

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Deborah S. Traffenstedt, Deputy City Manager *DST*

DATE: March 28, 2013 (CC Meeting of 4/3/13)

SUBJECT: Consider City Attorney (Richards, Watson and Gershon) Conflict Waiver to Permit Simultaneous Representation of the City of Moorpark and Shea Homes Including Review of Subdivision Improvement Agreement for Tentative Tract No. 5425

Background and Discussion

As previously disclosed to the City Council at the time an agreement was approved with RWG for City Attorney services, a RWG attorney has been providing legal services to Shea Homes Limited Partnership (Shea Homes) in a matter before the California Coastal Commission involving a residential development proposed in Huntington Beach, California. In order for a RWG attorney to review a draft Subdivision Improvement Agreement for a Shea Homes project in the City of Moorpark (Tentative Tract No. 5425/Residential Planned Development Permit No. 2003-02), RWG has obtained a waiver from Shea Homes. Staff is now requesting that the City Council authorize the City Manager to sign an Acknowledgment, Consent and Waiver to allow RWG to represent the City of Moorpark in the pending matter involving Shea Homes in Moorpark while representing Shea Homes in the unrelated matter before the Coastal Commission, as further explained in the attached letter from Kevin Ennis, City Attorney. Chapter 16.36, Security and Improvements, of Title 16, Subdivisions, of the Moorpark Municipal Code requires a subdivider to enter into a contract with the City, in a form acceptable to the City Engineer and City Attorney, for the construction of required improvements prior to the approval by the City Council of any final map or the acceptance of the dedication of any of the streets, alleys or other public places.

Fiscal Impact

None.

Staff Recommendation

Authorize the City Manager to sign an Acknowledgment, Consent and Waiver to permit RWG to represent the City of Moorpark in the Shea Homes project in Moorpark while simultaneously continuing to represent Shea Homes in the matter before the Coastal Commission, subject to City Manager final language approval of Waiver.

Attachment: Letter dated 3/26/2013, including draft Acknowledgment, Consent and Waiver

RICHARD RICHARDS
(1916–1988)

GLENN R. WATSON
(1917–2010)

HARRY L. GERSHON
(1922–2007)

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WILLIAM L. STRAUSS
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ROBERT C. CECCON
STEVEN H. KAUFMANN
KEVIN G. ENNIS
ROBIN D. HARRIS
MICHAEL ESTRADA
LAURENCE S. WIENER

STEVEN R. ORR
B. TILDEN KIM
SASKIA T. ASAMURA
KAYSER O. SUME
PETER M. THORSON
JAMES L. MARKMAN
CRAIG A. STEELE
T. PETER PIERCE
TERENCE R. BOGA
LISA BOND
JANET E. COLESON
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SERITA R. YOUNG
SHIRI KLIMA
DIANA H. VARAT
JULIE A. HAMILL
ANDREW J. BRADY
AARON C. O'DELL
BYRON MILLER
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TELEPHONE 951.695.2373

March 26, 2013

Steve Kueny
City Manager
City of Moorpark
799 Moorpark Avenue
Moorpark, California 93021

Re: Conflict Waiver: Shea Homes Project (Tentative Tract Map No. 5425 and PD No. 2003-02)

Dear Steve:

As you know, an attorney in our firm has been providing legal services to Shea Homes Limited Partnership (“Shea Homes”) in a matter before the California Coastal Commission involving a residential development proposed in Huntington Beach, California (the “Coastal Matter.”)

In connection with our work for the City of Moorpark (“City”), we have been asked to review an “Agreement for Construction of Subdivision Improvements and Reimbursement” and related land use approvals, permits and agreements for a Shea Homes project in the City. The project is generally described as Tentative Tract Map 5425 and Residential Planned Development Permit No. 2003-02 for the development of 102 Housing Units on a 15.13 acre parcel located at the terminus of Fremont Street, South of Los Angeles Avenue and east of Majestic Court in the City (“Moorpark Project”).

Upon receipt of the request to work on the Moorpark Project, we sought and obtained a conflict waiver from Shea Homes related to the Coastal Matter that allows us to represent the City in matters related to the Moorpark Project. At this time, the Shea Homes waiver allows us to provide services to the City on any aspect of Moorpark Project excluding litigation. A copy of that Shea Homes waiver letter is attached.

