

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: David A. Bobardt, Community Development Director 
By: David Lasher, Management Analyst 

DATE: March 7, 2011 (CC Meeting of 4/6/2011)

SUBJECT: Consider Report of Annual Development Agreement Review,
Established in Connection with Warehouse Discount Center at White
Sage Road and the SR-23 Freeway (NLA 118, LLC)

BACKGROUND/DISCUSSION

Government Code Section 65864 and City of Moorpark Municipal Code Section 15.40 provide for Development Agreements between the City and property owners in connection with proposed plans of development for specific properties. Development Agreements are designed to strengthen the planning process, to provide developers some certainty in the development process and to assure development in accordance with the terms and conditions of the agreement.

On October 19, 2005, the Moorpark City Council adopted Ordinance No. 322 (effective November 18, 2005), approving a Development Agreement between the City of Moorpark and NLA 118, LLP, in connection with the development of the Warehouse Discount Center (Commercial Planned Development No. 2004-03). The agreement remains in full force and effect for twenty (20) years from the operative date of the agreement.

Provisions of the agreement require an annual review and report to the City Council on the status of completion of all aspects of the agreement. This is the fifth annual review of the Development Agreement with NLA 118. The corporation has submitted the necessary application form and fee/deposit for this annual review. The Community Development Director has reviewed the submitted information and the project status and provides the following report.

Current Project Status

The 99,772 square foot Warehouse Discount Center building has been open for business since May 15, 2007. There is a second building on the site, which is 17,484 square feet and is partially occupied by Ortho Mattress and a recently established furniture outlet. The furniture outlet is owned and operated by the Warehouse Discount Center.

Developer Compliance with Terms of Agreement

The developer's responsibilities are included in Section 6 of the Development Agreement and include sixteen (16) specific requirements, as summarized below. Compliance with the terms and conditions of the Development Agreement has and will occur at various stages of the development process. Action by the developer and other clarifying information has been noted.

NO.	REQUIREMENT	STATUS
1.	Developer shall comply with this Agreement, Project Approvals, all Subsequent Approvals the MMRP of the previously certified EIR and any subsequent or supplemental environmental actions.	Developer is in compliance with all requirements at this time.
2.	All lands and interests in land shall be dedicated free and clear of liens and encumbrances.	An easement for a City "Welcome" sign was accepted by the City Council on August 20, 2008.
3.	Payment of "Development Fee" of Forty Thousand Twenty-Eight Dollars (\$40,028.00) per gross acre of commercial or institutional land.	This fee is adjusted annually (until paid) using the Consumer Price Index (CPI) in accordance with the agreement. This fee was paid on May 11, 2006, at time of issuance of building permits.
4.	Payment of "Citywide Traffic Fee" of Twenty-Two Thousand, Eight Hundred Thirty-Eight Dollars (\$22,838.00) per acre of commercial or institutional land.	This fee is adjusted annually (until paid) using the State Highway Bid Price Index in accordance with the agreement. This fee was paid on May 11, 2006, at time of issuance of building permits.
5.	Payment of all outstanding processing costs.	This is an ongoing requirement. At this time the developer is current with all processing costs, including submittal of the Annual Review Application and deposit for Development Agreement - Annual Review.
6.	Payment of a fee in lieu of park dedication "Park Fee" of (\$.50) per square foot of each building used for commercial or institutional purposes.	This fee is adjusted annually (until paid) using the Consumer Price Index (CPI) in accordance with the agreement. This fee was paid on May 11, 2006, at time of issuance of building permits.
7.	Provide installation and permanent maintenance of landscaping under the freeway bridge along the north and south sides of Los Angeles Avenue within the Caltrans right-of-way, including fencing improvements if approved by Caltrans.	A landscape plan was submitted and approved. A Three-Party Maintenance Agreement was executed on October 12, 2006 with the landscaping and irrigation installed and inspected on April 10, 2007. The applicant is in compliance with this requirement.

