



August 20, 2015

Ms. Duana T. Kolouskova
Johns Monroe Mitsunaga Kolouskova PLLC
11201 SE 8th Street, Suite 120
Bellevue, WA 98004

Subject: SHR11-00002 Potala Shoreline Permit Tolling

Dear Ms. Kolouskova:

Thank you for your letter of July 27, 2015. The City concurs that the tolling provisions of RCW 90.58.143(4) and WAC 173-27-090(4) apply to toll the two-year time-limit to commence construction on the Potala Village shoreline substantial development permit. This does not mean that the City accepts or agrees with all the statements or assertions in your letter.

If you have any questions, please contact me at aruggeri@kirklandwa.gov or at 425.587.3256.

Sincerely,

PLANNING AND BUILDING DEPARTMENT

A handwritten signature in blue ink that reads "Angela Ruggieri".

Angela Ruggieri, AICP
Senior Planner



JohnsMonroe
MitsunagaKoloušková
P.L.L.C.

Robert D. Johns (*Retired*)
 Michael P. Monroe
 Darrell S. Mitsunaga
 Duana T. Koloušková
 Vicki E. Orrico
 Trisna W. Tanus

RECEIVED

JUL 30 2015

AM
 PLANNING DEPT
 BY _____ PM

July 27, 2015

Ms. Robin Jenkinson
 City Attorney
 City of Kirkland
 123 Fifth Avenue
 Kirkland, WA 98033-6189

Re: SHR11-00002 Potala Shoreline Permit
 Shoreline Permit Extension Request

Dear Ms. Jenkinson :

As you are aware, this office represents the applicant Potala Village Kirkland and Lobsang Dargey with respect to the property located at 1006 Lake Street.

State law provides specific instruction as to the length of time for which a shoreline substantial development permit is effective, when those time frames are tolled, and authority for time extensions.

(2) Construction activities shall be commenced or, where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the substantial development permit and to the department.

(3) Authorization to conduct development activities shall terminate five years after the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the department.

(4) The effective date of a substantial development permit shall be the date of filing as provided in RCW 90.58.140(6). **The permit time periods in subsections (2) and (3) of this section do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other**

Ms. Robin Jenkinson
City Attorney
July 27, 2015
Page 2

government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.

WAC 173-27-090 (emphasis added).

Prior to construction of the development authorized by this Shoreline Substantial Development Permit, the City also requires the applicant to obtain multiple other permits and approvals. Those include a building permit which is subject to a design review process.

As the City is aware, there have also been three ongoing legal actions associated with development of the site, one related to the Shoreline Substantial Development Permit approved under City File No. SHR11-00002. The second legal action, currently pending before the Court of Appeals, relates to the underlying building permit. The third relates to the rezone imposed by the City. Pursuant to Section (4) of WAC 173-27-090, the effective date of the SSDP under Sections (2) and (3) has been tolled during pendency of these legal actions.

The effective date of the SSDP is also tolled pursuant to Section (4) because the City is processing approvals and permits for the development. The Applicant submitted its building permit application prior to the City's revised SSDP decision (dated August 12, 2013). Since then, the application has been under review and an active application. As a result of the outcome of the first legal action, the Applicant has more recently, contemporaneously, pursued an alternative, more limited project design and is actively engaged in the design review process. Therefore, pursuant to Section (4) of WAC 173-27-090, the effective date of the SSDP under Sections (2) and (3) has been tolled during the pendency of the City's review.

Even if the tolling provisions of Section (4) did not apply, there is ample justification for the City to extend the SSDP effectiveness under Section (2). There can be no question that the applicant/property owner has been diligent in attempts to obtain a building permit and develop the property. Legal actions related to legitimate questions of SSDP vesting and City determinations as to issuance of the original building permit have led to an extensive review process and a second substantive review of a much more limited development under a revised building permit application. The applicant therefore requests the City to explain any reasons that it might have for determining that Section (4) should not apply and grant an extension pursuant to Section (2).

Thank you for your review of this request.

Sincerely,



Duana T. Koloušková

Ms. Robin Jenkinson
City Attorney
July 27, 2015
Page 3

Direct Tel: (425) 467-9966
Email: kolouskova@jmmlaw.com

Cc: Angela Ruggeri, Planner
Client