

## MEMORANDUM

GAMMAGE & BURNHAM, P.L.C.

January 30, 2013

TO: Bill Sims  
FROM: Manjula M. Vaz  
RE: Amendments to the PADA between Tusayan and the Stilo Group

Following up on our conversation, attached are our thoughts on potential changes to the PADA.

### **1. Temporary/ Interim Housing on Camper Village (Section 8)**

In terms of the interim housing at Camper Village, we did have some delays installing the interim housing due any number of issues including: floodway approvals with the County and Town, weather delays and APS issues and approvals. However, by the end of February, we will comply with Section 8(b) of the PADA, which requires that we initially have 6 double-wide temporary homes at Camper Village.

The breakdown of units at Camper Village is as follows: In Phase 1, we have 6 double-wide lots and 6 single lots. 4 of the 6 double-wides are committed (Lots, 7, 8, 9, and 10). There are 2 double-wides on Lots 11 and 12 available for sale, lease purchase or lease. The two homes on Lots 11 and 12 will be installed by the end of February. There are 6 singles: 1 single is committed (Lot 4). Lot 6 is a Stilo 2BR single home which is available for sale, lease-purchase or lease; Lot 1 is the Stilo single Park Model available for sale, lease-purchase or lease; Lots 2, 3 and 5 have single models which are available for sale, lease-purchase or lease. We are currently negotiating leases for the two Stilo homes to residents in the community.

As we have discussed, we would like the Town to relax the “double wide requirements” in the PADA. While we are happy to provide double wide units to whoever would like them, we have found that people/buyers are more interested in single wide units, rather than double wide units. Therefore, we would like Section 8(c) to be revised to allow the installation of “double wide” or “single wide” units. Stilo will still commit to provide six units available for sale or lease; we would like some flexibility in the type of unit.

In addition, we would also like the ability to install duplex units if we desire. The duplex units will allow more people opportunities for affordable temporary housing. We are prepared to process a DRO application for the duplex units, if required. Since the Camper Village PAD permits multi-family, we believe duplex units are a permitted use. An alternative option to the DRO, we can also the Development Agreement to allow duplex units. The reason not to use the DRO, is that this is an interim use, it is not analogous to other properties in Tusayan.

## **2. Site Plan Conformance**

In terms of site plan conformance, we want to confirm with the Town that the temporary housing will comply with the site plan attached as *Exhibit E* of the PADA. The site plan does not have minimum lot standards. WilDan's previous requirement for minimum lot standards is not only outside of the requirements of the PADA, but also reduces the number of units available for the temporary housing and only drives up the cost to develop the lot, a portion of which is reflected to the end user. The goal was always to try and provide interim, affordable housing and not to create a subdivision. In order to ensure that we do not have issues with the lot standards, we may need to add a sentence in Section 8(b) which specifically states that the temporary housing units have neither a minimum lot standard requirement nor conventional setbacks. The only requirement of the temporary housing is that it complies with the approved site plan as much as reasonably possible and practical.

## **3. Force Majeure**

Dawn is concerned that we do not have an express mention of governmental action or inaction in the Force Majeure provision. The problem here is that the failure of Stilo to meet the time deadlines in the Development Agreement will likely be due to matters beyond Stilo's control (*i.e.*, governmental action or inaction). Permits may not be timely issued or permits may be appealed by third party NGOs. In either case, Stilo cannot really expedite a resolution and we are concerned Stilo would fail to meet the diligence standard in 20(b). In the case of the federal permit from the USFS, Stilo has no ability to sue the government to expedite the permit. Then, once issued, if the permit is appealed, the process will be an administrative level appeal to the USFS, then a judicial appeal in federal district court. Once appealed, Stilo will have to file a motion to intervene in the case and may or may not be successful. Even then, the case would be a record review case under the Administrative Procedures Act and not a typical litigation/contested case. At an appropriate point, and if Stilo were allowed to intervene, they could file a motion for summary judgment but it wouldn't be until long after the administrative record were produced and initial dispositive motions were lobbed back and forth (which typically takes many months). This will play out in the same manner relative to the state permits in that there will be administrative review of the permits at the agency level, then possibly judicial review of the agency's record . . . again, not a typical case of typical litigation that could otherwise attempted to be expedited via the filing of a motion for summary judgment.

In light of these concerns, we would like to add "governmental action or inaction" in the list of force majeure conditions because then we don't have to go to 20(b) and get mired down in whether or not Stilo is being diligent when the timelines in the permit are not met for construction.

#### **4. Forest Service Timelines**

We would like to amend Section 2(a) (Necessary Applications) to reflect the extended duration of obtaining federal approvals. We have some potential language revisions to the PADA. We want to sit down and discuss the language with you before forwarding to the Mayor and Council. We are amenable to submitting written monthly reports to the Town which will provide an update on the status of application submittals required in this Section. We hope the Town recognizes that it is not practicable to make simultaneous applications for all of Required Approvals. Certain applications required prior approval of other applications before they can be submitted.

#### **5. Camper Village Conditional Use Permit**

The CUP for Camper Village will expire in October 2013. I understand that the Town thinks we do not have a CUP. From a legal standpoint, our general position is: In 2003 Coconino County issued a ten year Conditional Use Permit (CUP) for manufactured housing at Camper Village. The CUP did not change the underlying residential zoning on the property, but rather was a separate, express authorization to permit a specific use. Coconino County Zoning Ordinance section 20.3-16 specified that a CUP is a property right that "runs with the land." Stilo made substantial, good-faith expenditures in reliance upon the CUP, and thus acquired a vested right under Arizona law. We are not aware of any authority why that CUP would suddenly vanish upon the incorporation of Tusayan or subsequent change of the underlying zoning by the Tusayan P&Z Commission and City Council.

For practical purposes, it may be better if we either agree that the camping use at Camper Village is a non-conforming use or consider a new CUP that clarifies any current compliance issues once and for all. Either way, we need to figure out where we are with Camper Village and would like to add some language to the development agreement which preserves the uses and operation of Camper Village.

Thank you for your assistance. Please let me know if you have questions. We are looking forward to working with you.