



September 9, 2024

Harbour Homes
Attn: Mr. Jamie Waltier
18329 98th Avenue NE Suite 300
Bothell, WA 98011

Dear Mr. Waltier,

On July 17, 2024, First Lutheran Church of Bothell (FLC) advised you that Harbour Homes' tieback proposal did not provide sufficient and material protection for our property and our congregation and we declined your offer. Attached, per your request, is a detailed commentary from the FLC Council for each term or condition contained in both documents.

If you have any questions for the Congregation Council, please don't hesitate to contact me. In addition, the Council's Executive Committee (president, vice-president, and secretary) would be happy to meet with you.

Please let us know how you would like to proceed.

Sincerely,

A handwritten signature in black ink that reads "Ho. Brown". The signature is written in a cursive, flowing style.

Ms. Ho. Brown
President - Congregation Council
First Lutheran Church of Bothell
206.478.4860
jepromets@comcast.net

Cc: FLC Congregation Council
Mr. Richard Keltner – Chairperson, FLC Building & Property Committee

Attachment

FIRST LUTHERAN CHURCH COMMENTARY ON HARBOUR HOMES PROPOSAL DATED 7/9/24

September 9, 2024

OVERALL REQUIREMENTS

1. The contract should be a single document rather than 2 separate agreements and specify any documents, by their title or some other identifier, e.g., Exhibit A, that encompass the final agreement. Each exhibit must be dated and be the final version; exhibits marked "preliminary" or exhibits subject to change are not acceptable.
2. The contract should include:
 - a process for amendments, if allowed, including that amendments must be in writing and signed by authorized representatives of both parties prior to going into effect.
 - a section on breaches of contract and remedies, including possible termination of the agreement prior to the start of construction.
 - a section on arbitration.
 - specifications on the number of soldier piles; the number of tiebacks per soldier pile and length; and how soldier piles installed (driven or drilled). Any subsequent change to these stipulations must be treated as an amendment to the agreement and follow the procedures outlined in the agreement. If additional financial consideration is warranted, as per the terms of the final agreement, then it shall be paid to FLC at the time FLC approves the written amendment(s).
 - stop work authority by FLC, with parameters that would ensure when a significant (define) issue is discovered, all work will cease until the issue is resolved to FLC's satisfaction and the process rectified to eliminate a recurrence.
 - a section specifying that any time the contract dictates notice is to be provided by Harbour Homes/102Main to FLC, a written notice (electronic mail is acceptable) is to be provided to: 1) the FLC Council president; 2) the pastor; 3) the church staff and 4) the FLC Building & Property Committee chairperson. The FLC president is responsible to provide Harbour Homes/102Main with the contact information for these parties and updates of any changes.
 - a commitment that Harbour Homes/102Main Investment Partners, LLC, will keep FLC's property free from spillover debris during the construction period by checking for and removing any debris on a daily basis.
 - a statement that the easement agreement between FLC and the Grantee is not transferrable.

LETTER OF AGREEMENT

(listed in order of bullet points in the letter, albeit numbered below)

1. *102Main will not stage any materials on the FLC property.*
FLC Response: This is not an item of consideration. Harbour Homes/102Main will not have any materials on or transport any materials across FLC's property, or come onto FLC's property unless pre-authorized for a specific purpose.
2. *Once commenced, the Project will proceed in a timely manner. 102Main will provide you, on behalf of FLC, with seven (7) days' notice of commencement of the Project.*
FLC Response:
 - Define "timely manner."

- More than 7 days' written notice (electronic mail is acceptable) should be given and the number of days should be defined as "calendar" or "business" days.
 - Notice is to be provided to the FLC Council president; the pastor; the church staff; and the FLC Building & Property Committee chairperson.
3. *Following commencement of the Project, 102Main will provide FLC with the construction schedule, as well as an updated construction schedule, generally occurring 30-90 days until such time as the building roofing and windows are complete.*

FLC Response:

- FLC should receive the initial construction schedule prior to the commencement of the Project.
 - The above should state "generally occurring **every** 30 to 90 days, if that's what's correct.
 - The initial and updated construction schedules are to be provided to the FLC Council president; the pastor; the church staff; and the FLC Building & Property Committee chairperson.
4. *Prior to the Project commencement, 102Main will hire, at its sole cost and expense, an inspection company to perform and prepare a pre-construction condition assessment report of the FLC property. 102Main will provide a copy of this report to FLC upon receipt.*

FLC Response: FLC will select and hire an inspection company to perform and prepare both pre- and post-construction condition assessment reports independent from 102Main.

