CITY COUNCIL AND REDEVELOPMENT AGENCY AGENDA REPORT

MEETING DATE: JANUARY 20, 2004 **ITEM NUMBER:**

SUBJECT: REHEARING OF THE 1901 NEWPORT PLAZA RESIDENTIAL DEVELOPMENT:
(1) AMENDMENT TO THE FINAL EIR NO. 1050
(2) GENERAL PLAN AMENDMENT GP-02-04
(3) ZONING CODE AMENDMENT
(4) FINAL MASTER PLAN (PA-02-11)

DATE: JANUARY 12, 2004

FROM: DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: CLAIRE L. FLYNN, AICP, ASSOCIATE PLANNER

FOR FURTHER INFORMATION CONTACT: CLAIRE L. FLYNN, AICP, (714) 754-5278

RECOMMENDED ACTION:

Staff recommends that the City Council/Redevelopment Agency take the following actions:

1. Conduct the rehearing of the 1901 Newport Plaza Residential Development and related discretionary approvals;

2. Approve the Original Project (161 units/415 residential parking spaces) **OR** Alternative C (145 units/375 residential parking spaces). Listed in sequential order, the following recommended actions are required if Council/Agency decides to reaffirm its prior approval made on April 14, 2003 for the original 161-unit residential condominium development **OR** to approve Alternative C as a reduced-density alternative:

   a) Council adoption of a resolution certifying Final EIR No. 1050.
   b) Redevelopment Agency adoption of a resolution recommending Council adoption of General Plan amendment (GP-02-04).
   c) Council adoption of a resolution approving General Plan amendment (GP-02-04).
   d) Council gives first reading of the draft ordinance amending Title 13 of the CMMC.
   e) Council adoption of a resolution approving Final Master Plan PA-02-11.

3. Continue two RDA items (the Amendment to the 1999-2004 Implementation Plan and adoption of the Inclusionary Housing Plan) to the Agency's regular meeting on March 8, 2004.

BACKGROUND:

On June 2, 2003, City Council approved a rehearing of the 1901 Newport Plaza Residences project. In September, 2003, Rutter Development filed a lawsuit seeking a

court order finding that the City Council's approval made on April 14, 2003, was final. At that meeting in April, the Council approved the entitlements authorizing construction of 161 residential condominiums at 1901 Newport Boulevard. On September 2, 2003, Council removed the rehearing on the proposed project and related discretionary approvals from the calendar until the lawsuit was resolved by the courts.

Following the filing of the lawsuit, the City Manager initiated settlement negotiation meetings between the developer and Costa Mesa Citizens for Responsible Growth (CMCRG). City Council has received periodic oral updates since the inception of our meetings some months ago. A total of six negotiation sessions have been held on the following dates: September 12, September 25, October 7, November 13, November 21, 2003, and December 5, 2003. Staff has also met with the developer and citizen group separately to address various issues. The parties involved in the negotiation process attempting to find common ground were:

- City staff (City Manager, Deputy City Manager, City Attorney, staff)
- Rutter Development (Jay Rutter, Ray Rutter, Dave Eadie)
- Costa Mesa Citizens for Responsible Growth (Dr. Paul Flanagan, Jay Humphrey, Sandy Genis, and Robin Leffler)

On December 10, 2003, the City Manager provided a letter to the developer and CMCRG describing development alternatives and the objectives toward settlement of the pending litigation filed by the applicant against the City and CMCRG. This "deal points letter" presents three reduced-density alternatives (Alternatives A, B, and C) as described in Table 1. The developer supports Alternative C (145 units/375 residential parking spaces), and CMCRG does not "object" to Alternative A (145 units/415 residential parking spaces), in concept. In terms of project design, the difference between these alternatives is 40 parking spaces.