We now write to formally disclose to the City our work for Shea Homes in the Coastal Matter and seek the City’s consent to provide services to the City on the Moorpark Project given our representation of Shea Homes in the Coastal Matter.

Our firm does not believe that the representation of the Shea Homes in the Coastal Matter will present a conflict of interest with our representation of the City in

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connection with the Moorpark Project. The separate and distinct natures of the two representations effectively ensure (i) that we would not obtain any confidential information of the City that would be relevant to our representation of Shea Homes in the Coastal Matter, and (ii) that there would be no substantive opportunity for us to disclose confidential information of the City in our work for Shea Homes in the Coastal Matter.

The purpose of this letter is to request the consent of the City to permit our firm to provide services to the City in connection with the Moorpark Project, while at the same time permitting our firm to continue to represent Shea Homes Limited Partnership in the Coastal Matter. Rule 3-310(C)(1) of the Rules of Professional Conduct of the State Bar of California states, in relevant part, as follows:

“(C) A member shall not, without the informed written consent of each client:

* * *

(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.”

Rule 3-310(E) of the Rules of Professional Conduct of the State Bar of California provides as follows:

“A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.”

A strict reading of Rule 3-310(C) does not, in our opinion, require written consent from the City because the City is not adverse to Shea Homes in the existing Coastal Matter. Similarly, we do not believe Rule 3-310(E) applies because we have not obtained any confidential information in either matter that would be material to the other matter. Nonetheless, we did need to obtain the consent of Shea Homes to work for the City on the Moorpark Project. In addition, we do need to formally disclose our representation of Shea Homes in the Coastal Matter to the City.

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Where a conflict of interest exists, we are obligated to inform you fully of the “relevant circumstances” and of the “actual and reasonably foreseeable adverse consequences” of the separate representation.

We have provided extensive advice to Shea Homes in connection with the Coastal Matter, and we intend to continue to fully represent Shea Homes in that Coastal Matter. In our view, providing services to the City of Moorpark in connection with the Moorpark Project is unrelated to the services our firm provides to Shea Homes in the Coastal Matter.

We do not foresee the possibility that any confidential information of the City would be material or related in any way to our services as special counsel to the Shea Homes in the Coastal Matter, and vice-versa.

We can and will continue to zealously represent the City and have absolutely no reason to believe that our objectivity or representation will be compromised in any way by our simultaneous representation of Shea Homes in the Coastal Matter.

If, after considering the foregoing, the City agrees to waive any potential conflict of interest arising from our separate and continued representation of the Shea Homes in the Coastal Matter, we would appreciate it if you would sign and return a copy of this letter.

Please do not hesitate to call me if you wish to discuss the matter further.

Very truly yours,



Kevin G. Ennis

Enclosure

Steve Kueny
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ACKNOWLEDGMENT, CONSENT AND WAIVER

Based upon the foregoing disclosures, the City of Moorpark acknowledges receipt of and understands the disclosures made herein and consents to the Firm's simultaneous representation of the City of Moorpark in connection with administrative, non-litigation matters, including the review and approval of an "Agreement for Construction of Subdivision Improvements and Reimbursement" and related land use approvals, permits and agreements for the Moorpark Project and the continued representation of Shea Homes Limited Partnership in connection with the Coastal Matter, and waives any actual, potential or perceived conflict arising from the simultaneous representation.

City of Moorpark

By _____

Date: _____, 2013

Title _____

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(1916-1988)

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(1917-2010)

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March 18, 2013

John Vander Velde
Vice President
Shea Home Limited Partnership
1250 Corona Pointe Court, Suite 600
Corona, California 92879

Re: Conflict Waiver: City of Moorpark Agreements and Matters

Dear Mr. Vander Velde:

As you know, my firm specializes in representing public entities. In the past we have discussed conflict issues when one or more Shea entities is proposing a transaction with a public entity that the firm represents.

