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May 4, 2020

**VIA U.S. MAIL**

Adam R. Kinsman, Esq.  
James City County Attorney  
101-C Mounts Bay Road  
Williamsburg, VA 23185

**Re: Colonial Heritage, LLC  
SUP-0003-2015: Public Utilities Connection  
Deer Lake Estates Cluster Development  
499 Jolly Pond Rd/Tax Parcel No. 2240100007**

Dear Adam:

In my capacity as attorney for Colonial Heritage, LLC, a Virginia limited liability company which is the owner of the Deer Lake Estates A-1 Rural Cluster Development referenced above ("Deer Lake Estates"), I write to request that James City County extend the deadline for commencement of construction and operation of public utilities serving Deer Lake Estates, which deadline was imposed in condition 5(a) of the Special Use Permit granted in Case No. SUP-0003-2015. The background for this request is as follows:

**Background**

Colonial Heritage, LLC is the developer of the Colonial Heritage age-restricted community located in James City County. As a part of the initial development of Colonial Heritage, property lying outside the primary service area ("PSA") but adjacent to the age-restricted development was approved for a 50 lot rural cluster development by SUP-0021-2004. Afterwards, as a part of the 2035 Comprehensive Plan adopted by the Board of Supervisors in June 2015, the County expanded the PSA to include Deer Lake Estates. Shortly thereafter, Colonial Heritage, LLC applied for a special use permit allowing connection of Deer Lake Estates to public utilities. That special use permit SUP-0003-2015 was approved by the Board of Supervisors on November 10, 2015.

Condition 5(a) of SUP-0003-2015 requires construction of the public utilities to commence within 36 months of the date of approval of the SUP, or the permit is void. Subsequently, in 2017 the Virginia General Assembly enacted Section 15.2-2209.1 of the Code of Virginia which mandated a statewide extension of special use permit deadlines requiring a landowner or developer to commence a project within a certain time. This statute, referred to hereafter as the "Extension Statute", extended performance deadlines until July 1, 2020 ***"or for a longer period as agreed to by the locality"*** (emphasis added). The County's Zoning Administrator issued an opinion on April 11, 2017 confirming the effect of the Extension Statute as requiring commencement of construction of public utilities for Deer Lake Estates by July 1, 2020.

As the housing economy recovered from the Great Recession, my client has undertaken two initiatives. First, Colonial Heritage, LLC has pursued necessary Corps of Engineers and DEQ permits for construction of a sewer bridge which would provide public sewer infrastructure to Deer Lake Estates from the adjoining Colonial Heritage age-restricted community.

Second, Colonial Heritage, LLC has filed a rezoning application seeking incorporation of Deer Lake Estates into the Colonial Heritage age-restricted community. That application was filed on September 24, 2019, see Case No. Z-19-0013/MP-19-0011 (the "Rezoning"). The Rezoning has been considered preliminarily by County planning staff, which determined that an extensive traffic study would be required as part of the application. That traffic study delayed the Rezoning process and was undertaken during the winter months of 2019-20.

In the interim, the COVID-19 pandemic struck Virginia and James City County. The Governor has issued orders prohibiting operation of non-essential businesses and Colonial Heritage, LLC has ceased development operations. Although houses under construction are being completed, little or no development activity relative to new housing or utility infrastructure is underway. Thus pursuit of the Rezoning has been largely postponed, and work on the sewer bridge referenced above has been halted. At this point in time, commencement of construction on public utilities infrastructure for Deer Lake Estates required by July 1, 2020 under SUP-0003-2015 and the Extension Statute is impossible.

The Extension Statute quoted above expressly permits James City County to consent to an extension of the deadline for commencement of construction of public utilities for Deer Lake Estates. If the SUP expires, a new SUP process will be required, complete with application, Planning Commission and Board of Supervisors public hearings, and the studies and submissions normally required of applicants for special use permits in James City County. This would be an expensive and protracted process. Meanwhile, the pendency of the Rezoning might well obviate the need for SUP-0003-2015 if Deer Lake Estates is rezoned and incorporated into the Colonial Heritage age-restricted community.

**Extension to October 1, 2023 Requested**

Thus, I write to request County agreement to an extension of the deadline established by subparagraph 5(a) of SUP-0003-2015 to October 1, 2023. This date coincides with the date on which the Commonwealth of Virginia Department of Environmental Quality permit for wetland and stream impacts necessary to install gravity sewer and water lines to Deer Lake Estates will expire. Further, the extension to October 2023 will allow ample time for consideration of the Rezoning application by James City County, and allow time for construction of Deer Lake Estates sewer and water infrastructure if the Rezoning is denied.

Please submit this request to the Board of Supervisors for consideration. My client and I will be happy to provide such further information or background materials as may be requested by the Board or staff. I thank the County in advance for its consideration of this matter.

Very truly yours,



Gregory R. Davis

GRD:kl

cc: Colonial Heritage, LLC, Attn: Joseph Roque