NO.	REQUIREMENT	STATUS
8.	<p>Warrant total gross taxable sales in the first year of operation to be Seven Million Dollars (\$7,000,000.00), Eight Million Dollars (\$8,000,000.00) in the second year, Nine Million Dollars (\$9,000,000.00) in the third year and Ten Million Dollars (\$10,000,000.00) in the fourth through tenth years, commencing twelve months after initial occupancy.</p> <p>Should annual gross taxable sales not reach annual amount for any year in first ten years, Developer shall pay the City the difference in total gross taxable sales times 0.0075 for each year the total gross sales are not met. Credit for gross taxable sale which exceed the established amount shall be credited to offset a shortfall in any subsequent year.</p>	<p>The "first year" of operation commenced 12 months after the initial occupancy which occurred on April 27, 2007. Accordingly, under the terms of the Development Agreement, the second year of operation was the period of May 1, 2009-April 30, 2010. Warehouse Discount Center has provided documentation demonstrating that it met the requirement for gross taxable sales during the second year of operation.</p>
9.	<p>Pay Air Quality Fee in the amount of Sixty Six Thousand Dollars (\$66,000.00) in satisfaction of Transportation Demand Management Fund, or at the City's sole description, provide equipment, vehicles, improvements or other items for equivalent credit toward the fee.</p>	<p>This fee was adjusted for the Consumer Price Index (CPI) in accordance with the agreement, and \$71,207.00 was paid on April 26, 2007.</p>
10.	<p>Provide easement for location and maintenance of a City Welcome Sign and pay Twenty Five Thousand Dollars \$25,000.00 for construction and erection of the sign.</p>	<p>This fee has been paid. An easement for a City "Welcome" sign was accepted by the City Council on August 20, 2008.</p>
11.	<p>Agreement to cast affirmative ballots for formation of one or more assessment districts for maintenance of parkway and median landscaping and street lighting, including but not limited to all water and electricity costs. Agreement to form property owner's association(s) to provide landscape, street lighting and park (if necessary) open space land, trails drainage facilities maintenance and compliance with NPDES requirements.</p>	<p>A "back-up" assessment district for landscaping maintenance was approved on August 20, 2008 by Resolution No. 2008-2738.</p>
12.	<p>Payment of all City capital improvement and processing fees.</p>	<p>Developer is in compliance with all requirements at this time. All fees were paid to Building and Safety at the time of the Building Permit Issuance.</p>
13.	<p>Payment of Los Angeles Avenue Area of Contribution (AOC) Fee.</p>	<p>Fees were paid prior to issuance of the Building Permit This fee was paid on May 11, 2006, at time of issuance of building permits.</p>
14.	<p>Agreement to pay any fees and payments pursuant to this Agreement without reservation.</p>	<p>Developer is in compliance with all requirements at this time.</p>
15.	<p>Agreement to comply with requirements for annual review of the Agreement including evaluation of Mitigation Monitoring Program.</p>	<p>To date, the applicant has complied with review requests and Mitigation Monitoring Program requirements and has submitted the application and deposit for annual review.</p>
16.	<p>Agreement that any property to be acquired by eminent domain shall be at City's discretion and after compliance with all legal requirements.</p>	<p>There has been no need to acquire property as part of this project.</p>

Section 6.8 of the Development Agreement stipulates that the applicant must reach a specific amount in gross taxable sales in a given year of operation. In the first year of operation this figure was \$7,000,000. In the second year of operation, this amount was \$8,000,000. The Development Agreement defines the “*first year* of operation” as commencing *one year after* the date of the initial occupation. As such, the period currently under review with respect to this annual review is the *third* year the business has been open, but the *second* year of operation, as defined by the Development Agreement.

In conjunction with this annual review, staff reviewed documentation from Mark Nathanson, the accountant for the Warehouse Discount Center. This documentation, while confidential, showed that the business generated gross taxable sales from May 1, 2009-April 30, 2010 consistent with the requirement. Independent of this documentation, staff contacted the HdL Companies which provided documentation associated with the State Board of Equalization that verified this information.

All requirements of the Development Agreement will be considered in the City’s review and approval process for all aspects of the development; including but not limited to, subsequent entitlement requests, public and private improvements, Final Maps, and building permits.

City Compliance with Terms of Agreement

The City’s responsibilities are included in Section 7 of the agreement and include five (5) specific provisions, as summarized below.

NO.	REQUIREMENT	STATUS
1.	Agreement to commit reasonable time and resources on expedited and parallel processing of application for subsequent applications.	To date, City has complied with any such requests.
2.	If requested, at the developer’s cost, proceed to acquire easements or fee title to land in order to allow construction of required public improvements.	To date, no such request has been received.
3.	Authorization for the City Manager to sign an early grading permit.	Grading was completed prior to the 2009 annual review.
4.	Agreement to process concurrently, whenever possible, all land use entitlements for the same property (so long as deemed complete).	To date, City has complied.
5.	Agreement to facilitate reimbursement to developer of any costs incurred that may be subject to partial reimbursement from other developers.	To date, no such request has been received.

