

cc: Daniel W. Ketelaar
Mr. Greg Obloy
Mr. Robert Carson

CARSON FISCHER, P.L.C.

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August 29, 2008

Stephen K. Postema, Esq.
Ann Arbor City Attorney
City Hall, 3rd Floor
100 N. 5th Avenue
Ann Arbor, Michigan 48107

Re: 601 Forest Site Plan Approval ("Project")

Dear Mr. Postema:

This letter is written in furtherance of City Council's failure to act on our client's (601 Forest LLC) request for site plan approval for the Project at its meeting of August 18, 2008. It is Applicant's position as more fully evidenced below that its site plan fully complies with all City Ordinances and requirements, that its site plan should, therefore, be approved by right and that it has suffered substantially because the City has failed to follow its own mandated procedures. Further, there is no legitimate reason for any further delay and approval of the site plan should be granted at the next scheduled Council meeting.

It is our understanding that City Council requested additional information in connection with the Wind Study which has been voluntarily provided to the City, additional time to review the traffic study which was provided to the City on or about January 8, 2008 and additional consideration of a proposed condition of site plan approval of the consolidation of the parcels involved in the site plan.

We believe that some background in connection with the Project and the site plan is appropriate. In that regard, we point out that as early as November, 2007 a pre-submittal meeting was held with City staff. A site plan was originally submitted on or about January 2, 2008, which was consistent with staff's acknowledged understanding of applicable ordinances, including floor area ratio ("FAR") calculations. In the period of March through April of 2008, City staff changed its position with respect to FAR, which required the Applicant to

resubmit a modified site plan (or challenge the action at that time). In May of 2008, Applicant, without waiver, resubmitted a new site plan based upon the City's revised FAR calculations, which resulted in a significantly smaller building. In regard to the May submittal, the Planning and Development Services staff submitted a report to the Planning Commission dated May 29, 2008 that recommended that "the proposal be approved because it complies with all applicable local, state and federal laws, ordinances, standards and regulations; would not cause a public or private nuisance; and would not have a detrimental effect on public health, safety or welfare."

On June 3, 2008, the Ann Arbor Planning Commission, by a 9:1 vote, approved the site plan subject to a variance being secured for a curb cut. In approving the site plan, the Planning Commission found the site plan complied with all of the requirements and criteria of the City. On June 25, 2008, Ann Arbor's Zoning Board of Appeals approved the variance for the curb cut.

Section 5:122.(3) Site Plans for City Council Approval - provides in relevant part: "The City Council shall approve or reject the site plan within 30 days of the recommendation by the Planning Commission." City Council did not address the site plan within 30 days of the June 3, 2008 Planning Commission recommendation. Therefore, the City has violated and continues to violate its own mandate to the substantial detriment of Applicant.

On June 12, 2008, City staff delivered a form development agreement as a PDF document and refused to release a word-version of the document, which might have facilitated any discussion/negotiation. Neither the staff nor counsel for the City would discuss the document at that time. There is no provision whatsoever in the ordinances of the City of Ann Arbor which requires the execution of a development agreement for Applicant's site plan which meets the criteria established by the ordinances as was confirmed by both the Planning staff in its report and the Planning Commission in its approval. Regardless, the City refused to place the site plan before City Council until a format of the development agreement was agreed to in principle between Applicant and staff. Although Applicant was advised that the site plan would be considered at the July 21, 2008 City Council meeting, the matter was not placed on City Council's agenda for that meeting. (It should be noted that even if it had been placed upon the agenda for July 21, 2008, City Council would have been delinquent in its required action in respect to the site plan, July 21 being more than 30 days subsequent to the June 3, 2008 action by the Planning Commission.)

On August 7, 2008, the matter was placed on the agenda of City Council, but Applicant was told that the matter would not be addressed at that meeting. However, City Council conducted a public hearing on the application in spite of the advice to Applicant that the matter would not be addressed at the August 7th meeting. Although the public hearing was opened on August 7, 2008, the public hearing was not closed and the Mayor "declared" the hearing continued to August 18, 2008.

On August 18, 2008, City Council re-opened the public hearing and took comments on the application. In spite of the fact that a prior public hearing in connection with another site plan was opened and closed during the August 18th meeting, the chairperson of the City Council meeting, without vote or resolution by the Council at the end of the public hearing, upon the exhaustion of all public comment with respect to the application, declared that the public hearing may not be closed because the matter may not be acted upon. This seemingly prescient statement was clearly irregular and an indication of an extra meeting decision. It was also contrary to normal practice. Thereafter, when the item came up for action later in the August 18, 2008 meeting, City Council, over the objection of one of its members, adjourned the matter to October 6, 2008, an inordinately distant date apparently chosen by you.

