

RESOLUTION NO. 1848

A RESOLUTION APPROVING A SETTLEMENT AGREEMENT WITH D.A. GREY

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

For the reasons that are explained in the Recitals in the attached Settlement Agreement, Release of All Claims and Covenant not to Further Sue (Agreement) between D.A. Grey Ltd. / Ridge Investments Inc. (Grey) and the City of Troutdale, it is in the City's best interests to resolve pending litigation regarding the development on property Grey owns in accordance with the terms that are set out in the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. The attached Settlement Agreement, Release of All Claims and Covenant Not to Further Sue (Agreement) is hereby approved. The Mayor shall execute the Agreement on behalf of the City. Following its execution, City staff shall implement the Agreement.

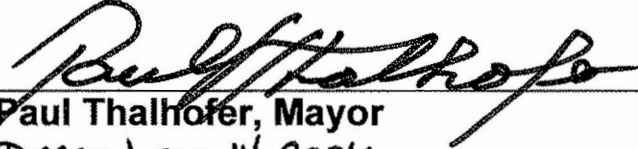
Section 2. In accordance with the Agreement, and pursuant to ORS chapter 271, the City Council is terminating the proceedings that it initiated to vacate the no-access easement on Grey's property, adjacent to SW 257th Avenue.

Section 3. This resolution shall take effect immediately upon adoption.

YEAS: 5

NAYS: 2 (Councilor Gorsek, Councilor Canfield)

ABSTAINED: 0



Paul Thalhofer, Mayor
December 14, 2006

Date



Sarah Skroch, Office Support Specialist

Adopted: December 12, 2006

SETTLEMENT AGREEMENT, RELEASE OF ALL CLAIMS AND COVENANT NOT TO FURTHER SUE

1. PARTIES

- 1.1 The parties to this Settlement Agreement, Release of all Claims and Covenant Not to Further Sue ("Agreement") are Ridge Investments, Inc. / D.A. Grey Ltd. ("Grey") and the City of Troutdale ("City").

2. RECITALS

- 2.1 Grey owns approximately 1.5 acres of property located in the City of Troutdale, shown on the map attached as Exhibit A ("Property"). The eastern boundary of the Property is adjacent to SW 257th Avenue, which is a Multnomah County road. The Property fronts SW Edgefield Avenue to the south, which is a City road. SW Edgefield is a segment of a loop road that serves 51 lots in the Sedona Park subdivision.
- 2.2 In 2002, the prior owner of the Property (Winkler) filed an application for a lot line adjustment and partition. At the time, Winkler owned a large parcel, identified as tax lot 1100 that was zoned A-2. He also owned lot 18 in the Sedona Park subdivision that was zoned R-4. Lot 18 and tax lot 1100 shared a common property line and zoning boundary. Winkler filed the partition application to divide tax lot 1100 into two parcels and a lot line adjustment to transfer 275 square feet of property from lot 18 to parcel 2. This increased parcel 2's frontage on SW Edgefield and created a legal right to access parcel 2 from SW Edgefield.
- 2.3 Sometime after Winkler's lot line and partition application were approved, Winkler sold lot 18. He also sold parcel 2 to Grey. Parcel 2 is the Property that is the subject of this Agreement.
- 2.4 When Winkler's lot line adjustment and partition were approved in 2002, Multnomah County requested that the City impose a condition of approval requiring the dedication of a no-access easement along the eastern property line of parcel 2 to prevent access to SW 257th Avenue. In accordance with the Intergovernmental Agreement ("IGA") between Multnomah County and the City of Troutdale (Contract No. 4600001441, Amendment No. 3, dated May 23, 2001), the City imposed a condition that required the dedication of the no-access easement.
- 2.5 City staff followed the Type I land use approval process in the Troutdale Development Code to review and approve the lot line adjustment and partition application. Notice of the application was not mailed to surrounding property owners, including those in Sedona Park. The Planning Director approved the application without conducting a public hearing, and administratively determined that the zoning boundary of parcel 2 shifted to include the small sliver of land (275 feet) that was transferred.

