CITY OF SCOTTSDALE

Community & Economic Development Division
Planning and Development Services

7447 East Indian School Road, Suite 105
Scottsdale, Arizona 85251

To: Chair Metz and Board of Adjustment Members

From: Jesus Murillo

Through: Brad Carr, AICP, LEED-AP – Board of Adjustment Liaison BC

Date: 9/23/2016

Re: Hunkapi Farms Appeals (5-BA-2016 & 6-BA-2016)

The appellants in both appeal applications have requested that their applications be continued to a future Board of Adjustment hearing date. The representative of the Hunkapi Farms has sent a letter in agreement with the appellants request for continuance. Finally, the Zoning Administrator has submitted a letter in concurrence with the appellants' request for a continuance. Copies of that correspondence are attached to this memorandum.

Attachments:

Letter from Doug Jorden, applicant for appeal case 5-BA-2016
Letter from Susan Demmitt, applicant for appeal case 6-BA-2016
Letter from Paul Gilbert, representative for Hunkapi Farms
Letter from Randy Grant, Zoning Administrator City of Scottsdale

LAW OFFICES

JORDEN HISER

& JOY, P.L.C.

5080 NORTH 40TH STREET, SUITE 245
PHOENIX, ARIZONA 85018
TELEPHONE: 480-505-3900
FACSIMILE: 480-505-3901

DOUGLAS A. JORDEN

DIRECT LINE: 480-505-3909
E-MAIL: djorden@JHJLawyers.com
www.JHJLawyers.com

September 21, 2016

VIA EMAIL (bcarr@scottsdaleaz.gov)

City of Scottsdale Board of Adjustment
c/o Brad Carr, Board of Adjustment Liaison
7447 East Indian School Road, Suite 105
Scottsdale, AZ 85251

Re: Board of Adjustment Appeal Cases 5-BA-2016 and 6-BA-2016
Hunkapi (2-UP-2015)

Dear Board:

On behalf of our clients, Mike and Kris Stevens and Eric and Jennifer Reece, we request a continuance in the Board of Adjustment matters noted above until the Board's first hearing date in February 2017, which we believe is February 1, 2017.

Last week, we learned from Hunkapi that it is exploring relocating to another site, which if successful would render the need for the Board of Adjustment hearing moot. Hunkapi and the appellants immediately realized that the October 5 hearing should be pushed back to give time for this potentially win-win solution to run its course. The parties contacted City staff last week about a delay of the October 5 hearing, as the September 21 deadline for submitting written materials for the Board's October hearing was fast approaching. We were advised last week by City staff that the matter could be cancelled since posting and advertising had not yet occurred and that the matter would not be heard by the Board as scheduled on October 5, 2016, thus eliminating the need for written submissions on September 21. Acting in reliance on that information, my clients did not finalize materials for submission on September 21. Yesterday, we heard from City staff that posting and advertising had occurred and that the matter was in fact scheduled on October 5, 2016. As a result, none of the parties are prepared to submit materials necessary for the Board to consider at the October 5 hearing.

We believe that a continuance based on good cause is appropriate for the reasons set forth above; it is in everyone's best interest if an amicable solution can be found. Alternatively, in accordance with Section 206 of the Rules of Procedure for the Board of Adjustment, the appellant is allowed one continuance as a matter of course. The prior continuance was requested by Hunkapi and we believe that a continuance is appropriate based on Section 206. We do not plan to submit written materials by today's deadline or attend the October 5 hearing.

It is our understanding that the other parties, represented by Paul Gilbert and Susan Demmitt, will be submitting similar letters. Thank you for your time in considering this matter.

Sincerely,

Douglas A. Jorden

DAJ/eaa

cc: Mike & Kris Stevens (via email)
Eric & Jennifer Reece (via email)
Susan Demmitt (via email)
Paul Gilbert (via email)
Randy Grant (via email)

GAMMAGE & BURNHAM, P.L.C.
ATTORNEYS AT LAW
TWO NORTH CENTRAL AVENUE
15TH FLOOR
PHOENIX, ARIZONA 85004-4470

TELEPHONE (602) 256-0566
FACSIMILE (602) 256-4475

SUSAN E. DEMMITT
sdemmitt@gblaw.com

WRITER'S DIRECT LINE
(602) 256-4456

September 21, 2016

VIA EMAIL (bcarr@scottsdaleaz.gov)

City of Scottsdale
Board of Adjustment
c/o Mr. Brad Carr
City of Scottsdale Board of Adjustment Liaison
7447 E. Indian School Road, Suite 105
Scottsdale, Arizona 85251

Re: Appeal Cases 5-BA-2016 and 6-BA-2016 (Hunkapi - 2-UP-2015)

Dear Mr. Carr:

On behalf of Cordell and Gail Overgaard and the CJ and GG Overgaard Revocable Trust, I am writing to request that the currently scheduled October 5, 2016 Board of Adjustment ("Board") hearing related to Appeal Cases 5-BA-2016 and 6-BA-2016 (Hunkapi - 2-UP-2015) ("Appeal Cases") be continued to the February 1, 2017 Board of Adjustment hearing agenda.

On September 14, 2016, we discussed with the City that all parties to the Appeal Cases desired and agreed to cancel the October 5, 2016 Board hearing and continue it to a future date. The cancellation of the October 5 hearing was requested after information was provided to the appellants by Hunkapi that they are engaged in ongoing negotiations to lease an existing ranch facility for which a Conditional Use Permit is already in place. This would render the Appeal Cases moot. After discussion amongst all parties, it was agreed that the October 5 hearing should be cancelled and continued to allow Hunkapi the opportunity to focus on finalizing the lease negotiations.

