



CITY COUNCIL AGENDA REPORT

MEETING DATE: May 17, 2004

ITEM NUMBER: Item Number

SUBJECT: Final Master Plan for 1901 Newport

DATE: May 6, 2004

FROM: City Attorney's Office

PRESENTATION BY: Tom Wood, Acting City Attorney

FOR FURTHER INFORMATION CONTACT: Tom Wood, 714.754.5399

RECOMMENDATION:

Approve extending deadline for dismissal of lawsuit entitled Rutter Dev. Corp. v. City of Costa Mesa, No. 03CC09792, Orange County Superior Court from May 17, 2004 to July 19, 2004.

BACKGROUND:

On January 20, 2004 the City Council approved the Final Master Plan for the 145-unit condominium project at 1901 Newport Boulevard. Condition No. 17C was imposed which reads: "The Final Master Plan approval (Resolution No. 04-10) shall become null and void if the Developer does not cause a dismissal with prejudice of the pending action Rutter Development Corporation v. City Council of the City of Costa Mesa et al., No. 03CC09792 to be filed with the Orange County Superior Court within 105 days after Ordinance No. 04-2 goes into effect. The City may extend this time period at its sole discretion."

This time deadline expires on May 17, 2004.

ANALYSIS:

The intent of condition 17C was to require the lawsuit to be dismissed after the Costa Mesa Redevelopment Agency and the developer had agreed upon and signed the necessary Affordable Housing Agreement. The parties have not yet completed negotiating this agreement. Therefore, the time limit for dismissing the lawsuit should be extended to allow further time to enter into the housing agreement. It is estimated that by extending this deadline for another 60 days, i.e., until July 19th, the parties will have finalized the agreement and the lawsuit can then be dismissed.

ALTERNATIVES CONSIDERED:

The City Council could let the deadline to dismiss the lawsuit expire. That would put Rutter in default of a condition of approval. The ramifications of this are uncertain at this ;point

FISCAL REVIEW:

There is no fiscal impact caused by the execution of this Assignment Agreement.

LEGAL REVIEW:

The City Attorney's Office drafted this report and no further legal analysis is needed.

CONCLUSION:

The deadline for dismissing the Rutter lawsuit should be extended to allow the parties to complete the negotiations for the Affordable Housing Agreement. Staff recommends the deadline be extended to July 19, 2004.

TOM WOOD
Acting City Attorney

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