- 2.6 In November 2005 Grey filed an application for site design review of condominium development. Residents in Sedona Park were notified of the proposed condominium development and objected.
- 2.7 In written submission and during testimony at public hearings, Sedona Park residents objected to the lack of notice and a hearing in 2002 when legal access was created to SW Edgefield. Sedona Park residents expressed concerns about the negative effects associated with traffic coming through their subdivision to access higher density development on the Property. Residents in Sedona Park were unaware that the loop street in their subdivision would be used to provide access to higher density development on the Property.
- 2.8 The Troutdale Planning Commission approved Grey's condominium development with access from SW Edgefield. Residents in Sedona Park appealed. The City Council held hearings and decided to uphold the Planning Commission's decision with revisions to the conditions of approval. The City Council directed staff to initiate proceedings to vacate the no-access easement along 257th and revised the conditions of approval so that primary access to the condominiums could not occur from SW Edgefield.
- 2.9 Grey and Multnomah County appealed the City Council decision to the Land Use Board of Appeals, and asked LUBA to reverse the Council decision. If the decision were reversed, Grey and Multnomah County could seek attorneys' fees.
- 2.10 The County, as the road authority for SW 257th, testified regarding concerns for the safety of drivers on SW 257th. The County also testified about the inability to design and pay for a safe access to SW 257th. On appeal, the County claimed that the Council's decision violated City and County road standards as well as the IGA. The County will not allow access from SW 257th.
- 2.11 The topography of the Property and nearby properties, existing adjacent development, wetlands and other factors preclude access to the site from another location besides SW Edgefield or SW 257th.
- 2.12 Grey filed an inverse condemnation claim, challenging the constitutionality of the City's decision because it denies access to and use of the property. Grey also filed a written objection to the City's proceedings to vacate the no-access easement along SW 257th. The City is legally precluded from vacating the no-access easement in light of Grey's objection as the underlying property owner.
- 2.13 Since the City cannot vacate the no-access easement, and in light of litigation costs and risks associated with a decision that precludes access to SW Edgefield, it is in the City's interest to resolve the dispute regarding development on the Property and the point of access by entering into this Agreement. The Agreement also addresses concerns that exist because the lot line adjustment and partition plat were approved without notice to Sedona Park residents, while preserving Grey's legal rights to develop the Property.

3. AGREEMENT

3.1 City Obligations. The City shall:

- A. Request that the decision on appeal before LUBA be voluntarily remanded to the City for reconsideration.
- B. Adopt a decision on remand that affirms the Planning Commission's decision approving the 19-unit condominium development, provided that the condominiums shall not be built unless:
 - (i) The City fails to adopt an ordinance approving a development agreement that authorizes development of a nine (9) lot detached single family subdivision; or
 - (ii) The actions of a third party preclude Grey from commencing development of a nine (9) lot single family subdivision by June 1, 2007.
- C. Work cooperatively with D.A. Grey on a development agreement that, if approved following a public hearing, authorizes a nine (9) lot single family subdivision on the Property with access from SW Edgefield via a public street.
- D. Tender payment of \$300,000 to D.A. Grey, subject to the following:
 - (i) Up to \$25,000 of the \$300,000 shall be paid for the costs incurred to design the nine (9) lot single family development. Design costs shall be paid by the City within thirty days of receipt of invoices from Grey documenting the labor, materials and services that were provided for designing the nine (9) lot single family subdivision. The City shall not be reimbursed for design costs if, due to no fault of Grey, single family homes are not built.
 - (ii) The balance of the settlement payment (\$300,000 minus amount paid for design costs that are incurred) shall not be paid unless the City decision regarding the nine (9) lot single family decision is final on or before June 1, 2007. The decision is not final until all the appeal periods have lapsed or all appeals have been finalized, whichever occurs last. The City shall pay the balance of the settlement payment in two installments. The first installment of \$100,000 shall be paid when the decision approving the nine (9) lot single family subdivision is final. The second and final installment of all remaining money owed will be paid on the later of July 15, 2007 or the date the first building permit is pulled.
 - (iii) Unless the City and Grey agree in writing to extend the date for commencing development, if development of a nine (9) lot single family