City Council has wholly failed to act upon the site plan in a timely and lawful manner. Further, pursuant to both applicable Michigan statutes and the ordinance of the City, not only must City Council approve or reject the site plan within 30 days of the recommendation of the Planning Commission, it is required to approve the site plan since this site plan complies with all requirements. In fact, this site plan not only complies with all applicable ordinances of the City of Ann Arbor, it also carries out the intent and purpose of the ordinances within the City.

As an example, this Applicant has continued to act in good faith and beyond what is required for application for site plan approval, all in satisfaction of unwarranted requests by the City and at substantial additional expense. Applicant has provided the City with studies and materials beyond that required under the ordinance, all of which support the development. Applicant, therefore, finds itself in a position of being delayed and incurring additional costs to its substantial damage and finds the City in violation of its own ordinances in respect to the approval of site plans.

Without waiver of any of our client's rights, claims and prerogatives, we are enclosing herewith an additional copy of the wind study and its background

materials and project list of our client's experts, Integrated Environmental Solutions Limited. As you will note, the background materials support the conclusions of the Wind Study and the methodologies used. It is also worth noting that the Wind Study was done by one of the most highly respected and internationally recognized authorities on the subject. It is extremely disappointing that materials which support the development have been allowed to be used for the ulterior motives of a small number of the public or others to delay and disrupt the site plan approval process. There is no justification whatsoever for this having occurred. Moreover, as was pointed out during the continued public hearing on August 18, 2008, the principal author of the Wind Study was present at the City Council meeting and available to discuss any of the issues that Council persons might have had with the Wind Study. Council did not see fit to ask one question.¹ Regardless, the City has the Wind Study and the background materials. The Wind Study supports the Project. The site plan should be approved at the next City Council meeting.

Regarding the Traffic Study, any questions with respect to that study done by a Midwest Consulting, one of the few firms recognized to do such studies by MDOT and a known authority for the work that it does for municipalities and third parties, could have been addressed at any time since January of 2008. Moreover, the principal author of the Traffic Study was also present at the City Council meeting on August 18, 2008 and, as was represented to Council, available to answer any questions the Council may have had. Council did not see fit to ask one question. The Traffic Study supports the Project. The site plan should be approved at the next City Council meeting.

Finally, with respect to the proposed condition regarding the consolidation of the parcels, the Council could have adopted its affirming resolution on that condition or could have accepted the explanation that if Council were concerned with its ability to enforce the collection of any delinquent taxes that may occur with respect to the parcel, Applicant is more than willing to have all parcels stand for the collection of the taxes with respect to any one of the parcels that are involved. Moreover, counsel for Applicant is more than willing to work with the City Attorney in order to reasonably address this issue in a business-like fashion.² Regardless, this matter should not have held up Council's consideration and is easily resolvable by Applicant in a

¹ A disorganized presentation of questions by the University of Michigan academic whose apparent concentration of study is other than Wind Studies, should never have been allowed to delay the hearing or the decision and certainly is not in anyway a reasonable ground for having delayed consideration by the Council for a period of approximately six weeks.

² It is a common occurrence for construction to take place on long-term land lease parcels.

City Attorney Postema
August 29, 2008
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CARSON FISCHER, P.L.C.

reasonable fashion. The site plan should be approved at the next City Council meeting.

Applicant respectfully asserts that there is no reason for any further delay in the consideration by City Council of the application and, therefore, requests that this matter be placed on the agenda for the next occurring City Council meeting. This application must not be delayed until October 6th. There is no legitimate reason for further delay and the City's refusal to act upon this matter at the next meeting can only be interpreted as evidencing ulterior and improper motives in respect to the application.

Should you wish to discuss this matter, please do not hesitate to contact me. Please advise me as to whether the application will be placed on the agenda for the next Council meeting.

Sincerely,

CARSON FISCHER, P.L.C.



Robert M. Carson

RMC:cd

Enclosure

cc: Kevin S. McDonald, Esq., Senior Assistant City Attorney

cc: Mr. John Hieftje, Mayor

cc: Mr. Roger Fraser, City Administrator

cc: Client

cc: Gregory T. Obloy, Esq.