



June 13, 2008

Donn Hall, Chairman
Planning Commission
City of Costa Mesa
PO Box 1200
77 Fair Drive
Costa Mesa, CA 92628-1200

Re: Zoning Application ZA-08-17/Nexus Development Corporation
Master Plan Amendment/ Master Plan PA-07-20
Westside Lofts Mixed-USE Project
Hearing Date: June 23, 2008

Chairman Hall:

Trico Rents L.P. ("Trico") would like to thank you for the opportunity to comment on the above entitled zoning application and the proposed "...major amendment..."¹ initiated by the applicant Nexus Development. Trico is an adjoining landowner to the project and has made its concerns known previously regarding various aspects of the project. As a large property owner on the Westside, Trico is as concerned as anyone in the City about revitalizing the Westside. We do not believe that a project with 151 new rental units is consistent with the intent of the Mesa West Bluffs Urban Plan or will be a positive influence in revitalizing the Westside. We think it helps to view the subject application with a historical perspective.

History and Stated Objectives of Applicant

Since the project was first proposed the stated objectives of the applicant were:

"...Provide **home ownership opportunities** that meet current market demand (emphasis added)..."

"...Create a mixed-use community that is sensitive to surrounding land uses, yet responsive to the changing economic conditions of the area..."²

¹ The April 15, 2008 letter of Applicant, Nexus, which forms the sole basis of Zoning Application ZA-08-17, refers to the application as a "...major amendment..."

² Westside Lofts IS/MND, 2-2, August 2007.

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The original proposal was to develop 151 residential condominiums, 5 live/work units and 6 industrial office buildings. This was the plan analyzed by the consultants to the City, City Staff and Planning Commission in ultimately approving the project.

The Mesa West Bluffs Urban Plan

The project was presented and approved as being consistent with the objectives of the Mesa West Bluffs Urban Plan, which include:

“...To meet demand for a **new housing type** to satisfy a diverse residential populations comprised of artists, designers, craftspeople, professionals, and small business entrepreneurs....”

“...To promote a **new type of urban housing** that would be target-marketed to people seeking alternative housing choices in an industrial area....”³ (emphasis added)

Adoption by the Planning Commission Every Analysis of the Project Assumed 151 Ownership Condominiums

Accordingly, when the project was considered by the Planning Commission the underlying themes of development presented by the applicant and endorsed by the City and the consultants to the City were residential development and **pride of ownership**. These themes were important underpinnings of the decision to approve the project ultimately reached by the Planning Commission on or about November 13, 2007.⁴

The most significant benefit of the project as originally proposed by the applicant and as recognized and supported by staff and by the Planning Commission was that the proposed project would help revitalize the Westside. It would not be just another project but would rather be a “...vision...” for the City. “...A mixed-use development project (that) would help stimulate revitalization in the Westside by offering a new type of urban housing, live/work units, and potential corporate headquarters for the surfing and apparel industry....”

The Concern of “...Over-Crowded Apartments...”

It was this vision of consistency with the objectives of the Mesa West Bluffs Urban Plan, which led to the adoption of the applicant’s zoning application and master plan amendment. Due to concerns about the possibility of the units becoming a rental property the Planning Commission included two (2) specific conditions for approval as follows:

³ This theme runs throughout the application as well as the Westside Lofts IS/MND including the analysis of public services such as schools, police and fire, traffic etc. at the same theme appears in the City’s Initial Study of March 6, 2006 entitled “Initial Study/Mitigated Negative Declaration, Mixed-Use Overlay District and Westside Urban Plans...*Residential Ownership Plan*....” (emphasis added) and See Staff Report Dated November 1, 2007 for meeting date of November 13, 2007.