ANALYSIS:

Originally Proposed 161-unit Project

Prior to development in the Planned Development zoning district, review and approval of a Master Plan by both Planning Commission and City Council is required. The applicant proposes to develop 3.61 acres located in the northern portion of the 7.79-acre site 161 residential condominiums located in four-story building complexes, a two-level subterranean parking structure, and a five-level parking structure while retaining the existing 1901 Newport Plaza commercial buildings (127,512 sq.ft.). A total of 448 commercial parking spaces and 415 residential parking spaces were originally proposed.

The originally proposed project would not involve any financial assistance from the Redevelopment Agency or any assumption of the inclusionary housing obligation. Therefore, 100% of the projected $1.7 million in Housing Set-Aside funds generated by the 161-unit project would remain with the Agency. The Agency could apply this money towards any housing-related project (i.e. First time Homebuyers Program, Affordable Housing, etc.) in the Redevelopment Project Area.

Alternative A - Agreement in Principal

During four months of negotiations, the developer and CMCRG agreed in principal to a reduced-density alternative: 145 dwelling units/415 residential parking spaces ("Alternative A"). With the assistance of the City's economic advisor, Kathleen Head of Keyser Marston Associates, Inc., and special legal counsel, Celeste Brady, staff analyzed various development scenarios.

The primary objective of the analysis is to identify project alternatives that would come as close as possible to the agreement in principal. These project alternatives would involve the following:

- *Density Reduction* – The overall density will be reduced from 45 units/acre to 40 units/acre under Alternative C.

- *Height Reduction*– The originally proposed four-story building complexes will be reduced to three stories along the Bernard Street frontage and at the southeast corner of Bernard/Harbor.

- *Financial assistance* – Financial assistance from the RDA would be required to fund the financial cost to the developer for revising the originally proposed project. This financial assistance would be funded through the tax increment generated by the residential development. The Redevelopment Agency's financial assistance may apply to this project if the sole source of the Agency assistance is from the 20 percent Housing Set Aside Fund and only directed to the affordable housing component of the project. Any other source of subsidy to the project will trigger the developer's payment of and compliance with prevailing wage requirements for the entire project. Prevailing wage requirements will be triggered under Alternative A and not under Alternative C.

Alternative C (145 units/375 residential parking spaces)

Subsequently, staff set forth its best efforts to identify project alternatives that would be: (a) financially feasible to the City (in terms of potential financial assistance from the Redevelopment Agency) and (b) financially feasible to the developer (in terms of acceptable financial profitability). As shown in Table 2, Alternative C represents the reduced-density development scenario that meets these objectives and comes closest to the agreement in principal.

Table 1 – Summary Table

Development Scenario	# Dwelling Units	# Parking Spaces	Potential RDA Financial Assistance***
Original Project	161 units	415	$0.00
[*Agreement in Principal*] Alternative A	145 units	415	$4.31 Million**
Alternative B	150 units	388	$964,000
Alternative C	145 units	375	$1.36 Million

**Pursuant to Section 13-87, Table 13-85(4), of the Costa Mesa Municipal Code.*
***Not considered to be financially feasible.*
****This includes the City/Agency's assumption of an obligation for five very-low affordable units off-site.*

Alternative C would require approximately $1.3 million in financial assistance from the Redevelopment Agency to fund the financial cost to the developer for revising the originally proposed project. This accounts for a total of 90% of the projected housing set-aside revenue generated from the proposed project. Revised site plans/floor plans/elevation drawings are attached as Attachment 6.

Alternative A would require approximately $4.3 million in financial assistance from the Redevelopment Agency. This is not considered a financially feasible alternative because this financial gap due to project revisions exceeds what is available to the Agency through the projected housing set-aside funds.

Outcome of Negotiation Sessions

The developer has expressed their support of Alternative C (145 units/375 residential parking spaces). However, CMCRG has reaffirmed that they would not object to Alternative A (145 units/415 residential parking spaces), in concept. In terms of project design, it is important to note that the only difference between Alternative A and Alternative C is 40 parking spaces.
Although the developer and CMCRG have not agreed to the parking supply, all other issues raised by CMCRG have been resolved as a result of the negotiations. These specified concerns are summarized in Table 2.

