



July 13, 2021

MEMORANDUM

TO: Mayor & City Council

FROM: Bill Nary, City Attorney

RE: Linder Village (Orchard Park) Development Agreement

This application was heard by the City Council at a public hearing on February 18th. At the hearing, the City Council voted to approve the Applicant's request for an annexation and zoning, preliminary plat, and a variance. The Council approved the application, substantially as recommended, by the Planning and Zoning Commission by a vote of 3-2.

The Legal question that has been posed upon the opening of the primary initial tenant to Linder Village, the WinCo Grocery Store, is whether the Council's direction or the development agreement required the completion of the all the access roads that were being funded primarily by the Developer, LYNX/DMG Real Estate holdings would be completed prior to the opening of the store. The store was granted TCO status for the purpose of opening the store on June 24, 2021. At the time of the opening of the store the ACHD improvements on Linder Road and Meridian Road were in substantial compliance with ACHD and therefore they authorized the approvals in relation to the work under their control. Additionally, the portion of the roadway between Linder Road and Meridian Road was substantially complete by the Idaho Transportation Department standards for the road under their authority and therefore the store opening was allowed. There is side work and landscaping that continues to be done on both roadways, but the agencies approved the work as substantially complete from a traffic safety standpoint and therefore the delay was approved by the road authorities. The City has a surety in place for the outstanding landscaping in accord with UDC standards.

The development agreement required as a condition of approval of the annexation a zoning of the property required all existing stub streets from the adjacent property (i.e. Paramount Subdivision), Arliss, Bergman, and Director be connected and that the developer complete all improvements required by ITD and ACHD in relation to the roadways in accordance with the STARS (*Sales Tax Anticipation Revenue*) agreement between the developer and the road agencies. The only local street that was required by the City to be extended into the site with the first phase of development was N. Bergman Ave. This roadway is constructed and includes the required traffic calming per the recorded development agreement. It is also important to note that the STARS agreement was not finalized at the time of annexation. During the public hearing it was discussed that the improvements to Chinden Boulevard would be

phased. This appears to be the contentious point at this time. The timing and construction of phase 2 is solely at the control of ITD. The developer is responsible for paying for the costs of the improvements, however the timeframe for construction is specified in the executed STARS agreement in accord with the development agreement with the City. It is Legal's opinion that the City followed the established process of the City and did not violate the terms of the recorded development agreement in order to grant WinCo a TCO to open the store. The final certificate of occupancy will not be issued until all improvements have been completed per the terms of the development agreement.