

Hopping Green & Sams

Attorneys and Counselors

January 4, 2020

VIA ELECTRONIC MAIL ONLY

Teresa Lamar-Sarno, AICP
Assistant to the City Manager
Land Development Services
City of Port St. Lucie
121 SW Port St. Lucie Blvd.
Port St. Lucie, Florida 34984

RE: Riverland/Kennedy Application for Parcel B MPUD Approval (P20-175)

Ms. Lamar-Sarno:

This firm represents Riverland Associates I, LLLP, Riverland Associates III, LLLP, and Riverland/Kennedy II, LLC (collectively “*Riverland*”) with respect to the Riverland Development of Regional Impact located in the City of Port St. Lucie in southwest St. Lucie County (“*Riverland DRI*”). We are in receipt of a letter to the City written by Ramzi Akel of Akel Homes dated December 30, 2020 (“*ACR Letter*”), concerning the above-referenced application.¹ Mr. Akel is ostensibly objecting on behalf of Riverland’s neighboring landowner, ACR Acquisition, LLC (“*ACR*”). ACR is the Developer of that certain development known as Wilson Groves Development of Regional Impact (“*Wilson Groves DRI*”). We write to address the many errors and material misrepresentations in the ACR Letter.

A. Riverland Is Not Proposing to Exceed Any Road Requirements Identified in the Comprehensive Plan or Land Development Code.

ACR’s principal stated objection is that the proposed Parcel B MPUD will allow Riverland to build substantially more units than are currently permitted without having first completed certain roadway improvements which ACR purports are in violation of the Riverland DRI Development Order (the “*Riverland DRI DO*”). ACR vaguely cites the Comprehensive Plan, the Annexation Agreement, and Code of Ordinances § 160.02² in support. ACR is wrong for at least five reasons.

¹ The ACR Letter purports to complain solely about the above-referenced Application for Parcel B MPUD approval to be considered by the Planning & Zoning Board (“*P&Z Board*”) on January 5, 2021. However, Riverland also has pending for consideration by the P&Z Board the same day Proposed NOPC No. 4 to the Riverland DRI (P20-162). Where appropriate, this letter will attempt to distinguish between each separate approval sought.

² The referenced section simply adopts the City’s Concurrency System and specifies its purpose. The section contains no substantive traffic concurrency requirement, nor does ACR cite any concurrency management standard Riverland’s application fails to meet.

First, contrary to that stated in the ACR Letter, Riverland DRI Condition No. 19 states that “[N]o building permits shall be issued for development that generates more than the total net external p.m. peak hour trip threshold or exceeds the number of residential units identified in Table 2, whichever comes last, until: 1) the contracts have been let for the roadway widening or construction projects identified in Table 2 under ‘Required Improvement’” Emph. Added. The current and proposed Riverland DRI require the completion of trip generation analyses prior to each site plan or residential subdivision plat approval. Each trip generation analysis evaluates satisfaction with development order conditions to determine if any transportation conditions (such as the construction of certain offsite roadway improvements) have been triggered. These provisions ensure compliance with applicable concurrency management requirements. Unlike ACR, Riverland submitted a traffic report from transportation expert, Andrea Troutman (copy attached). The traffic report establishes that the proposed development complies with all applicable traffic concurrency requirements by confirming that the total net external PM peak trip threshold (as opposed to the number of residential units) is the later of the two thresholds for all site plans or residential subdivision plan approvals granted to date and for that proposed within the Parcel B MPUD approvals. Nothing in the ACR Letter refutes Ms. Troutman’s analysis or refutes the conclusions made by City Staff or its consultant that conducted a separate third-party review of Ms. Troutman’s analysis that traffic concurrency will be met.

Second, nothing in the proposed Parcel B MPUD allows Riverland to exceed the number of units authorized under the Riverland DRI DO, whether under the approved NOPC No. 3 or under the proposed NOPC No. 4. The changes from NOPC No. 3 to No. 4 result in **no increase** in the number of permitted residential units; both NOPC No. 3 and NOPC No. 4 permit a total of 11,700 residential units.

Third, contrary to ACR unsubstantiated and baseless allegations, there is absolutely no requirement that the construction of offsite roadway improvement be *completed* by the time total net external p.m. peak hour trip threshold is triggered or the number of residential units associated with each Required Improvement is exceeded.