Evaluation of Good Faith Compliance

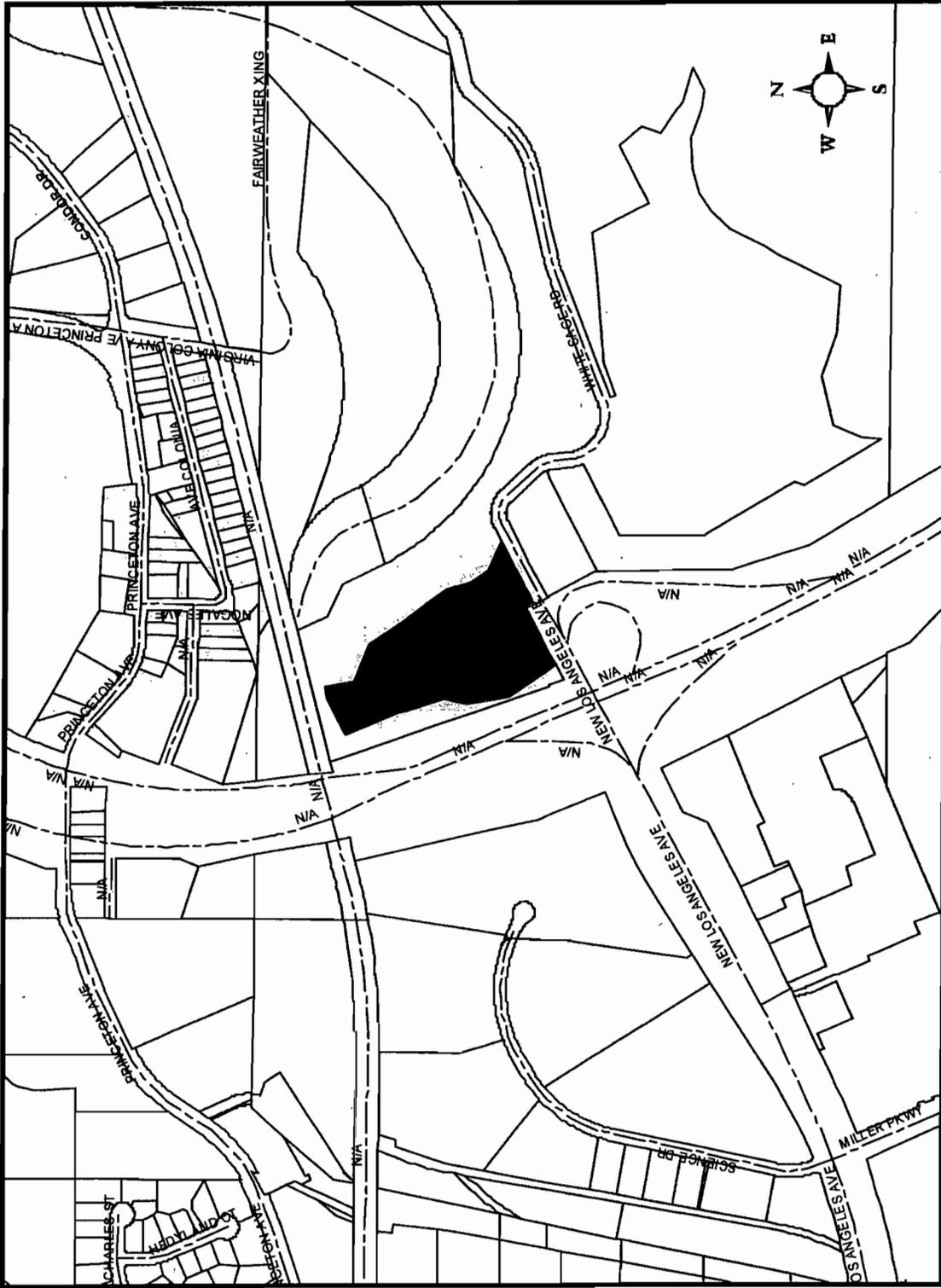
Based on a review of the Development Agreement Annual Review Application and the status of the project, the Community Development Director has determined, on the basis of substantial evidence that NLA 118, LLC has, to date, complied in good faith with the terms and conditions of the agreement.

STAFF RECOMMENDATION

1. Accept the Community Development Director's Report and recommendation, on the basis of substantial evidence, that NLA 118, LLC has complied in good faith with the terms and conditions of the agreement.
2. Deem the annual review process complete.

ATTACHMENT:

1. Location Map



LOCATION MAP

CC ATTACHMENT 1