Table 2 – Summary of Negotiations

Issues of Concern Specified by CMCRG	Action taken to Address Concerns	Resolved through Negotiation ?
Building Height - Four-story Building Height along Bernard (Shade/Shadow Effects) should be decreased.	Building Height along Bernard frontage decreased from four stories to three stories.	YES
Density - Project density should be reduced from 45 units/acre to a maximum of 40 units/acre.	Project density reduced from 161 condominiums to 145 condominiums (-16 units).	PARTIALLY – overall density is still higher than desired by CMCRG
Access – Easternmost commercial exit drive on Bernard should be closed.	Bernard commercial exit limited to emergency access vehicles only.	YES
Parking – Project should retain the originally proposed 415 residential parking spaces.	This action is not considered financially feasible given the financial limitations of the RDA's assistance without triggering prevailing wages.	NO
Affordable Housing – Commitment to affordable housing obligation should be linked to project occupancy.	Project includes 7 of the total 12 affordable units required. These 7 units will be constructed on-site as part of the proposed residential development. Agreement between developer and RDA negotiated.	YES

Discretionary Approval Actions Required

If the originally proposed 161-unit project or the 145-unit reduced-density alternative is approved by Council and/or the Redevelopment Agency, the following actions are required:

1. *Council adoption of a resolution certifying Final EIR No. 1050*. A recommendation of Final EIR certification does not obligate or necessitate the City Council to approve the proposed project (Attachment 1).

2. *RDA adoption of a resolution recommending Council adoption of General Plan amendment (GP-02-04).* The General Plan Amendment allows for the following: (a) Site-specific FAR increase for the commercial component, (b) Site-specific density increase for the residential component, and (c) Site-specific building height of 5 stories for the five-level parking structure (4-stories allowed; 5-stories proposed). [Attachment 2]

3. *Council adoption of a resolution approving General Plan amendment (GP-02-04).* The General Plan Amendment allows for the following: (a) Site-specific FAR increase for the commercial component, (b) Site-specific density increase for the residential component, and (c) Site-specific building height of 5 stories for the five-level parking structure (4-stories allowed; 5-stories proposed). [Attachment 3]

4. *Council's first reading of the draft ordinance amending Title 13 of the CMMC*. The Zoning Code Amendment allows for the following: (a) Site-specific FAR increase for the commercial component and (b) Site-specific density increase for the residential component. [Attachment 4]

5. *Council adoption of a resolution approving Final Master Plan PA-02-11*. The approval of the Final Master Plan involves the approval of a minor modification for 2-foot balcony encroachment into street setback areas and the application of a parking reduction to tenant open space requirements. [Attachment 5]

6. *RDA adoption of a resolution amending the 1999-2004 Implementation Plan.* This amendment recognizes the need for affordable housing units triggered by the proposed development. (***The project's approval is conditioned on the Redevelopment Agency's action on this issue at the Agency's regular meeting on March 8, 2004***.)

7. *RDA adoption of a resolution approving the Inclusionary Housing Plan*. The Inclusionary Housing Plan sets forth the affordable housing obligation for the proposed development. (***The project's approval is conditioned on the Redevelopment Agency's action on this issue at the Agency's regular meeting on March 8, 2004***.)

Parking Analysis

Chapter VI, Off-Street Parking Standards, of Title 13 of the Costa Mesa Municipal Code describes a reduction in parking requirements for tenant open parking to encourage property owners to provide covered parking. Under the Code, tenant open parking can be reduced by .25 space per unit for one bedroom and larger units if tenant covered parking is provided within either a carport or parking structure.

The intent of this qualification for reduction in required open parking is for the following:

- *Encourage covered parking as a premium over open parking*. The parking reduction is to encourage developers to provide covered parking over open parking. Covered parking is considered a premium.

- *Create an upscale residential development with amenities of a two-car garage*. The parking reduction is associated with upscale residential developments where the residents enjoy amenities such as two-car garages. These upscale residential communities are typically associated with families/owner-occupied households and not with renter households. With renter households and multiple roommates, the parking demand would be higher with multiple tenants each owning a car.