Fourth, in compliance with the Riverland DRI DO and in advance of triggering the applicable trip thresholds for “Required Improvements,” Riverland has accelerated its commitment to comply with and satisfy the Riverland DRI DO requirement to let the contracts for the roadway construction of Community Boulevard from Discovery Way to E/W 3 prior to the 469th residential unit building permit (earlier than the 522nd permit as would have ordinarily been required pursuant to the PM peak hour threshold required under Condition 19) being issued in Parcel B. Riverland also voluntarily added a second triggering event, namely a Parcel B commitment that no later than two (2) years from the date of issuance of the first non-model residential building permit in Parcel B, the contracts will be let for the construction of SW Community Blvd. from the existing terminus to the SW Marshall Parkway (aka E/W #3) intersection. NOPC No. 4 will enhance, not inhibit, traffic conditions anticipated under the current DRI development order.

Fifth, the ACR Letter verbatim lists the following roadway improvements:

- (1) “Phase 1 two lanes of Community Blvd. from Discovery Way to E/W 3 must be completed by Riverland before 700 units may be constructed”
- (2) “two lanes of Community Blvd. from E/W 3 to Paar Dr. must be completed by Riverland before 2000 units may be constructed.”
- (3) “two lanes of Community Blvd. from Paar Dr. to Becker Rd. and two lanes of E/W 3 from Community Blvd. to N/S B must be completed by Riverland before 2500 units may be constructed.”

As is clearly established in the approved traffic reports, with the exception of Phase 1 two lanes of Community Blvd. from Discovery Way to E/W 3, for which contract letting is triggered prior to the issuance of the 522nd residential building permit within Parcel B (which as noted above is actually being let at the 469th residential building permit in advance of when required), none of the other improvements listed in the ACR Letter are triggered by the Parcel B MPUD approval.

ACR’s conclusory allegations regarding traffic concurrency misrepresent the development order requirements relating to traffic affecting the Riverland property. The allegations are unsupported by any evidence, and they fail to refute the competent, professional, and substantial opinions proffered by Riverland’s traffic expert as well as City staff’s conclusions on the same. They provide no reason to delay the Board’s consideration of the DRI amendment or Parcel B MPUD approval much less provide a basis to recommend denials.

B. Access to Wilson Groves Property.

While not separately identified as such, ACR’s dispute with Riverland’s current obligations under the Riverland DRI DO, as amended by Notice of Proposed Change (“NOPC”) No. 3 via Resolution 16-R52, is that the existing approved Riverland DRI DO does not require Riverland to immediately construct the first two lane miles of Becker Road across Riverland’s property to provide paved road access to the lands within the Wilson Groves DRI. The objection concerns roadway obligations that have already been approved by the City when the City approved NOPC No. 3.

Riverland’s pending Parcel B MPUD Rezoning Application (P20-175) and the proposed DRI Amendment P20-175 for NOPC No. 4 is not proposing to change any roadway construction obligations whatsoever, and in some instances will serve to advance the timing of when Riverland will commit to constructing certain offsite road improvements. Indeed, although the ACR Letter misrepresents what it contends are technical issues with the proposed Parcel B MPUD approval (and, by association, the NOPC No. 4 approval), its subject line and primary complaint relates to “Access to Wilson Groves.” ACR *does not and cannot* take the position that the Comprehensive Plan or Land Development Code require that Riverland build the first two lane miles of Becker Road across Riverland’s property to provide access to the Wilson Groves DRI. Rather, ACR contends the Annexation Agreement for the Western Annexation Area dated July 19, 2004 (“Annexation Agreement”), required the parties thereto to build portions of Becker Road across their respective properties from the I-95 Interchange to Range Line Road in 2009. From this

premise, ACR seeks to have Riverland's development orders either tabled or denied indefinitely. However, **ACR's premise fails as a matter of law for the following reasons, including (without limitation):**