5. *At any time following execution of this Agreement and prior to commencement of the Project, 102Main will install foundation and/or exterior monitoring survey points on the south end of the building on the FLC property and record data. At the time building roofing and windows are complete, 102Main shall collect survey data to compare to the pre-construction condition. In the event of a change of conditions/settling due to the Project, 102Main shall, at its sole cost and expense, repair and/or restore the FLC property to its pre-construction condition utilizing a geotechnical engineer's recommendations.*

FLC Response:

- FLC will have approval of the third party who will be used to install the foundation monitors; collect and analyze the data; and provide written reports (electronic mail is acceptable if the data lends itself to this method of delivery) and recommendations simultaneously to FLC and 102Main. All reports are to be provided to the FLC Council president; the pastor; the church staff; and the FLC Building & Property Committee chairperson.
- Data will be collected and reviewed every other day by the third party so that issues can be identified early and appropriate action taken at the time of the discovery, rather than waiting until the roofing and windows are complete.
- Describe what evidence is required to substantiate that any change of conditions and/or settling are due to the Project.
- FLC will hire the vendor(s) to perform the repairs and/or restorations to the property's original or better condition at 102Main's sole cost and expense. Payment for the work performed must be received by the vendor(s) prior to the due date specified by the vendor(s).
- Depending on the type and degree of damage, construction may need to stop until the repair and/or restoration has been completed and a remedy against reoccurrence determined and implemented.

6. *At completion of the Project, 102Main will utilize the inspection company to perform and prepare a postconstruction condition assessment report of the FLC property. 102Main will provide a copy of this report to FLC upon receipt.*

FLC Response: FLC will select and hire an inspection company to perform and prepare a post-construction condition assessment report (as well as the pre-construction condition assessment), independent from 102Main.

7. *Any damage to the FLC property caused by 102Main or its subcontractors related directly to the Project will be restored as promptly as possible.*

FLC Response:

- Describe what evidence is required to substantiate that any damage to FLC's property was caused by and is directly related to the Project.
- FLC will hire the vendor(s) to perform the repairs and/or restorations to the property's original or better condition at 102Main's sole cost and expense. Payment for the work performed must be received by the vendor(s) prior to the due date specified by the vendor(s).
- Depending on the type and degree of damage, construction may need to stop until the repair and/or restoration has been completed and a remedy against reoccurrence determined and implemented.

8. *102Main will indemnify and defend against any claims or damages that may arise out of 102Main's access under the FLC property and construction and installation of the Project.*

FLC Response: Describe what evidence is required to substantiate that any claims or damage to FLC's property were due to 102Main's access under the FLC property and construction and installation of the Project.

9. *102Main shall at all times carry a general liability insurance policy with limits no less than \$1 million dollars and name FLC as an additional insured.*

FLC Response: A "no less than \$1 million dollars" general liability insurance policy seems inadequate. Specify the actual amount of insurance 102Main will carry rather than "no less than."

10. *102Main will construct a fall protection fence at the top of the Project as specified by the City of Bothell.*

FLC Response: Specify the City's requirements and how they impact FLC.

11. *At the time of building permit issuance for the Project, 102Main will pay FLC Eighty Thousand dollars (\$80,000) in consideration for signing the Temporary Construction and Tie Back Easement Agreement (the "Easement"), attached hereto as Exhibit A.*

FLC Response:

- Financial consideration is to be determined.
- Once paid to FLC, the financial consideration is not refundable under any circumstances.
- The Exhibit A that was provided is not an easement agreement.
 - Exhibit A's cover sheet, which follows the easement agreement, is titled "Legal Description of Easement Property," and appears to be a drawing, labelled "EXHIBIT __" at the top.
 - The blank after the word "EXHIBIT" doesn't specify it's Exhibit A and is labelled "Preliminary." If this drawing is part of the contract, then it must be the final version.