After a discussion by Commission Clark and Ms. Brandt and the applicant regarding the concerns that "... the buildings could become over-crowded apartments "...", Commissioner Clark added a clause"... "as Item No. 6 of Condition No. 4. Ms. Nelson agreed to this clause. ...". The purpose of the amendment as ultimately adopted by the Commission was to address the fear that the project would become nothing more than more overcrowded apartments on the Westside; not a "...new type of urban housing..."⁵ and therefore fail to help revitalize the Westside and be inconsistent with the Mesa West Bluffs Urban Plan

Finally the Planning Commission and staff likewise recognized this same concern when they included condition 17 in the approval of the application which was amended by Chairman Hall, Commissioner Egan, Commissioner Righimer, and agreed to by the applicant. The condition ultimately stated that " All residential units and live/work units shall be initially "for sale" units. **The site shall not be developed for apartments or other non owner-occupied units....**" (emphasis added).

The Findings of the Commission

The Findings made by the Commission at the time of the adoption of the project were that the goals of the Mesa Bluff Urban Plan would be obtained and that the proposal would comply with the objectives of the Mesa Bluffs Urban plan to "promote Westside revitalization **through homeownership, encourage owner-occupied housing** (emphasis added)..." and provide a "new type of urban housing...."

The Current Proceedings before the Planning Commission

In checking with our real estate attorney who also consults with cities on municipal code issues and has served as both a planning commissioner and city councilman in another city, he believes there are some serious discrepancies in how the present application is presently being considered. The points made below are intended to raise these questions in order to insure that whatever actions are taken are consistent with Costa Mesa's Municipal Code.

The current proceedings before the City Planning Commission apparently stem from the Zoning Application ZA-08-17, for a Master Plan Amendment to Final Licensee Plan PA-07-20 for the Westside Lofts Mixed-Use Project. Pursuant to a notice received by Trico on or about May 12, 2008, the Zoning Administrator would "...render a decision on Thursday May 22, 2008 or as soon as possible thereafter..." on the above referenced Zoning Application. As of the date of this writing no decision has been made to approve or disapprove by the Zoning Administrator.

While there is some confusion as to the appropriateness of the request by the Applicant, Nexus, for they seek a "...major amendment..." to the approved Master Plan, it is assumed that the

⁵ See Minutes of Planning Commission of November 13, 2007.

Applicant is seeking the major amendment pursuant to Costa Mesa Zoning Code, thereby invoking the authority of the Zoning Administrator initially.⁶

Authority of Zoning Administrator and Application

Pursuant to Sec. 13-11 of the Costa Mesa Municipal Code the Zoning administrator's authority is established in subsection (b) which states:

"...(b) The zoning administrator is authorized to approve, conditionally approve, or deny the following discretionary planning applications. The zoning administrator may forward any action to the planning commission for review.

- (1) Administrative adjustment;
- (2) Minor conditional use permit;
- (3) Lot line adjustment; and
- (4) Any action specified in this Zoning Code...."

However assuming that subsection (4) is the basis for the proposed major amendment, there is no vesting of authority in the Zoning Administrator to consider a major amendment of the type being considered when the major amendment fails to comply with the City's 2000 General Plan or the force of law of the Mesa West Bluffs Urban Plan area. The proposed amendment is incompatible with the Mesa West Bluffs Urban Plan and further deals with the type of "...policy decisions..." as set forth by staff in the staff report of November 13, 2007.

Accordingly it appears that the Zoning Application is an inappropriate attempt to seek a modification of terms and conditions of approval for the project, since it seeks to modify at least two conditions of approval, i.e., Nos. 4 and 17, which would be inconsistent with the Major Findings for approval, i.e. A and B and inconsistent with the objectives of the Mesa West Bluffs Urban Plan. Accordingly the application should have been made directly to the Planning Commission as required by Sec. 13-10 of the Costa Mesa Municipal Code which sets forth that:

- "...(2) The planning commission is authorized to act upon the following discretionary actions:
- a. Recommend to the city council approval, conditional approval or denial of general plan amendments, specific plans, rezones, Zoning Code amendments, development agreements, density bonuses with public financial incentives, preliminary and final master plans, and any other action specified in this Zoning Code.
 - b. ..."

In fact until clarification of the subject application it appears that the Applicant is seeking to invoke new terms and conditions of approval; a potential General Plan Amendment and/or an Amendment to the Mesa West Bluffs Urban Plan. Irrespective of the content of the Application it is clear that the proposal of the Applicant is incompatible with the Mesa West Bluffs Urban Plan and the findings of the Planning Commission adopted November 13, 2007.

