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Town of Frisco – Planning Division
1 E. Main Street
Frisco, CO 80443
Via hand delivery only

21 May 2020

Re: MM Properties, Main Street Construction

To whom it may concern,

My name is Steven O'Connor; my firm is located in our shared community of Frisco, and I have the privilege of representing Ms. Myra Mesko, and her company, MM Properties, with respect to her ongoing construction project on Frisco's main street corridor.

I write today in response to several communications you have received from the adjoining property owners to Ms. Mesko's project. Representations have been made by multiple parties to the Town which are flat out inaccurate, and/or require additional clarification.

As an initial note, I am aware that you have received correspondence from both Fred Sprouse and C.J. Conant, attorneys representing Ms. Mesko's neighbors. It is our position that the litigation which is currently pending is properly heard before the District Court of Summit County, and is certainly not properly heard before the Town or Planning generally, as of course neither are parties to the suit and will not be. Mr. Sprouse and Mr. Conant apparently would like the town to make determinations about how these lawsuits will unfold, or would like the town to take positions on the project vis a vis the pending litigation. In effect, it appears as though Mr. Sprouse and Mr. Conant would like the Town to adjudicate these disputes in such a way that would be fatal to Ms. Mesko's project. We assume they are taking this approach because they have an understanding of the substantial weakness of their positions as we move through the trial process.

I know of no authority which would enable such an adventure, and frankly, I imagine the Town would much prefer not to be embroiled in the settlement and litigation of claims between business owners within the town limits. We are requesting that the Town, as opposed to acting as judge and jury on the lawsuits, which appears to be the nature of the request, simply evaluate the project on its merits, and its sizeable future contribution to the wellbeing and vitality of the Frisco business community.

With respect to the letters substantively, the following:

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1. With respect to Mr. Brad Hovis, and the comments from his attorney, Mr. “C.J.” Conant: As Counsel for Ms. Mesko, I have been working with Mr. Conant and his client with respect to a.) settling the ongoing litigation and b.) coming to a mutually agreeable conclusion on how best to proceed. Notably, this is *not* mentioned in Mr. Conant’s letter to you, which I believe is a material and deliberate misrepresentation to inspire you into charting a course you may otherwise not.

For your edification, Mr. Hovis’ hotel is illegally hooked on to Ms. Mesko’s transformer. Her project requires that the transformer which exists on her property now undergo an upgrade. In order to upgrade the transformer, Mr. Hovis’ hookups, which are no longer in compliance with current code, must be upgraded. Mr. Hovis’ proposal to this solution is that Ms. Mesko a.) pay all of his attorneys fees, presumably for anything ever, so that he is not out of pocket for those costs, and b.) that Ms. Mesko also subsidize the entire cost of revamping Mr. Hovis’ non-compliant structure.

This is, of course, an absurd position, as Mr. Hovis’ problems with his building are his own, as are his attorneys’ fees. While Mr. Conant’s letter takes the position that Ms. Mesko has initiated a lawsuit to force her neighbors to pay for her project, this is incorrect. Ms. Mesko is simply asking that her neighbors be responsible for the costs of their own trespasses and non-compliant features. Nothing more, nothing less. In fact, it is Mr. Hovis who is trying to escape all costs, entirely, which is why there is pending litigation.

Mr. Hovis also makes a great deal of fuss over the trash disposal issue. Ms. Mesko’s affiliates intend to address that concern at this evening’s meeting.

Suffice it to say though, what Planning should be reading from Mr. Conant’s letter is that Mr. Hovis believes he has absolute control over Ms. Mesko’s project proceeding, and absent his assent to move forward, whether on the dumpsters or with respect to the Xcel issue, Ms. Mesko is without relief. He is, of course, mistaken, but this statement has been articulated to me functionally verbatim by Mr. Hovis to me directly, and the Town should be aware that he has taken the position that this is his project to greenlight or terminate, hence his militance in the correspondence.

We decline to address the nuisance argument, as, of course, the major reason the project has become delayed is because Mr. Hovis has refused to remedy his non-compliant structure to make way for the placement of the new transformer, which is also, in some part, why a lawsuit was initiated, because the parties could not come to agreements on their own. To the extent Mr. Hovis has complaints about the status of the project, he has only himself to blame.