This letter seeks a conflict waiver that will permit the firm to represent City of Moorpark ("City") in connection with the review and approval of an "Agreement for Construction of Subdivision Improvements and Reimbursement" and related land use approvals, permits and agreements for a Shea Homes project in the City. The project is generally described as Tentative Tract Map 5425 and Residential Planned Development Permit No 2003-02 for the development of 102 Housing Units on a 15.13 acre parcel located at the terminus of Fremont Street, South of Los Angeles Avenue and east of Majestic Court in the City ("Moorpark Project").

Kevin G. Ennis of our firm is the recently appointed City Attorney for the City.

As you know, our firm currently is and has been providing legal services to Shea Homes Limited Partnership, a matter before the California Coastal Commission involving a residential development proposed in Huntington Beach, California the "Coastal Matter." Our role as counsel for the City would be handled by a lawyer in a different practice group and does not involve any substantive issues relating to the Coastal matter.

Our firm does not believe that the representation of the City will present a conflict of interest with our continued representation of Shea Homes Limited Partnership in connection with the Coastal matter. The separate and distinct natures of the two representations effectively ensure (i) that we have not obtained any confidential information of Shea Homes Limited Partnership that would be relevant

John Vander Velde
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to our representation of the City, and (ii) that there would be no substantive opportunity for us to disclose confidential information of Shea Homes Limited Partnership in our work as City Attorney for the City.

The purpose of this letter is to request the consent of Shea Homes Limited Partnership to permit our firm to provide services to the City in connection with the Moorpark Project, while at the same time permitting our firm to continue to represent Shea Homes Limited Partnership in the Coastal matter. Rule 3-310(C)(1) of the Rules of Professional Conduct of the State Bar of California states, in relevant part, as follows:

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A strict reading of Rule 3-310(C) does not, in our opinion, require written consent because the City is not adverse to Shea in the existing Coastal matter. Similarly, we do not believe Rule 3-310(E) applies because we have not obtained any confidential information in either matter that would be material to the other matter. Nonetheless, we feel it is in the spirit of these rules to disclose that representation to Shea Homes Limited Partnership and provide it the opportunity to evaluate and consent to our continued representation.

Where a conflict of interest exists, we are obligated to inform you fully of the “relevant circumstances” and of the “actual and reasonably foreseeable adverse consequences” of the separate representation.

John Vander Velde
March 18, 2013
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We have provided extensive advice to Shea Homes Limited Partnership in connection with the Coastal matter, and we intend to continue to fully represent Shea Homes Limited Partnership in that matter. In our view, providing services to the City of Moorpark in connection with the Moorpark Project and is unrelated to the services our firm provides to Shea in the Coastal matter.

We do not foresee the possibility that any confidential information Shea Homes Limited Partnership might impart to the lawyers at the firm handling the unrelated Coastal matter would be material or related in any way to our services as City Attorney for the City in connection with the Moorpark Project, or vice-versa.

We can and will continue to zealously represent Shea Home Limited Partnership and have absolutely no reason to believe that our objectivity or representation will be compromised in any way by our simultaneous representation of the City in the Moorpark Project.

If, after considering the foregoing, Shea agrees to waive any potential conflict of interest arising from our separate representation of the City of Moorpark in the Moorpark Project, we would appreciate it if you would sign and return a copy of this letter.

Please do not hesitate to call me if you wish to discuss the matter further.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steven H. Kaufmann", with a long horizontal flourish extending to the right.

Steven H. Kaufmann

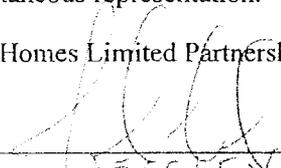
John Vander Velde
March 18, 2013
Page 4

ACKNOWLEDGMENT, CONSENT AND WAIVER

Based upon the foregoing disclosures, Shea Homes Limited Partnership acknowledges receipt of and understands the disclosures made herein and consents to the Firm's simultaneous representation of the City of Moorpark in connection with administrative, non-litigation matters, including the review and approval of an "Agreement for Construction of Subdivision Improvements and Reimbursement" and related land use approvals, permits and agreements for the Moorpark Project and the continued representation of Shea Homes Limited Partnership in connection with the Coastal matter, and waives any actual, potential or perceived conflict arising from the simultaneous representation.

Shea Homes Limited Partnership

By


JEFFREY H. DUNNE

Date: 3/18, 2013

Title

AUTHORIZED AGENT of
REGIONAL COUNCIL