Kari Jimenez

From: Dale Coulam
Sent: Friday, February 27, 2015 10:36 AM
To: Kari Jimenez
Subject: Family Dollar Settlement Agreement
Attachments: Family Dollar Store Agreement.doc

Please see attached which all parties have reviewed and agreed to.

Thanks, Dale

SETTLEMENT AGREEMENT TO RESOLVE ISSUES IN DISPUTE

This Settlement Agreement ("Agreement") is entered into effective the ____ day of March, 2015, by and between IVINS CITY, a municipality and political subdivision of the State of Utah, ("Ivins City" or the "City") and T & N Properties, a Utah Limited Liability Company ("Developer"), collectively referred to as "the Parties."

RECITALS

Whereas, Developer has obtained a Conditional Use Permit to construct a retail Family Dollar Store on the corner of 400 South and 200 East in Ivins (the "Project"); and

Whereas, the Parties desire to enter into a settlement agreement to resolve disputed issues involving the amount of Street Impact Fees attributable to the Project, off-site street/drainage improvements, and on-site detention requirements; and

Whereas, the strict application of the City's last Capital Facilities Plan and Impact Fee Analysis for Streets would result in a Street Impact Fee of $78,124.20, but would allow Developer to provide its own data to support a different impact fee amount, which Developer has done; and

Whereas, for purposes of settlement only, the City is willing to use and apply alternative data provided by Developer to calculate Street Impact Fees attributable to the Project and which results in a Street Impact Fee of $37,953.72; and

Whereas, the Parties also desire to resolve a dispute as to the amount of on-site detention of storm water and certain down-street improvements to and/or along 200 East;

Now, therefore, the Parties hereby agree as follows:

AGREEMENT

1. Transportation Impact Fees. Developer provided the City with alternative trip data that it claimed should be used in calculating Transportation Impact Fees attributable to the Project. Following discussions with Developer and consideration of the alternative trip data, the City agrees, for purposes of this settlement agreement, that the Transportation Impact Fee for the Project will be $37,953.72.

2. On-Site Drainage. Based upon the anticipated storm water runoff from the Project, some on-site detention of such storm water will be required before it is allowed to discharge onto 200 East. However, Developer may accomplish this by upsizing its on-site storm drainage pipes to provide underground detention such that the water can fill the oversized pipes and discharge onto 200 East at a controlled rate.

3. The Parties also agreed that Developer would install the following additional improvements to 200 East, not otherwise required by the Project, to the south of where 200 East abuts the Project:

    a. continue curb, gutter and paving on the East side of 200 East down to where such improvements join similar improvements currently installed at the North end of Lightfoots, including a cross gutter land "hump" at the intersection of 500 South and 200 East, as well as installing sidewalk from 400 South down to Lightfoots.

The 200 East improvements are included in the Transportation Capital Facilities Plan. Therefore, the costs of installing such improvements will be credited against the Street Impact Fees agreed to in paragraph (1) above until the Transportation Impact Fee is exhausted. Any approved 200 East Street costs in excess of $37,953.72 shall then be fully reimbursed by the City, provided the City Engineer has determined that they are reasonable and necessary. To that end, Developer shall provide the City with its cost proposals prior to commencement of construction of the 200 East improvements and shall also provide proof of actual costs incurred/paid by Developer once the improvements have been installed. It should be noted, however, that the reimbursable costs are for 200 East Street improvements only and shall not include the costs of street improvements to 400 South or for connecting to the sewer, all of which shall be borne at Developer's sole expense.

4. Mutual Release. Other than enforcing the provisions as written in paragraph 1 through 3 hereof, the Parties, on behalf of themselves, successors and assigns, do hereby agree to mutually release, acquit and forever discharge each other, including their officers, elected officials, representatives, agents, and employees, from all other actions, causes of action, claims, demands, damages, costs, expenses and compensation, both known and unknown, in any way arising out of or related to paragraphs 1 through 3 set forth above. It is understood that said paragraphs 1 through 3 represent the compromise of disputed issues. As a result, for example, the City waives the right to pursue collection of Transportation Impact Fees greater than those agreed to in paragraph 1 hereof and Family Dollar waives the right to pursue a refund of or reduction to the Transportation Impact Fees agreed to in paragraph 1 hereof unless the City adopts a new Transportation Impact Fee in either 2015 or 2016 that would result in a Transportation Impact Fee less than the amount specified in paragraph 1 hereof. In that case, the lower Transportation Impact Fee shall apply. The parties further declare that they have read and understand the terms of this Agreement and have signed this Agreement voluntarily.

5. Controlling Law and Venue. This Agreement has been made under the laws of the State of Utah and such laws shall control its enforceability. Any action to interpret or enforce this Agreement shall be brought in the Fifth District Court in and for Washington County, State of Utah.

6. Binding on Heirs and Assigns. The terms and conditions of this Agreement shall be binding upon the heirs, successors and assigns of the parties hereto and shall run with the land.

7. Entire Agreement. This Agreement contains the entire agreement between the parties and supersedes any prior or concurrent agreements; no oral or written terms or conditions which are not expressly contained in this Agreement shall be binding. This Agreement may not be amended except by written agreement of the parties.

Dated this _____ day of March, 2015.

IVINS CITY:

_____
Chris Hart, Mayor

Attest:

_____
Kari Jimenez, Ivins City Recorder

T& N PROPERTIES:

By:_____
Christian W. Forsyth