First, the issue of whether the Annexation Agreement requires Riverland or the City to build the first two lanes of Becker Road across the Riverland property is currently the subject of litigation styled *ACR Acquisition, LLC v. City of Port St. Lucie, et al.*, St. Lucie County Circuit Court Case No. 2015-CA-000337 (OC) ("ACR Litigation"). In this case in which the City and Riverland are co-defendants and which has been pending since 2015, ACR alleges that Riverland (and the City) are in breach of the Annexation Agreement for not having constructed that segment of Becker Road in 2009. The St. Lucie County Circuit Court currently has jurisdiction over the very objection ACR raises in connection with the Parcel B MPUD and NOPC No. 4. By seeking to have Riverland's lawful and appropriate applications for development be tabled and stopped from being able to proceed through the City's approval process is nothing but ACR's attempt to undermine and subvert the circuit court's jurisdiction to resolve unilaterally ACR's issue(s) in dispute.

Second, the P&Z Board's power and role is *not* to resolve contractual interpretation disputes between parties, particularly when such disputes are pending before the circuit court. Rather, P&Z Board's "powers and duties" are described in the City's Land Development Code, section 32.57. None of the listed powers and duties remotely approach having the right or responsibility to adjudicate contractual disputes. Moreover, the P&Z Board and the City Council, since the litigation was first filed on February 25, 2015 has proceeded to process and approve all of Riverland's development-related applications to date, including NOPC No. 3 via Resolution 16-R52 and Parcel A MPUD via Ordinance 16-58, both of which were approved by City Council on September 12, 2016, and more recently Parcel C MPUD (P19-110) via Ordinance 19-74 approved and adopted by City Council on November 12, 2019.

Third, neither the proposed Parcel B MPUD nor the proposed NOPC No. 4 change negatively which roads must be built or the thresholds for when the roads must be built on the Riverland property. To the contrary, proposed NOPC No. 4 maintains all of the roadway segments and thresholds contained in the current, approved NOPC No. 3. Any complaint that the DRI amendment negatively impacts ACR in terms of its traffic requirements is unfounded.

Fourth, the issue of *when* Riverland, the City, or someone else builds Becker Road does not relate to whether the Parcel B MPUD application (P20-175) before the P&Z Board complies with the technical requirements of the Comprehensive Plan and Land Development Code, and those are the only questions germane for the P&Z Board's consideration.

Fifth, while not relevant to the P&Z Board's analysis on January 5, 2021, to the extent the P&Z Board has any concern about ACR's access to the Wilson Groves property, two important facts should assuage any such concern: (1) The Annexation Agreement allows ACR to build the disputed roadway segment of Becker Road across Riverland's property and affords ACR with a right of reimbursement if it does (Annexation Agreement § 5.(1).(iii)); and (2) *ACR is complicit in any access concerns it has* because ACR actually *excluded* from its DRI development order a

requirement that it build Becker Road across its property so it connects with Range Line Road (inconsistent with ACR's obligations under the Annexation Agreement). **Simply put, ACR controls its access to its property.** ACR just wants someone else to bear the initial burden and expense of constructing actual road improvements to gain better, paved access to its land.

In summary, ACR's actual objection – when Becker Road gets built across the Riverland property – has nothing to do with the applications before the P&Z Board, namely whether the Parcel B MPUD and DRI Amendment (NOPC No. 4) approvals comply with the Land Development Code and Comprehensive Plan. The issue of access to the ACR property along Becker Road is properly before the Circuit Court, and the City P&Z Board is not endowed with the power to determine or adjudicate issues in litigation. The proposed Parcel B MPUD and NOPC No. 4 do not impact negatively which roadway segments must be built by Riverland on the Riverland property from what is required today. Finally, ACR has total control over access to its property. ACR's traffic arguments are legally and factually baseless.

C. ACR's Third Objection to the Parcel B MPUD Approval is Not Relevant.

ACR's third and final objection is that approving the Parcel B MPUD would allow Riverland to develop Parcel B without any requirement for certain identified roadway segments, "causing a breach of the Annexation Agreement by both Riverland and the City."³ In addition to refuting this allegation in the ACR Letter, it must be noted that compliance with the Annexation Agreement is not a legal basis for the P&Z Board to recommend to table or deny Riverland's applications for approval of its Parcel B MPUD or its DRI Amendment (NOPC No. 4). The issue of whether to table, approve, or disapprove of the Parcel B MPUD or NOPC No. 4 is limited to whether Riverland's proposals are consistent with the Comprehensive Plan and comply with the Land Development Code. Absent evidence they are not, the P&Z Board should recommend approval of both development orders to the City Council.