Commission Lacks Jurisdiction to Hear the Current Application Current Application is to Develop 151 Rental Units and Later Convert Them for Sale

⁶ It is assumed until clarification that the Applicant and Staff seek to invoke Sec. 13-28(g)(2) of the Costa Mesa Municipal Code.

The Zoning Administrator however failed to approve, conditionally approve, or deny the discretionary planning application. Accordingly the Planning Commission has no authority to render any decision until the decision is reached by the Zoning Administrator. Combined with the pending application over which the Zoning Administrator has no authority to act along with the failure to render a decision in the matter, the Planning Commission has no authority to act until a decision is either made or a new application is made directly to the Planning Commission. Such application is rather one for a modification of the terms and conditions for approval reached by the Planning Commission on or about November 13, 2007;⁷ an amendment to the Mesa West Bluffs Urban Plan; a variance or amendment to the General Plan; a modification to or amendment of the findings for approval. The current application contains none of the foregoing.

Commission Should Not Rush to Judgment

Because of the significant changes being sought and the different impacts created by the new proposal the Commission should consider this as a new application and direct staff to consider the consequences of the proposed changes. It is important that the ultimate goals of the City be achieved and revitalization of the Westside be the end product. Accordingly the following information should be gathered before any decision is made:

1. A scoping EIR document should be created to consider the possible additional and new impacts that the project may create;
2. The above should consider issues including but not limited to trip generations as a result of the proposed major amendment; public services; potential occupancy levels of the 151 high density rental units as opposed to owner occupied condominiums;
3. What effect might the changes have on property values?
4. What, if any, effective controls could the City impose on occupancy limits?
5. Incompatibility of the new project with the Mesa West Bluffs Urban Plan;
6. Should the current application be processed under the municipal code that deals with condominium conversions as that is the stated intent of the Applicant?⁸

Not Another Government Bail Out

At the time the project initially came before the Planning Commission there were and still are a number of concerns raised about the project and the fact that no one wanted it to become just more "...over-crowded apartments..." and/or another "...white elephant..." Moreover, there is

⁷ Trico recognizes that the applicant in conjunction with the City may believe that the Zoning Administrator can merely refer the matter for review to the Planning Commission, however it is Trico's position that in order to do so, the application would have been the type of application that should have been originally brought before the Zoning Administrator initially for the Zoning Administrator to have been legally able to render a decision as required by the Costa Mesa Municipal Code. Because the Zoning Administrator could not have rendered a decision on an application which seeks to dramatically change the scope of the project, the underlying assumptions made at the time the project was processed and invoked policy decisions, it has no authority to forward the matter to the Planning Commission.

⁸ See letter of applicant of April 15, 2008 in support of application.

no change in conditions which would justify the current application as they were considered and commented on by the applicant at the time of original hearing. Accordingly if the Planning Commission decides to move forward and make a decision at its hearing on June 23, 2008 without the necessary information to make an informed decision, then the Planning Commission should deny the current application for the following reason:

1. The application as proposed fails to meet the findings of the Planning Commission of November 13, 2007;
2. The application would render the project incompatible with the Mesa West Bluffs Urban Plan, as a matter of law;
3. The application would not be compatible with the City's General Plan;
4. The project is otherwise incompatible with surrounding land uses;
5. The project should not go forward until the issues of density, traffic and City services are adequately briefed in an amended through a new scoping EIR;
6. The project will not have a positive impact on revitalization of the Westside;
7. The project should not go forward until the issue of occupancy of the units is fully briefed and determined to have no impact on the services provided by the City;
8. The project is not a new type of urban housing and does not encourage home ownership;
9. The project is an apartment complex as disclosed in its application and Applicant is seeking to develop an apartment complex with the option to later convert it to for sale condominiums. Accordingly the application fails as a matter of law;
10. The project as a rental property has a serious potential to become a white elephant on the Westside and a negative impact on revitalization of the Westside;

If you have any questions regarding the foregoing, please do not hesitate to contact me.

Respectfully,

Trico Rents L.P., a California limited partnership

By: 
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