

Fairhaven Center Project
August 2, 2023
Development Agreement Proposal / Memorandum of Understanding

The following Development Agreement Proposal / Memorandum of Understanding (the "Proposal") is written in order to provide certain general terms to be agreed by the City of Bellingham (the "City") and Dominion Sustainable Development Corporation (the "Property Owner") in order to move the Fairhaven Center project forward.

1. The Property

The property that is the subject of this Proposal (the "Property") is identified by the following addresses and parcel numbers:

- 1130 11th Street – 370201 103145 0000
- 1132 11th Street – 370201 103140 0000
- 1138 11th Street – 370201 102135 0000
- 1140 11th Street – 370201 102130 0000
- 1101 Tenth Street – 370201 094158 0000
- 1131 Tenth Street – 370201 093145 0000
- XXXX Tenth Street – 370201 092140 0000
- 1139 Tenth Street – 370201 094135 0000

2. Public Parking

Parcels identified in Section 1 and referred to as "the Property", are subject to the agreement between the City and Fairhaven Village Association, COB resolution 43-94, (aka "Fairhaven Parking District"). Accordingly, the Property is required to provide on-site parking for residential and lodging uses in accordance with the Bellingham Municipal Code ("BMC") but is exempt from on-site parking requirements for non-residential uses. In addition to the number of parking stalls required by the BMC for the development project, the Property Owner agrees to provide a minimum of 80 additional parking stalls on the Property for public use, of which at least 5 shall be designated for and equipped for electrical vehicle charging unless the Building Code requires more. The Property Owner will own and manage these additional publicly accessible parking stalls and receive all income generated therefrom.

These publicly available parking spaces shall be available for use by the public, including employees of on-site businesses. The Property Owner may restrict hours of use between 2300hrs and 0500hrs. Property Owner may charge hourly, daily, weekly or monthly rates for use of the 80 minimum parking stalls. Rates and charges shall be solely the purview of the Property Owner. Property Owner shall be responsible for setting and enforcing all other terms and conditions of use of on-site publicly accessible parking spaces.

In addition to the minimum 80 spaces described above, the Property Owner shall provide for all public parking improvements in the public right of way described in the Fairhaven Parking District agreement or as required street improvements described in the BMC. Property Owner and the City may agree to modifications to existing parking within the public right of way provided that any existing, improved and paved parking space within the public right of way, displaced by an improvement desired by the Property Owner, shall be replaced on the Property as publicly available with a minimum of 1:1 ratio based on existing stalls around perimeter of site on Mill Ave and 11th Street (32 minimum. See attachment).

Property Owner may unbundle all on-site parking for residential tenants from the cost of purchase or leasing of residential spaces. Property Owner may lease parking spaces to tenants separately from purchase or lease agreements.

The City and Property Owner agree that waivers from any BMC regulation for required on-site parking shall neither be applied for nor granted, except reductions as may be allowed for affordable housing units.

A construction parking management plan shall be submitted and approved by the City with the first building permit submitted for any development of the Property. The Property Owner shall ensure that its contractors, subcontractors, suppliers, employees, shall not use existing on street parking within the core of Fairhaven generally circumscribed by 8th Street, 13th Street, Knox Avenue and Larrabee Avenue.

Property Owner may request, and the City may permit, closure of on-street parking on the North side of Mill Avenue between 10th and 11th and along 11th street between Mill Avenue and the northern property line for a temporary period during active construction activity not to exceed 24 months per phase of construction, unless a 12-month extension is approved. The City shall not charge fees for loss of parking revenue for this temporary closure to facilitate construction.

3. South Bay Trail

The Property Owner agrees to preserve public access to the existing South Bay Trail across the Property during and after construction. The City may approve a temporary trail detour plan to ensure continued public access and safety during actual construction periods. The trail may be re-aligned and reconstructed in a location agreed upon by both parties, provided that the new trail and appurtenant structures meet City multimodal trail design standards and an equivalent or enhanced trail user experience is provided. The City and the Property Owner shall execute a new public trail easement for public use of the South Bay Trail prior to the completion of the project and the issuance of a certificate of occupancy. The City will cover the costs of recording the new easement. The Property Owner will provide an "outlook" view structure adjacent to the South Bay Trail, which will create new community views to Bellingham Bay. City review and approval of the exact trail alignment and design specifications for trail and view structure shall occur with the public facilities contract.

4. Compensation for Trail & Outlook Relocation/Construction

The City agrees to provide a park impact fee credit to the Property Owner for the cost of improving and/or relocating the South Bay Trail and constructing a public "outlook" view structure, in accordance with the procedure for park impact fee credits identified in BMC 19.04.140. The City shall not provide compensation for the new South Bay Trail easement. Section 5.3.1 of the City's Parks, Recreation, and Open Space Plan recommends the development of town square or public plaza space in urban villages. Any application for park impact fee credits must be made no later than the time of application for a building permit.

5. Affordable Housing

The Property Owner agrees to provide at least 20% of the units within the project as affordable housing units for 12 years as identified in BMC 17.82, provided that City allows the Property Owner the limited tax credit for providing these units under BMC 17.82.

6. View corridors and Pedestrian Connectivity

The Property Owner agrees to provide the view corridors and publicly accessible pedestrian connectivity, identified on exhibits of the project previously submitted to the City.

7. Zoning Text Amendment and Permit Processing

The City agrees to process a Zoning Text Amendment, which allows an increase in height and allowed stories for the Property. Expedited building permit plan review may be accepted, with a City approved independent ICC plan reviewer or other third party review service offered by the City, at Property Owner's expense.

8. Development Agreement

The City and the Property Owner agree to enter into a Development Agreement (the "DA") for the above-mentioned development issues and any other development issues that may be necessary as a result of the final City Design Review process.

9. Net Community Benefit

The items outlined above are the basic development concepts, which will allow the project to achieve a net positive community benefit. There have been multiple public and private community meetings in the community, with agreement among the community that these basic development concepts do achieve the desired net positive community benefit.


10. Non-Binding Proposal

This Proposal is non-binding, once City Council agrees these basic development concepts are appropriate, the detailed language of each component of this Proposal will be negotiated and approved by City staff and the Property Owner, to create a binding development agreement.

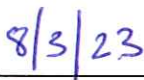
In the interest of expediting the development project and City Council approves this concept Development Agreement & Memorandum of Understanding, the City will process a final project Design Review by staff, with a Zoning Text Amendment and the final DA, concurrently. All final Design Review ("DR") plans submittals are completed at the Property Owner's risk, subject to a City Council approval of the final DA. Once the final DR plans and the DA and approved, the Property Owner may submit for Building Permit. The zoning text amendment need not be approved for the Property Owner to submit for Building Permit, under current land use regulations.

The City will not process the zoning text amendment until the parties agree to the DA, subject to final approval of the agreement by City Council. If the parties are unable to reach agreement on the DA, the City shall not initiate the text amendment. On the other hand, if the parties reach agreement on the DA, and said DA is executed by the parties, the City shall initiate the text amendment. However, said DA will be binding only if City Council approves the zoning text amendment. In the event the City Council does not approve the text amendment, none of the terms set forth in this Proposal or in the DA shall be binding on the Property Owner, and the Property Owner may modify its proposal and re-submit appropriate documents and plans.

Property Owner:
Dominion Sustainable Development Corporation



David Ebenal, President
PO Box 31548
Bellingham, WA 98228



Date