D. Conclusion.

ACR's Letter asks the P&Z Board to delay indefinitely Riverland's efforts to develop its property or recommend denial of the approvals without any competent, substantial, or legal basis. Delaying or recommending denial by accepting such arguments will only harm the interests of the City and Riverland. Allowing Riverland to timely develop its property will better assure the construction of important public infrastructure allowing Riverland's development and other development to proceed in the Western Annexation Area, contributing greatly to the City's economy and tax base. ACR's request that the City delay such important decisions and associated public benefits while ACR litigates *against the City* in Circuit Court is untenable.

³ The roadway improvement segments specifically identified by ACR are: Community Boulevard from Discovery Way to SW Marshall Parkway (E/W3); Community Blvd. from E/W 3 to Paar Dr.; Community Blvd. from Paar Dr. to Becker Rd.; and E/W 3 from Community Boulevard to N/S B.

Teresa Lamar Sarno

January 4, 2020

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Riverland respectfully requests that the P&Z Board consider the above responses to the ACR Letter, consider the competent and substantial evidence submitted by Riverland along with Staff's recommendation of approval, and grant the Board's recommendation of approval of both the Parcel B MPUD (P20-175) and proposed DRI Amendment NOPC No. 4 (P20-162) to the City Council.

Please feel free to contact me if you should have questions.

Sincerely,

HOPPING GREEN & SAMS, P.A.

s/Douglas M. Smith

Douglas M. Smith

Enclosure

cc: James Stokes - City Attorney jstokes@cityofpsl.com
Russ Blackburn - City Manager rblackburn@cityofpsl.com
Robert Sweeney - Director of Public Works rsweeney@cityofpsl.com
Greg J. Oravec – City Mayor Mayor@cityofpsl.com
Jesus Merejo - Chief Assistant City Manager jmerejo@cityofpsl.com
Client

September 8, 2020

Riverland/Kennedy II, LLC
Attn: Mr. Kevin Ratterree
1600 Sawgrass Corporate Parkway, Suite 400
Sunrise, FL 33323

Re: Riverland/Kennedy DRI – Parcel B - #PTC20-074

Dear Mr. Ratterree:

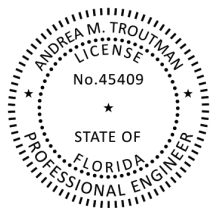
The purpose of this letter is to provide the trip generation statement required in Condition 17 of the Development Order (Resolution 16-R52) for the above referenced project.

Attachment 1 provides the Daily, AM peak hour and PM peak hour trip generation for the proposed 938 single family adult restricted units for Parcel B. Also shown on this attachment are the trips for the approved 1,087 and 1,250 single family adult restricted units for Parcels A and C respectively. Condition 19 requires the construction of Community Boulevard from Discovery Way to E/W 3 with development generating 828 PM peak hour trips.

As shown on Attachment 1, the cumulative trips generated by the development of Parcels A, B and C exceed the trip threshold requiring the construction of Community Boulevard from Discovery Way to E/W 3. Attachment 2 provides the phasing analysis showing that 522 single family adult restricted units can be built for Parcel B before requiring the improvement.

Please contact me at atrouman@pindertroutman.com if you need any additional information or have any questions.

Sincerely,



Digitally signed by
Andrea M Troutman
Date: 2020.09.08
12:46:39 -04'00'

Andrea M. Troutman, P.E.
President

Attachments

This item has been electronically signed and sealed by Andrea M. Troutman, P.E. on 9/8/20 using a Digital Signature. Printed copies of this document are not considered signed and sealed and the signature must be verified on any electronic copies.