The cancellation of the October 5 hearing was discussed with the City. This understanding was reached based on information confirmed by the City that the public notices for the October 5 hearing had not yet been finalized and thus the City could simply cancel the hearing. All parties to the Appeal Cases acted in reliance on the information that hearing would be cancelled and, in further reliance, did not prepare supplemental briefs for submittal to the Board. For an October 5, 2016 hearing, any such briefs would be due today, September 21, 2016.

Late yesterday—September 20—the City informed the parties to the Appeal that the hearing could not be cancelled, but instead must be continued by formal action of the Board. Additionally, the City informed the parties that there was no guarantee that the Board would elect to take such action. In reliance upon the initial communication given by the staff, the parties to the Appeal Cases have been

materially disadvantaged because they have not had time to prepare supplemental briefs. In and of itself, this is good cause to support the continuance.

After discussion and agreement amongst all parties, including the Overgaards, Kris and Mike Stevens, and Hunkapi, the City has been asked to present the request for a continuance to the Board at the October 5 hearing and discuss with the Board the miscommunication that took place. The parties to the Appeal Cases do not plan to appear at the October 5 hearing and will not submit supplemental briefs to the City for the October 5 hearing.

The parties would like the Appeal Cases continued to the February 1, 2017 agenda. Supplemental materials will be submitted to the Board prior to the February 1, 2017 hearing date in accordance with Board rules.

Additionally, it is our position that the appellant is entitled to a one-time, by-right continuance as outlined in Section 206 of the Rules of Procedure of the Board of Adjustment. The original continuance request, dated May 5, 2016, was made by Hunkapi, the real-party-in-interest.

We appreciate the Board's consideration of this matter. We request that this letter be included in the packet of materials provided to the Board members for the October 5 hearing. Similar letters will be authored by the other parties to the Appeal Cases. Should you have any questions regarding the continuance request, please do not hesitate to contact me.

Best Regards,

GAMMAGE & BURNHAM

Susan E. Demmitt pm

By

Susan E. Demmitt

SED/pm

e-cc: Mr. Randy Grant, City of Scottsdale
Mr. Cordell Overgaard
Mr. Mike Stevens
Mr. Eric Reece
Mr. Doug Jorden, Esq.
Mr. Paul E. Gilbert, Esq.

BEUS GILBERT
PLLC
ATTORNEYS AT LAW

701 NORTH 44TH STREET
PHOENIX, ARIZONA 85008-6504
(480) 429-3000
FAX (480) 429-3100

PAUL E. GILBERT
DIRECT: (480) 429-3002

EMAIL: PGILBERT@BEUSGILBERT.COM

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September 21, 2016

VIA EMAIL (bcarr@scottsdaleaz.gov)

City of Scottsdale Board of Adjustment
c/o Brad Carr, Board of Adjustment Liaison
7447 East Indian School Road, Suite 105
Scottsdale, AZ 85251

Re: Board of Adjustment Appeal Cases 5-BA-2016 and 6-BA-2016
Hunkapi (2-UP-2015)

Dear Board:

The undersigned represents Hunkapi, the applicant in conjunction with 2-UP-2015. In close proximity to this correspondence, you will receive two other letters from Susan Demmitt and Doug Jorden, who represent the applicant in conjunction with the Board of Adjustment Cases 5-BA-2016 and 6-BA-2016. This correspondence is agreement with both the request for the continuance until February 1, 2017 and the description of the facts which buttress and underline this request.

Basically, we were all led to believe by the Scottsdale planning staff that the Board of Adjustment application had not been noticed and posted, and that therefore the Board of Adjustment application would be continued. As it turns out, this information was not correct and therefore the request for the continuance has to come before the Board of Adjustment for dispositive action. In reliance on the posture of this matter by the planning staff, none of the lawyers involved had prepared the necessary documentation to make a timely submittal to the Board of Adjustment, given the fact that we just learned of the posture of this application yesterday, September 20, 2016.

Furthermore, my clients, Hunkapi, are currently in negotiations to potentially move the Hunkapi operation to another site. Pending the outcome of these negotiations, it makes little sense to expend the time, effort and legal fees to go forward with the Board of Adjustment hearing, particularly given the fact that the applicants who have filed the Board of Adjustment request are in favor of the continuance to let the current negotiation play out. The negotiations to move the Hunkapi operation may not come to fruition, but they are being undertaken in good faith which, under the circumstances, appears to be a very legitimate reason to allow this continuance.

Since all parties who are affected by this case are in agreement, importantly including the planning staff, it is urged that this continuance be granted as requested until February 1, 2017.

Very truly,

BEUS GILBERT PLLC

Paul E. Gilbert

PEG/dmw
cc: Randy Grant
Doug Jorden
Susan Demmitt

CITY OF SCOTTSDALE

Planning and Development Services
Current Planning
7447 East Indian School Road
Scottsdale, Arizona 85251

City of Scottsdale Board of Adjustment
c/o Brad Carr, Board of Adjustment Liaison
7447 E. Indian School Road, Suite 105
Scottsdale, AZ 85251

Re: Board of Adjustment Appeal cases 5-BA-2016 and 6-BA-2016
Hunkapi (2-UP-2015)

Board of Adjustment Members:

As the Zoning Administrator for City of Scottsdale, I concur with the appellants' request for a continuance to the February 1, 2017 regularly-scheduled Board of Adjustment hearing. This will allow the all interested parties in the matter of the appeal requests (5-BA-2016 & 6-BA-2016) and associated Conditional Use Permit request (2-UP-2015) additional time to reach a amicable resolution regarding this site.

Sincerely,

Randy Grant,
Zoning Administrator