The applicant proposes to provide covered parking in an enclosed garage within the proposed parking structure. The applicant is requesting the application of the .25 space per unit reduction in tenant open parking based on a proposed condition that would meet the intent of the Code which is to ensure parking availability. Table 3 is a summary table of the parking requirements.

Table 3 – Summary Table

No. of Residential Units	CMMC Permitted	Application of Parking	Total CMMC Permitted Parking

	Permitted Parking	of Parking Reduction *	Permitted Parking with Application of Parking Reduction
Original Project 161 units	456	(-41)	415
145-unit project	412	(- 37)	375

**Pursuant to Section 13-87, Table 13-85(4), of the Costa Mesa Municipal Code.*

Condition of Approval for Parking

A condition of approval ensures that the covered parking provided in lieu of required tenant open parking is not obstructed and that the parking spaces are used for vehicle parking only. The applicant agrees to a condition of approval requiring the recordation of Covenants, Conditions, and Restrictions (CC&Rs) prior to issuance of a building permit that will require that covered parking spaces in the enclosed garages are used for vehicle parking and not for any other purpose that obstructs the parking area (i.e. storage). In addition, the CC&Rs shall require that the Home Owner's Association conduct an annual inspection of all garages to ensure that the garages are in fact being used for vehicle parking and shall file a report with the City verifying the results of said inspection. The condition of approval requiring these provisions to be included in the CC&Rs will ensure that the garage parking is used for vehicle parking and not for any other purpose. Therefore, the intent of the Code allowing for reduction of .25 parking spaces for tenant open parking is met.

One important parking-related provision in the CC&Rs would allow the enforcement of the parking provision. If the residents fail to comply with the CC&Rs by not using their garages for vehicle parking, the garage doors for these units would be removed. The applicant indicated that this condition has been used in the industry for residential development projects of this type.

Inclusionary Housing Plan Requirements

As noted in previous staff reports, AB 637 and AB 701 require that 15% of the units developed within a redevelopment project area after 1976 must be affordable to low- and moderate-income households. At least 40 percent of those affordable units must be made available to very-low-income households.

The original 161-unit project included 98 units on the portion of property along Bernard Street added to the Downtown Redevelopment Project Area after 1976. This triggered the need for 14 income-restricted units. Of these, eight (8) would be provided to low- to moderate-income households, and six (6) would be provided to very low-income households.

The proposed 145-unit condominium alternatives include 78 condominium units on the portion of the property added to the project area after 1976. Consequently, approval of this development by City Council obligates the developer to provide twelve (12) affordable housing production units (15% of the 78 units) within the Redevelopment Project Area. Of the twelve (12) units 40%, or five (5) units must be made available at an affordable rate to very low-income households, with the remaining seven (7) units made affordable to households in the low- to moderate-income level.

Table 4 compares the inclusionary requirements of the original 161-unit project and the 145-unit project alternatives.

Table 4 – Inclusionary Housing Requirements

INCLUSIONARY HOUSING REQUIREMENTS 1901 Newport Plaza Residences			
Project	**Low-Mod Units**	**Very Low Units**	**Total Units Required**
Original Project 161-Unit Project	8 units	6	**14**
145-Unit Project	7	5	**12**

As a condition of this project, agreed upon during the discussions, the developer would provide seven (7) inclusionary moderate-income housing units on-site, as part of the new residential development project. These units would be income-restricted with affordability covenants for a period of 45 years for ownership units. The Agency will then assume responsibility for providing the remaining five (5) units in the Downtown Redevelopment Project Area within the required ten (10) year period. In addition, they would be income-restricted with affordability covenants for a period of 55 years for rental units, or 45 years for ownership units. Should any of the aforementioned units be provided outside the boundaries of the Redevelopment Project Area, the requirement for providing affordable housing would be doubled, pursuant to CCRL.

