



ADMINISTRATIVE MEMORANDUM NO. 18-259

DATE: June 28, 2018
TO: Mark Berman, City Attorney
VIA: David L. Recor, Development Services Director 
FROM: Scott Reale, Senior Planner SR 
RE: Developer's Agreement – Costco
1800 W Sample Rd

17-12000023

Pursuant to a June 4, 2018 meeting between City staff and representatives for Costco Wholesale Corporation, the Development Services Department is seeking to enter into a Developer's Agreement with Costco in order to allow the vertical construction of approved development (PZ #17-12000023 | BP #18-407) prior to Broward County approval of an easement vacation. The Agreement, if approved by City Commission, would allow for the development of a new gas station over a platted utility easement during the County's vacation process. Staff does not object as the City adopted Ord No 2018-35 on February 13, 2018 which abandoned that portion of the Utility Easement located under the proposed gas station canopy.

Please review for legal form and sufficiency, and if applicable, please draft a resolution authorizing this Agreement.

I am available at x4667 to discuss the project or answer questions.

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into between Costco Wholesale Corporation ("Owner"), having an address of 999 Lake Drive, Issaquah, Washington 98027, and the City of Pompano Beach, a Florida municipal corporation, having an address of 100 West Atlantic Boulevard, Pompano Beach, Florida ("City").

WITNESSETH

WHEREAS, Costco Wholesale Corporation is the Owner of the property located at 1800 West Sample Road, Pompano Beach, Florida 33064, which is generally located on the north side of West Sample Road and west of Powerline Road in the City of Pompano Beach, Broward County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein ("Property"); and

WHEREAS, on September 27, 2017, the City's Planning and Zoning Board approved Site Plan Application P+Z #17-12000023 ("Site Plan") in order to allow for relocation and construction of a new +/- 6,192 square foot gas station with a +/- 110 square foot controller building and expanded parking lot area ("Project"). A copy of the approved Site Plan is attached hereto as Exhibit "B"; and

WHEREAS, there are two existing six (6) foot platted utility easements that run side-by-side and north to south within the Property as further identified on the Hasey Center Plat as recorded in Plat Book 136 Page 39 of the Public Records of Broward County, Florida (collectively referred to as "Utility Easement"); and

WHEREAS, the Site Plan provides for the relocation of the existing force main and related infrastructure from the Abandonment Area (as defined herein) and around the proposed gas station ("Relocation Work"), which will be located within a new utility easement to be dedicated to the public and recorded against the Property; and

WHEREAS, on February 13, 2018, the City adopted Ordinance No. 2018-35 abandoning a portion of the Utility Easement located under the proposed gas station canopy as further described in Exhibit "C" ("Abandonment Area") and Owner has submitted application 2018-V-12 to Broward County, which is currently under departmental review; and

WHEREAS, in adopting Ordinance NO. 2018-35, the City vacated the public interest in the Abandonment Area of the Utility Easement and removed the right of the public (including utilities) to use that portion of the Utility Easement; and

WHEREAS, a separate vacation application has been submitted to Broward County to vacate the private property platted rights created by the easement ("County Vacation") and Broward County is expected to approve the County Vacation on or before October 9, 2018; and

WHEREAS, on June 25, 2018, the City issued building permit number 18-0407 ("Building Permit") to Owner for the Project prior to the approval of the easement vacation by Broward County, Florida and that Building Permit authorizes, inter alia, the Relocation Work; and

WHEREAS, Costco desires to commence all construction authorized pursuant to the Building Permit prior to the final approval of the easement vacation; and

WHEREAS, the City requested and Owner agreed that, prior to the vertical construction of the Project over the Abandonment Area, the parties shall enter into an Agreement setting forth specific conditions applicable to the development under the Building Permit within the Abandonment Area.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The above recitals and representations are true and correct and are incorporated herein.
2. The City hereby authorizes the construction of the Project over the Abandonment Area prior to the completion of the easement vacation by Broward County, Florida, subject to the following conditions:
 - a. Costco may commence all work in accordance with the Building Permit including construction activity and vertical improvements within the Abandonment Area.
 - b. Costco shall notify City in writing upon completing the Relocation Work.
 - c. A Temporary Certificate of Occupancy may be issued while the Abandonment Area is being processed by Broward County. The Temporary Certificate shall be issued for a limited period not to exceed ninety days, but may be extended for an additional ninety days at the discretion of the Building Official, if, in his opinion, such extension is justified.
 - d. No certificate of occupancy for the Project shall be issued unless and until the County Vacation has been approved by the Broward County Board of County Commissioners.
 - e. In the event the County Vacation is not approved by Broward County, Owner and City will mutually agree upon a course of action that will allow the Building Permit to be closed out.
3. This Agreement shall be construed in accordance with the laws of Florida and venue shall be in Broward County, Florida.
4. This Agreement shall not be modified, waived, amended or released as to any portion of the Property except by written instrument executed by the owner of the Property and approved in writing by the City of Pompano Beach.