12. *Upon signing the Easement, 102Main will provide FLC non-exclusive use of the upper gravel parking lot on 102Main's property via ten (10) parking passes, which need to be visibly displayed when parking on the 102Main property to avoid a parking ticket. These ten (10) parking passes shall expire on either March 31, 2025 or upon seven (7) calendar days' written notice to you, on behalf of FLC, of Project commencement, whichever comes first.*

FLC Response: Notice of expiration to be provided to the FLC Council president; the pastor; the church staff; and the FLC Building & Property Committee chairperson.

TEMPORARY CONSTRUCTION & TIE BACK EASEMENT AGREEMENT (not identified on its face as Exhibit A)

1. *For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby conveys and grants to Grantee, its successors and assigns, for the purposes hereinafter set forth, a Temporary Construction and Tie Back Easement (the "Easement"), under, over, across, along, in, upon and under that portion of Grantor's Property described in the attached Exhibit A incorporated herein ("Easement Property").*

FLC Response:

- Per the Letter of Agreement, FLC will not receive valuable consideration until the building permit is issued. This paragraph conflicts with that condition.
- The stated purposes of “under, over, across, along, in, upon and under” appear to be all-encompassing, duplicative, and beyond the necessary scope of the agreement.

2. *Grantee, its agents and/or assigns, shall have the right to enter upon the Easement Property for the purpose of installing, constructing, operating, maintaining, removing, repairing, and replacing a sub-surface shoring systems consisting of vertical shoring walls, tie backs and soil nails ("Shoring System") together with the right of ingress to and egress from Grantor's Property for the foregoing purposes. Grantee shall limit its impact on Grantor's Property to the extent necessary to install the Shoring System stated above.*

FLC Response:

- This statement conveys rights of ingress and egress for any and all possible activities. It should be limited to what is applicable for the underground deployment of tiebacks. Any access to FLC's property above ground needs to be pre-authorized by FLC, per occurrence.
- The language indicates the entire “shoring system” will be built on FLC property and that soil nails will be used in addition to tiebacks. This is incorrect.
- If the tiebacks are permanent, specify how critical components of each tieback tendon and anchor head are protected from corrosion.

3. *In exercising its rights herein, Grantee shall comply with all conditions imposed by the City of Bothell regarding construction of the shoring system and in compliance with all applicable laws and regulations. Grantee shall provide notice to Grantor of its intent to commence construction of the shoring system. All work shall be completed by a licensed, bonded and insured contractor of Grantee's choosing. Grantee shall keep Grantor's property free and clear of all mechanic's and materialmen's liens.*

FLC Response:

- Notice to FLC to begin construction should be the same as what's in the letter of agreement. This will be resolved when the contract is a single document.
- Notice is to be provided to the FLC Council president; the pastor; the church staff and the FLC Building & Property Committee chairperson.

4. *Grantor retains the right to the use and possession of the real property over which the Easement is granted in any manner provided that use by Grantor shall in no way interfere with the rights granted herein to Grantee. Grantor shall not construct or maintain any buildings or other structures on the Easement Property nor perform any digging, tunneling or other form of construction activity on the Easement Property which would disturb the Shoring System installed in the Easement Property by Grantee.*

FLC Response:

- A "Shoring System," as defined in #2 above, will not be installed on FLC's property.
- Any applicable rights granted by Grantor to Grantee are temporary until the Certificate of Occupancy (COO) is issued (see #5 below). The language here doesn't include that limitation, and, therefore, reads as if the rights are granted in perpetuity.

5. *The Easement shall terminate immediately following the date the City of Bothell issues a Certificate of Occupancy for Grantee's project.*

FLC Response:

- Define "immediately."
- Identify a time frame in which FLC will be notified that the COO has been granted and that the agreement is terminated.
- If the COO is delayed or not obtained after inspection, describe the notification process to FLC, including an expected time frame for resolution.

6. *Except as otherwise provided herein, Grantor agrees that this Easement and the rights and obligations of Grantor and Grantee shall inure to the benefit of and be binding upon their respective heirs, successors and assigns.*

FLC Response: It's unclear why this statement is included. Per #5 above, the easement agreement (and all rights and obligations) terminates when a COO is issued.

7. *Grantor agrees to execute, in a timely manner, any and all further documents, including maintenance easements, to Grantee or the City of Bothell to carry out the purposes and intent of this Easement.*

FLC Response:

- Define "a timely manner."
- Define "any and all further documents, including maintenance easements" and provide the current version of each.