In an effort to drive the point home, from Mr. Conant’s letter: “Excel (sic) Energy will not impose this type of disruption [in moving the transformer] and expense on the Hotel without its consent, which the Hotel Frisco will not provide at this time, if ever.” This is the

rub, entirely. The transformer modification is an essential element of the project – that Mr. Hovis does not intend, ever, to agree to this required element of the project should suggest to the town that his sole intent is to drive Ms. Mesko into financial insolvency by generating delay, so that he may scoop the property from underneath her. For context, Mr. Hovis has repeatedly been rebuffed by Ms. Mesko to acquire her property in the past, much to his dissatisfaction. We believe this is his newest end-run in doing so.

Having the Town's help in making Mr. Hovis appreciate that there is a larger community which will benefit from this project even if it does not immediately serve his individual short term interests may be of some utility. Ms. Mesko would like to have the project completed and remove the now-unsightly construction equipment; only Mr. Hovis stands in the way of doing so. We imagine the town would like to see it completed, also.

With approval from the Town to move forward on the project, it is likely Ms. Mesko can work with Xcel to remove Mr. Hovis from the equation entirely (as a note: Mr. Conant's representations about what is and is not possible with or without agreement from "Excel" are materially different from those representations made by Xcel to Ms. Mesko, so we believe they are either deliberately or inadvertently inaccurate, as conveyed to you in Mr. Conant's letter.

2. Looking to the Frisco Marketplace (Letters from Schmidt and McInitire), it is worth noting here, also, that I am presently working with Mr. Fred Sprouse, Counsel for Frisco Marketplace, which centers around mutually agreeable resolution to the parties' issues, absent the need for further intervention from the Court. Those discussions, given the neighborly approach being taken by the Frisco Marketplace owners, are appearing much more productive than those with Mr. Hovis.

It is my expectation that Ms. Mesko's representatives will be addressing the concerns about the "bump-in" highlighted in Mr. McIntire's letter, so I will not review the point here, other than to note that the reason there is any issue at all between these two projects is because the Frisco Marketplace Development also enjoys a zero lot line, which the town approved, and, which once constructed, actually trespassed over Ms. Mesko's lot line. Much of the dispute between these two parties, now, relates to that work, the zero lot line configuration, and the continuation of that historical regime on main street. I note with particularity that although Mr. McIntire argues "a zero lot line configuration is not consistent with much of the current construction on main street," I would be curious to see either his or the development's position on their own zero-lot line endeavor, and ask that you apply your approach to those presumably good and marketable ideas to this project, as well.

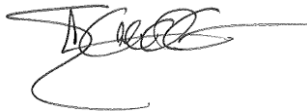
As to the concerns highlighted in paragraph 3 of the McIntire letter, Ms. Mesko simply states, as she has stated to Frisco Marketplace in the past, that no impediment or harm has befallen the Frisco Marketplace structure – the entire issue is a result of a miscommunication between Ms. Mesko's prior counsel and Mr. Sprouse. Again, and importantly, Ms. Mesko has

made a proposal to Frisco Marketplace's Counsel to get to the bottom of that issue and resolve any lingering questions related thereto. I believe the above also addresses those concerns raised in the Schmit correspondence.

The long and short of these disputes, though, is thus: Ms. Mesko is trying to construct a project that will generate tax revenue for the Town and beautify Main Street for decades to come. She has worked actively with the town to be responsive to their demands, and has attempted to work with her neighbors to cooperate on the project's completion. Only when it became clear that a.) Mr. Hovis does not wish to make any modifications whatsoever at any cost to himself, and b.) that Frisco Marketplace simply dislikes the very notion of a zero lot line configuration, did the whole morass become necessary.

We look forward to completing this project with the Town's approval, which I am confident can be done in some way, shape, or form, with or without the litigation, prior to the conclusion of this calendar year. Thank you.

All my best,

A handwritten signature in black ink, appearing to read 'Steve O'Connor', with a long horizontal line extending to the right.

Steven Charles O'Connor, J.D.

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