

ORDINANCE NO. 352

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, APPROVING AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT NO. 2004-01, BETWEEN THE CITY OF MOORPARK AND TOLL LAND XX LIMITED PARTNERSHIP FOR 43.04 ACRES NORTH OF CHAMPIONSHIP DRIVE AND EAST OF GRIMES CANYON ROAD

WHEREAS, Section 65864, Article 2.5, Chapter 4, Division 1, Title 7 of the State Planning and Zoning Law provides that cities may enter into contractual obligations known as Development Agreements with persons having equitable interest in real property for development of that property; and

WHEREAS, on December 6, 2006, the City Council adopted Ordinance No. 346, approving Development Agreement No. 2004-01, in conjunction with Residential Planned Development Permit No. 2003-04, General Plan Amendment No. 2003-04, Zone Change No. 2003-03, Tentative Tract Map No. 5463 on the application of Toll Land XX Limited Partnership; and

WHEREAS, Toll Land XX Limited Partnership is now requesting Amendment No. 1 to Development Agreement No. 2004-01; and

WHEREAS, the Planning Commission of the City of Moorpark on June 12, 2007, adopted Resolution No. PC 2007-517, recommending to the City Council approval of Amendment No 1 to Development Agreement No. 2004-01; and

WHEREAS, a duly noticed public hearing was conducted by the City Council on June 20, 2007 to consider Amendment No. 1 to Development Agreement No. 2004-01 and to accept public testimony related thereto; and

WHEREAS, the City Council has considered all points of public testimony relevant to Amendment No. 1 to Development Agreement No. 2004-01 and has given careful consideration to the content of Amendment No 1 to Development Agreement No. 2004-01, and has reached a decision on the matter.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Moorpark does hereby find as follows:

A. Development Agreement No. 2004-01, as amended by Amendment No. 1, is consistent with the General Plan and Chapter 15.40 of the Municipal Code.

B. Development Agreement No. 2004-01, as amended by Amendment No. 1, is consistent with the intent and provisions of the Mitigated Negative Declaration previously adopted for this project.

C. Development Agreement No. 2004-01, as amended by this ordinance is necessary to ensure the public health, safety and welfare.

SECTION 2. The City Council hereby amends Development Agreement No. 2004-01 between the City of Moorpark, a municipal corporation, and Toll Land XX Limited Partnership as follows:

A. Section 5.4 is amended with the insertion of the following language at the end of the second paragraph:

However, in recognition of the importance of the Acquisition Parcel to the feasibility of the Project, none of Developer's obligations contained in this Development Agreement or in the Project Approvals shall be effective until Developer has acquired legal title to the Acquisition Parcel.

B. The first four paragraphs of Section 6.9 are amended to read as follows (the remainder of Section 6.9 is not amended):

Developer agrees to provide a total of twelve (12) affordable housing units; eight (8) units for Tract 5463 (four (4) low and four (4) very low) and four (4) units per the Development Agreement for Tract 5464 (two (2) low and two (2) very low) as further described in this subsection 6.9.

To partially meet this obligation, the Developer agrees to transfer clear title to the approximately 0.34 acre and approximately 0.16 acre parcels known as 396 Charles Street in partial fulfillment of the requirements for affordable housing as indicated in section 6.9 of this Agreement. City will credit Developer five (5) affordable units, consisting of three (3) low income and two (2) very low income units toward the total required by this Agreement and the Development Agreement for Tract 5464. In the event Developer obtains clear title to the approximately 0.34 acre parcel known as 436 Charles Street in further partial fulfillment of the requirements for affordable housing, City will credit Developer three (3) additional affordable units, consisting of one (1) low income and two (2) very low income units toward the total required by this Agreement and the Development Agreement for Tract 5464. Prior to the issuance of a grading permit for either Tract or upon receipt of clear title, whichever is earlier, Developer shall transfer the property or properties described above to the City free and clear of any and all encumbrances and structures. Should the grading permit for Tract 5463 precede the grading permit for Tract 5464, the credit for the five (5) or eight (8) (depending on whether Developer has acquired clear title to the 436 Charles Street property) affordable units shall be applied to Tract 5463. Should the grading permit for Tract 5464 precede the grading permit for Tract 5463, the requirement for four (4) affordable units will be fulfilled. At the Developer's option, the credit for the remaining fifth (5th) to eighth (8th) affordable

unit(s) may be applied toward the fulfillment of one (1) to four (4) affordable housing unit(s) for Tract 5463.

To meet its obligation for the remaining affordable units, Developer shall also provide three (3) (or two (2) if credits have been obtained for the 436 Charles Street property) four (4) bedroom and two (2) bath single-family detached units with a minimum of 1,200 square feet to be sold to buyers who meet the criteria for low income (80 percent or less of median income), and four (4) (or two (2) if credits have been obtained for the 436 Charles Street property) four (4) bedroom and two (2) bath single-family detached units with a minimum of 1,200 square feet to be sold to buyers who meets the criteria for very low income (50 percent or less of median income). All single-family detached units shall include a standard size two-car garage with roll-up garage door and a minimum driveway length of eighteen (18') feet measured from the back of sidewalk, meet minimum setback requirements of the City RPD zone, include concrete roof tiles, and other amenities typically found in moderate priced housing in the City (e.g., air conditioning/central heating, washer/dryer hookups, garbage disposal, built-in dishwasher, concrete driveway, automatic garage door opener). The duplex type units in Tracts 3481, 3070-2, 3070-3, 3070-4, 4170, and 5133 are considered to be single-family detached units for the purpose of this subsection 6.9.