subdivision does not commence on or before July 15, 2007, the City is not obligated to pay Grey the balance of the settlement payment that is owed under Section 3.1.D(ii) above. For purposes of this subsection, "commencing development" includes submittal of engineering plans for review by City staff. If Grey commences development but does not complete the construction of single family homes, through no fault of the City, Grey shall refund that portion of the settlement payment that exceeds the payment for design costs that were incurred.

- E. Not require the payment of application or permit fees for discretionary land use approvals that are required to develop a nine (9) lot single family subdivision. Discretionary land use approvals do not include system development charges, fees for public works applications or permits or fees for building permits, applications or inspections.
- F. Toll the 180 day limitation for the commencement of claims under ORS 197.796(2) for a period commencing November 14, 2006 and ending on the date a final decision (to include resolution of appeals or the expiration of the appeal period) is adopted regarding the development agreement for the nine (9) lot single family subdivision.
- G. Terminate the proceedings for the vacation of the one-foot no access easement along SW 257th Avenue.

3.2 Grey Obligations.

- A. In consideration for the City's decision to approve development on the Property as described herein, and the other terms and conditions in this Agreement, Grey hereby does release, acquit, forever discharge and covenant not to further sue the City and its respective officers, directors, employees, and agents from any and all past, present and future claims, demands, rights, damages and compensation of any nature whatsoever, including attorneys fees, arising out of, related to or in any way caused by the facts and circumstances described in the recitals above or arising out of the City's decision to approve development on the Property. Grey intends this Agreement to be a full, final and complete settlement, release and compromise of any and all claims that have or could have been asserted, provided that the filing fee and deposit for costs that Grey filed with LUBA may be returned to Grey.
- B. Grey shall not commence development of condominiums on the Property unless, through no fault of Grey's, Grey is not authorized to develop a nine (9) lot single family subdivision on or before June 1, 2007.
- C. Grey shall design a nine (9) lot single family subdivision that complies with the Troutdale Development Code and submit the necessary plans, reports and documents for the City to review and consider approving following a public hearing.

Compliance with the Troutdale Development Code also includes obtaining any necessary variances.

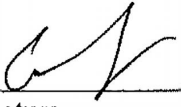
4. GENERAL PROVISIONS

- 4.1 This Agreement is a compromise of doubtful and disputed claims. It is not to be construed as an admission of liability on the parties to this Agreement, and each party expressly denies liability.
- 4.2 Every provision to this Agreement is intended to be severable unless such severance shall frustrate the overall purpose of this Agreement.
- 4.3 This Agreement contains the entire agreement between the parties and is a contract. It is understood and agreed that this Agreement shall bind and benefit the officers, directors, shareholders, heirs, successors, employees, agents' representatives, personal representatives, council members and assigns with respect to the parties to this Agreement. Any subsequent amendments to this Agreement must be in writing and signed by both parties.
- 4.4 This Agreement may be executed in one or more original counterparts.

We, the undersigned, have read the foregoing Agreement carefully, we fully understand its contents, and we fully understand that no other consideration or payment of any kind other than the aforesaid amounts will be made, and that there is no other agreement, promise or inducement of any kind for this Agreement other than what is herein expressed. The undersigned further agree that this Agreement is intended by them to be a complete and final agreement to settle all claims relating to the aforementioned claim. This Agreement shall be effective as of the date it has been executed by both parties.

We, the undersigned, hereby further execute the Agreement as our free and voluntary act and deed.

For Grey:



Signature
Owen


Title or position
12/21/06

Date
1905 SW 257th

Address
Troutdale OR 97060

City, State, Zip Code

For the City:



Signature
Mayor

Title or position
December 14, 2006

Date
104 SE Kibling Avenue

Address
Troutdale, OR 97060

City, State, Zip Code

EXHIBIT A