**Attachment 1
 Riverland/Kennedy DRI
 Trip Generation**

DAILY

Parcel	Land Use	ITE Code	Intensity	Trip Generation Rate (1)	Total Trips
Proposed Parcel B	Senior Adult Housing - Detached	251	938 DUs	$\text{Ln}(T) = 0.88\text{Ln}(X) + 2.28$	4,034
Approved Parcel C	Senior Adult Housing - Detached	251	1,250 DUs	$\text{Ln}(T) = 0.88\text{Ln}(X) + 2.28$	5,194
Approved Parcel A	Senior Adult Housing - Detached	251	1,087 DUs	$\text{Ln}(T) = 0.88\text{Ln}(X) + 2.28$	4,593
Total					13,821

AM PEAK

Parcel	Land Use	ITE Code	Intensity	Trip Generation Rate (1)	Total Trips	
					In	Out
Proposed Parcel B	Senior Adult Housing - Detached	251	938 DUs	$\text{Ln}(T) = 0.76\text{Ln}(X) + 0.21$ (33/67)	74	150
Approved Parcel C	Senior Adult Housing - Detached	251	1,250 DUs	$\text{Ln}(T) = 0.76\text{Ln}(X) + 0.21$ (33/67)	92	187
Approved Parcel A	Senior Adult Housing - Detached	251	1,087 DUs	$\text{Ln}(T) = 0.76\text{Ln}(X) + 0.21$ (33/67)	83	167
Total					249	504
						753

PM PEAK

Parcel	Land Use	ITE Code	Intensity	Trip Generation Rate (1)	Total Trips	
					In	Out
Proposed Parcel B	Senior Adult Housing - Detached	251	938 DUs	$\text{Ln}(T) = 0.78\text{Ln}(X) + 0.28$ (61/39)	168	107
Approved Parcel C	Senior Adult Housing - Detached	251	1,250 DUs	$\text{Ln}(T) = 0.78\text{Ln}(X) + 0.28$ (61/39)	210	135
Approved Parcel A	Senior Adult Housing - Detached	251	1,087 DUs	$\text{Ln}(T) = 0.78\text{Ln}(X) + 0.28$ (61/39)	188	121
Total					566	363
						929

(1) Source: Institute of Transportation Engineers (ITE), *Trip Generation*, 10th Edition.

**Attachment 2
 Riverland/Kennedy DRI
 Trip Generation - Phasing**

DAILY

Parcel	Land Use	ITE Code	Intensity	Trip Generation Rate (1)	Total Trips
Proposed Parcel B	Senior Adult Housing - Detached	251	522 DUs	$\text{Ln}(T) = 0.88\text{Ln}(X) + 2.28$	2,408
Approved Parcel C	Senior Adult Housing - Detached	251	1,250 DUs	$\text{Ln}(T) = 0.88\text{Ln}(X) + 2.28$	5,194
Approved Parcel A	Senior Adult Housing - Detached	251	1,087 DUs	$\text{Ln}(T) = 0.88\text{Ln}(X) + 2.28$	4,593
Total					12,195

AM PEAK

Parcel	Land Use	ITE Code	Intensity	Trip Generation Rate (1)	Total Trips	
					In	Out
Proposed Parcel B	Senior Adult Housing - Detached	251	522 DUs	$\text{Ln}(T) = 0.76\text{Ln}(X) + 0.21$ (33/67)	47	96
Approved Parcel C	Senior Adult Housing - Detached	251	1,250 DUs	$\text{Ln}(T) = 0.76\text{Ln}(X) + 0.21$ (33/67)	92	187
Approved Parcel A	Senior Adult Housing - Detached	251	1,087 DUs	$\text{Ln}(T) = 0.76\text{Ln}(X) + 0.21$ (33/67)	83	167
Total					222	450
						672

PM PEAK

Parcel	Land Use	ITE Code	Intensity	Trip Generation Rate (1)	Total Trips	
					In	Out
Proposed Parcel B	Senior Adult Housing - Detached	251	522 DUs	$\text{Ln}(T) = 0.78\text{Ln}(X) + 0.28$ (61/39)	106	68
Approved Parcel C	Senior Adult Housing - Detached	251	1,250 DUs	$\text{Ln}(T) = 0.78\text{Ln}(X) + 0.28$ (61/39)	210	135
Approved Parcel A	Senior Adult Housing - Detached	251	1,087 DUs	$\text{Ln}(T) = 0.78\text{Ln}(X) + 0.28$ (61/39)	188	121
Total					504	324
						828

(1) Source: Institute of Transportation Engineers (ITE), Trip_Generation, 10th Edition.