[Continued on Next Page]

Witnesses:

Attest:

ASCELETA HAMMOND, CITY CLERK

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of June, 2018 by LAMAR FISHER, as Mayor, GREG HARRISON, as City Manager, and ASCELETA HAMMOND, as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"CITY":

CITY OF POMPAÑO BEACH

By: _____

LAMAR FISHER, MAYOR

By: _____

GREG HARRISON, CITY MANAGER

(SEAL)

Witness:

Marianne G. Bundren

Print Name: Marianne G. Bundren

M. Holman

Print Name: M. Holman

STATE OF Virginia)
COUNTY OF Spotsylvania) SS:

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, the foregoing instrument was acknowledged before me by Margaret C. McCulla, Assistant Secretary of Costco Wholesale Corporation, the OWNER, freely and voluntarily under authority duly vested in him/her by said company. She is personally known to me.

WITNESS my hand and official seal in the County and State last aforesaid this 28th day of June, 2018.



My Commission Expires:

"OWNER":

COSTCO WHOLESALE CORPORATION

By: Margaret C. McCulla

Name: Margaret C. McCulla

Title: Assistant Secretary

Linda R. Blue
Notary Public

Typed, printed or stamped name of Notary Public

Exhibit "A"

LEGAL DESCRIPTION

ALL OF PARCEL "A", TOGETHER WITH A PORTION OF PARCEL "B" OF "HASEY CENTER", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 136, PAGE 39, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL "B"; THENCE NORTH 89°27'54" EAST ON THE NORTH LINE OF SAID PARCEL "B", ALSO BEING THE SOUTH RIGHT-OF-WAY LINE OF SAMPLE ROAD (STATE ROAD NO. 834) FOR 199.17 FEET; THENCE SOUTH 00°32'06" EAST 577.93 FEET TO THE INTERSECTION WITH THE SOUTH LINE OF SAID PARCEL "B"; THENCE 89°31'29" WEST ON SAID SOUTH LINE 203.86 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL "B", ALSO BEING THE SOUTHEAST CORNER OF PARCEL "A"; THENCE NORTH 00°04'10" WEST ON THE WEST LINE OF SAID PARCEL "B", ALSO BEING THE EAST LINE OF SAID PARCEL "A", 577.74 FEET TO THE POINT OF BEGINNING.

LESS THE RIGHT-OF-WAY DEDICATION RECORDED IN OFFICIAL RECORDS BOOK 13646, PAGE 701 OF SAID PUBLIC RECORD.

SAID PARCEL CONTAINING 553,738 SQUARE FEET, 12.7121 ACRES.

TOGETHER WITH:

THE NORTH 1/2 OF THE NORTH 1/2 OF TRACT 20 OF AN UNRECORDED SALES PLAT OF POMPANO BEACH FARMS, LEGALLY DESCRIBED AS:

THE NORTH 1/2 OF THE NORTH 1/2 OF THE WEST 1/2 OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 48 SOUTH, RANGE 42 EAST, PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

AND

THE SOUTH 1/2 OF THE NORTH 1/2 OF TRACT 20 OF AN UNRECORDED SALES PLAT OF POMPANO FARMS, LEGALLY DESCRIBED AS:

THE SOUTH 1/2 OF THE NORTH 1/2 OF THE WEST 1/2 OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 48 SOUTH, RANGE 42 EAST, PUBLIC RECORDS OF BROWARD COUNTY FLORIDA. LESS THE SOUTH 25 FEET OF THE WEST 30 FEET THEREOF.

SAID PROPERTY CONTAINING 53,400 SQUARE FEET, 1.2259 ACRES.

SAID LANDS SITUATE, LYING AND BEING IN THE CITY OF POMPANO BEACH, BROWARD COUNTY, FLORIDA, HAVING A COMBINED AREA OF 607,138 SQUARE FEET (13.9380 ACRES), MORE OR LESS.