Subject to City's sole discretion, this obligation, in whole or part, may be met by providing attached for sale units in lieu of single-family detached units at the ratio of one and one-half (1-1/2) attached for sale unit for each single-family detached unit. In the event such substitution results in any fraction of a unit, then the requirement shall be rounded up to the next higher whole number (e.g. the requirement of 3 single-family detached units are met by 4-1/2 attached for sale units, then 5 attached for sale units are required). Each of the substituted units shall be at the income level of the units for which they are being substituted and shall contain at least 1,200 square feet, three bedrooms and attached or assigned parking for two parking spaces. The approval of such substituted units may require refurbishment or replacement of carpeting, flooring, cabinets, windows, appliances and other items to bring the units up to standards as determined by the Community Development Director at his or her own sole discretion. Should the Developer acquire the attached units within four (4) ~~two (2)~~ years from December 31, 2006~~the operative date of this Agreement~~, and offer them for sale to the City as provided for in this subsection 6.9, the attached for sale units in lieu of single-family detached units shall be at a ratio of one and one quarter (1 1/4) attached for sale unit for each single-family detached unit.

C. Section 6.22 is amended to read as follows:

In the event the County does not improve the remaining unimproved portion of Grimes Canyon Road to the City boundary, then The Developer shall improve both sides of Grimes Canyon Road to its ultimate right-of-way from Championship Drive north to the northern City limits, with the same section as

the improvements previously made to the portion of Grimes Canyon Road north of Championship Drive in connection with Tract 4928; provided, however, that Developer shall have no responsibility for repair or reconstruction of any portion of Grimes Canyon Road which was damaged by flood waters or other conditions prior to the date hereof ("Road Repair Work"). Developer shall pay all City costs for acquisition of the properties needed for construction of these improvements, including but not limited to legal, engineering, planning, and appraisal costs in addition to the costs for acquisition of properties. Fifteen percent (15%) shall be added to all City out-of-pocket expenses for the acquisition costs, excluding the actual cost of the properties. With regard to improvement of the easterly half of Grimes Canyon Road, the required work shall commence prior to issuance of a building permit for the first dwelling unit in the Project, and the improvements shall be completed within ~~ninety (90)~~ one-hundred eighty (180) days of ~~after the later of issuance of a building permit for the first dwelling unit in the Project or receipt of all permits required for construction of the improvements.~~ Developer shall have no obligation with respect to improvement of the westerly half of Grimes Canyon Road unless and until the County has completed the Road Repair Work. Developer shall commence work on improvements to the westerly half of Grimes Canyon Road within thirty (30) days following completion by the County of the Road Repair Work, and the improvements shall be completed within one-hundred eighty (180) days after the later of completion of such work by the County or receipt of all permits required for construction of the improvements.

D. Section 6.23 is amended to read as follows:

Pursuant to approved MND and MMRP, prior to recordation of the first Final Tract Map for the Property, initiation of rough grading or issuance of any subsequent permits, the applicant is required to purchase and dedicate fee title for seventy-two (72) acres of open space in lieu of providing on-site open space dedication pursuant to Section 17.38.080 of the Hillside Management Ordinance. Prior to purchase and dedication, the City Council shall approve the location of the proposed open space land. City accepts that, in lieu of the purchase of the seventy-two (72) acres of open space, Developer shall pay two million six hundred eighty thousand dollars (\$2,680,000.00) to City to be used in its sole and unfettered discretion for open space preservation purposes. Six hundred seventy thousand dollars (\$670,000.00) shall be paid to the City no later than the recordation of the Final Map. Subsequent annual payments of six hundred seventy thousand dollars (\$670,000.00) shall be made for three years on the anniversary of the first payment. The fee shall be adjusted annually, commencing January 1, 2008, by the larger increase of a), b), or c) as follows:

- a) The CPI increase shall be determined by using the information provided by the U.S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles/Riverside/Orange County metropolitan area during the prior year. The calculation shall be made using the month

which is four (4) months prior to the month in which this Agreement became effective (e.g., if this Agreement became effective in October, then the month of June is used to calculate the increase).

- b) The annual adjustment shall be determined by any increase in the median price of the single-family detached for-sale housing in Ventura County as most recently published by Data Quick (Housing Index) for the previous twelve (12) month period.
- c) The annual percentage amount paid to City by the Local Agency Investment Fund (LAIF) calculated as follows: The sum of the quarterly effective yield amounts paid by LAIF for the City's Pooled Money Investment Account for the most recent four (4) calendar quarters divided by four (4).

In the event there is a decrease in all of the referenced Indices for any annual indexing, the Fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.

SECTION 3. The City Clerk is hereby directed to cause one copy of the amended, signed, and adopted development agreement to be recorded with the County Recorder no later than ten (10) days after the City enters into the development agreement pursuant to the requirements of Government Code Section 65868.5.

SECTION 4. Upon the effective date of this ordinance, the Community Development Director shall cause the property that is the subject of the Development Agreement to be identified on the Zoning Map of the City by the designation "DA" followed by the dates of the term of said amended Agreement.

SECTION 5. If any section, subsection, sentence, clause, phrase, part or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

SECTION 6. This Ordinance shall become effective thirty (30) days after its passage and adoption.

SECTION 7. The City Clerk shall certify to the passage and adoption of this ordinance; shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published once in the Moorpark

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Star a newspaper of general circulation, as defined in Section 6008 of the Government Code, for the City of Moorpark, and which is hereby designated for that purpose.

PASSED AND ADOPTED this 18h day of July, 2007.

Patrick Hunter, Mayor

ATTEST:

Deborah S. Traffenstedt, City Clerk

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