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Therefore, if the 145-unit residential project is approved, the existing 1999-2004 Implementation Plan must be amended to include the affordable housing project, or projects to be provided by the Agency in implementing the inclusionary housing provisions. Redevelopment Agency action will be required for the preparation, consideration and action on an Inclusionary Housing Plan for the 1901 Newport Plaza Residences project. These two issues are scheduled for the Redevelopment Agency's regular meeting on March 8, 2004. The project's approval is contingent upon the Redevelopment Agency's action to amend the 1999-2004 Implementation Plan and adopt an Inclusionary Housing Plan.

ALTERNATIVES:

The following alternatives are available to the City Council:

1. *Approve Alternative C (145 units).*. This is a reduced-density alternative (145 units/375 parking spaces) compared to the original project. This would require the Agency's financial assistance in the amount of $1.36 million, or an expenditure of 90 percent of the Housing Set Aside funds generated by the project. Approval resolutions for the required discretionary actions for the 145-unit project are attached. A condition of approval would require that the developer withdraw his lawsuit related to the original project approvals on April 14, 2003.
2. *Reaffirm the originally proposed 161-unit project*. This action would reaffirm the City Council's approval of the Original Project (161 dwelling units/415 residential parking spaces). This would not require any financial assistance to the developer from the Agency. All of the projected $1.7 million in Housing Set-Aside funds generated by the project would remain with the Agency. Approval resolutions for the required discretionary actions on the 161-unit project are similar to the 145-unit project and will be available for signature at the public hearing if Council approves this alternative. The reinstatement of this approval is the issue of the pending litigation against the City.
3. *Deny the original project and all development scenarios*. The project could not be constructed. The developer may submit a revised project six months after this denial.

LEGAL REVIEW:

The City Attorney's office has reviewed the draft resolutions as to form.

ENVIRONMENTAL REVIEW:

Final EIR No. 1050 addresses the impacts of implementing the proposed 161-unit, Newport Plaza Residences project. The Planning Center conducted an independent, third-party review of the environmental document for compliance with CEQA guidelines and deemed that the Final EIR, including the shade/shadow analysis, is compliant with CEQA.

CONCLUSION:

During the negotiation sessions, the developer and CMCRG agreed in principal to a reduced-density alternative: 145 dwelling units/415 residential parking spaces. Subsequent to this agreement, staff conducted a legal and financial analysis of various development scenarios that would come as close as possible to this agreement in terms of financial feasibility. The technical analysis indicates that the agreement in principal (also known as Alternative A) cannot be financially supported by the Redevelopment Agency or the developer.

The negotiation sessions have resolved all issues of concern specified by CMCRG with the exception to parking. While both parties have agreed to a 16-unit density reduction, the developer supports Alternative C (145 units/375 residential parking spaces), and CMCRG does not object to Alternative A (145 units/415 residential parking spaces), in concept. Strictly in terms of project design, the singular difference between these alternatives is 40 parking spaces.

The City has set forth Alternative C as a financially feasible, reduced-density alternative which comes closest to Alternative A in terms of density and project design. Alternative C involves $1.36 million in Agency assistance to the developer. This is an expenditure of 90 percent of the projected housing set-aside funds generated by the 145-unit project.

City Council may reaffirm its original approval of the 161-unit project. The originally proposed project would not involve any financial assistance from the Redevelopment Agency or any assumption of the inclusionary housing obligation. Therefore, 100% of the projected $1.7 million in Housing Set-Aside funds generated by the 161-unit project would remain with the Agency. The Agency could apply this money towards any housing-related project (i.e. First time Homebuyers Program, Affordable Housing, etc.) in the Redevelopment Area.

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Attachments:
1. Council Resolution certifying Final EIR No. 1050.
2. Redevelopment Agency resolution for GPA (GP-02-04).
3. Council resolution for General Plan amendment (GP-02-04).
4. Draft ordinance
5. Council resolution for Final Master Plan PA-02-11.
6. Site Plan/Elevations/Floor Plans

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