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November 29, 2021

Juan Ortiz Martinez
c/o H. Clark Leming, Esquire
Leming and Healy, P.C.
233 Garrisonville Road, Suite 104
Stafford, VA 22554

SUBJECT: *Application 21154077; TM# 38-83C; Venture Drive, Lot 17; Zoning Administrator Vesting Determination*

Dear Mr. Leming:

This letter is in response to your request for a determination of vested rights ("Request") related to Tax Map Parcel No. 38-83C ("Property" or "Lot 17"). The Property is zoned B-3, Office, and consists of approximately 4.2 acres.

In the Request, you state that the approved final subdivision plat, recorded in Stafford County Land Records ("Land Records") at Plat Book 24, Page 301 on or about September 13, 1993 ("Lot 17 Subdivision Plat"), created Lot 17 and *approved all uses permitted in the M-1 Zoning District*. You state that there was reliance in good faith on the approval of the Lot 17 Subdivision Plat and diligent pursuit through subsequent approvals and costs.

According to Virginia Code § 15.2-2307, a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the following three elements/prongs occur:

1. *The landowner obtains or is the beneficiary of a significant affirmative governmental act (SAGA) which remains in effect allowing development of a specific project;*

The Request states that the Lot 17 Subdivision Plat is a SAGA. Virginia Code § 15.2-2307(B) provides, without limitation, a list of acts deemed to be SAGAs:

(i) the governing body has accepted proffers or proffered conditions which specify use related to a zoning amendment; (ii) the governing body has approved an application for a rezoning for a specific use or density; (iii) the governing body or board of zoning appeals has granted a special exception or use permit with conditions; (iv) the board of zoning appeals has approved a variance; (v) the governing body or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances;

(vi) the governing body or its designated agent has approved a final subdivision plat, site plan or plan of development for the landowner's property; or (vii) the zoning administrator or other administrative officer has issued a written order, requirement, decision or determination regarding the permissibility of a specific use or density of the landowner's property that is no longer subject to appeal and no longer subject to change, modification or reversal under subsection C of § 15.2-2311.

The operative SAGA in this case is set forth in Virginia Code § 15.2-2307(B)(vi), which states that "the governing body or its designated agent has approved a final subdivision plat, site plan or plan of development for the landowner's property." Accordingly, the landowner obtained and/or is the beneficiary of a SAGA which remains in effect pursuant to Virginia Code § 15.2-2307(A)(i).

2. *Relies in good faith on the SAGA; and*

The Request states that the landowner relied in good faith on the Lot 17 Subdivision Plat by undertaking engineering and planning, development, site preparation, and the construction work in reliance on the on the Lot 17 Subdivision Plat. It is my conclusion that the expenditures listed in the Request qualify and show reliance on the SAGA pursuant to Virginia Code § 15.2-2307(A)(ii) and such reliance is presumed to be in good faith without any evidence presented to the contrary.

3. *Incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the SAGA.*

The Request states that the landowner incurred extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the SAGA. The Request outlines certain expenses that include preparation and submission of a construction plan in 1998, preparation and submission of a grading plan, construction bond, and erosion and sediment control bond in or around 2003, construction of a turnaround in 2003, preparation and submission of a major site plan in 2004, and preparation of offsite drainage and temporary easement plans to serve Lot 17 in 2006. Although listed expenditures in total are "extensive obligations or substantial expenses," such obligations or expenses were not made *in diligent pursuit of the specific project in reliance on the SAGA* as required by Virginia Code § 15.2-2307(A)(iii). The SAGA in this case—the Lot 17 Subdivision Plat—was approved and recorded in the Land Records in 1993. No expenditures in furtherance of the project, as shown on the Lot 17 Subdivision Plat, have occurred since 2006. According to the Request, twenty-eight (28) years have passed since the SAGA and fifteen (15) years have passed since the last expenditure in pursuit of the specific project. Such timeframe is *not* diligent pursuit; therefore, the final element/prong, Virginia Code § 15.2-2307(A)(iii), has not been satisfied.

Letter to: Juan Ortiz Martinez

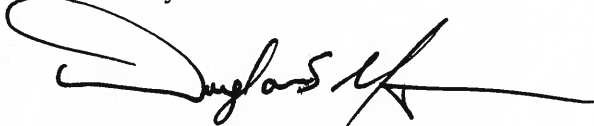
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Even if the final element/prong has been satisfied, the specific project and any vested rights that would accrue to the landowner would only be *those that Stafford County has affirmatively acted upon and the evidence to support such affirmative action is clear, express, and unambiguous*. The Lot 17 Subdivision Plat merely approved the subdivision of certain property into two lots, including Lot 17, and therefore approved the creation of such lots. Nothing in this SAGA specifies or qualifies as an approval by the County that Lot 17 may be developed with *any use permitted in the M-1 Zoning District*, as you assert. The Lot 17 Subdivision Plat does not specify *any* use on the Property. Any reference to the M-1 Zoning District on the Lot 17 Subdivision Plat only indicates that at the time of approval of such plat, Lot 17 and the property subject to the Lot 17 Subdivision Plat was located in the M-1, Light Industrial Zoning District. Lot 17 is now located in the B-3, Office Zoning District and any use on the Property must conform to the applicable zoning regulations.

This determination may be appealed to the Board of Zoning Appeals within thirty (30) days from receipt of this letter, in accordance with Virginia Code § 15.2-2311, or this decision shall be final and un-appealable. You may obtain the BZA appeal application at <https://staffordcountyva.gov/AppealofZoningDecisions>.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas S. Morgan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Douglas S. Morgan, CZA, CTM
Zoning Administrator

DSM:sjs