



NORTH OGDEN CITY

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MEMORANDUM

TO: North Ogden City Council and
Mayor Richard G. Harris
Ron Chandler, Manager

FROM: Dave Carlson, City Attorney/Dir. Economic Development

DATE: May 14, 2012

RE: 1. Appeal from decision of North Ogden City Planning Commission
Regarding Amendment of the Cove PRUD Final Development Plan; and
2. Ordinance to Vacate Portions of the Cove PRUD Plat; and

Before you for your approval are two closely related items pertaining to modifications of the Cove PRUD. In April of this year, the North Ogden Planning Commission allowed certain amendments to the landscape plan contained in the Cove PRUD Final Development Plan. Only 8 lots have been sold in the nearly 200 lot subdivision. Although some of the lot owners objected to the amendments, they did not appeal the Planning Commission's decision; however, the owner of the Cove PRUD, Westside Investments, LLC, did appeal that decision which is now before you.

All of the lot owners in the Cove PRUD have retained a single attorney who is the official spokesperson and agent of all the owners. In the months that have followed, there has been a steady dialogue between the attorney for the lot owners and attorney for the developer. Counsel for the City has also participated in those discussions. The discussions resulted in a compromise agreement between the developer and lot owners. The City administration recommends that the City Council give its blessing to the compromise by adopting the measures that appear on its agenda for its May 23, 2012 meeting.

The first action requested from the City Council consists of exercising its authority to "modify" the decision of Planning Commission regarding the Final Development Plan by adopting and approving the changes to the landscape plan and plat amendments agreed upon by the developer and lot owners.

The second action requested from the City Council consists of adopting an ordinance vacating a portion of the Cove PRUD Plat to allow the amended plat approved by the Planning Commission to be recorded.

In order to place these requests in context, I will give a little background to explain how the developer and lot owners came to the agreement embodied in the proposed plat amendment and discuss what

steps remain to be taken to get the building lots in this important residential property back on the North Ogden real estate market.

The original approvals and entitlements to the Cove Subdivision were obtained by Matt Meyers, a local resident and present owner of one Cove Subdivision lot. The Cove was conceived at the peak of the red-hot housing market just prior to the collapse. It was envisioned as “country club” living with a very high level of amenities: spacious clubhouse, private parks and trails, swimming pool, tennis courts, soccer fields, baseball field, etc. The original developer pushed the City very hard to expedite approval of the subdivision which resulted in certain shortcuts being taken in the process that have proved problematic later on.

As soon as the City granted the approvals and gave the entitlements to the Cove, the original developer flipped the subdivision to a group financed by Farr West Bank and represented by developer Bob Woods. The financing model for the subdivision relied heavily on the continuation of the hot pace of residential lot sales occurring during the pre-collapse market. When the housing market crashed, lot sales ceased completely and the Cove became unsustainable as a development.

The Cove was approved even though the offsite improvements required to deliver secondary water to the Cove were not complete. Because of the proximity to canyons beneath Ben Lomond, an avalanche and debris flow study was performed that required certain features to be installed to protect the subdivision from these hazards. The city approved the subdivision notwithstanding that these protection features had not been designed let alone constructed. The city required escrow in the way of a letters of credit for much of the subdivision infrastructure the developer was required to build but no escrow was required for the landscape or other amenities, the offsite secondary water system improvements or the avalanche/debris flow protection features.

A large percentage of the subdivision infrastructure had been completed at the time of the collapse: the culinary water system, the portion of the secondary water system within the subdivision, roads, sidewalks, lighting, sewers, storm sewers, etc. Woods, however, was unable to keep up the payments on his financing and Farr West Bank foreclosed on the Cove. During the time when Woods was trying to save the subdivision from foreclosure, the city erred by allowing the letters of credit securing incomplete subdivision improvements to expire.

Farr West Bank made some failed efforts to resuscitate the subdivision. The inability to finish the offsite portion of the secondary water system infrastructure was a big obstacle. Farr West Bank ran into financial difficulties of its own and, prior to going out of business, sold the Cove Subdivision to Westside Investments, LLC, headed by Randy Marriott. Marriott’s acquisition of the subdivision was very fortunate for the city. He is the principal behind Ben Lomond Water, the owner of the secondary water system that delivers water to the Cove. He owns his own construction/development company and he has successfully developed many of the hillside subdivisions in North Ogden.

When Westside calculated it’s pro forma on the Cove Subdivision it realized that the Cove was doomed to failure in the post-collapse housing market, due to the hefty homeowner assessments maintenance of the “country club” model would require,. Accordingly, Westside petitioned the Planning Commission for amendment to the Final Development Plan. The goals of the amendment were to reduce development costs and monthly homeowner assessments.

The Planning Commission granted amendment to the Final Development Plan, significantly reducing the level of amenities and landscaping the original plan required. Although initially opposed to changes in the Cove, lot owners have come around to believe that it is not in their best interest to try to sustain, through homeowner assessments, the level of amenities originally conceived for the Cove.

Accordingly, they agree with the developer to the removal of many of the open areas and amenities originally planned. In the amended plat, area around the clubhouse designated as open space, has been divided up into additional building lots. From the sale of these additional lots, homeowners will receive a cash settlement intended to compensate them for their disappointment in not getting the level of amenities originally promised when they bought their lots.

The clubhouse will be converted into a single family dwelling. The quality of the landscape in the remaining common areas will be substantially similar to what the Planning Commission approved by way of amendment to the Final Development Plan. One of the two main north/south trails will be eliminated as previously approved by the Planning Commission and according to the recommendation of the City's trails committee. Portions of the upper open space area will be divided up and added to increase the size of each abutting building lot. The City will retain an easement over this and other open space areas to service storm water detention features and other utilities.

There will continue to be homeowner's association(s) to maintain the remaining limited common area, primarily the private drives and associated landscaped areas.

A plat amendment reflecting the changes to the Cove PRUD agreed upon by the developer and lot owners has been prepared, reviewed by city staff and a decision by the Planning Commission on the amendment will have been rendered by the time these items are considered by the City Council.

Assuming the Planning Commission grants the proposed plat amendment, the amendment serves as the basis of the "appeal" to the City Council regarding the Final Development Plan. Under its power to "modify" a decision of the Planning Commission, it is requested that the City Council exercise its power to modify the Final Development Plan to conform to the landscape plan as agreed upon by the developer and lot owners and as reflected in the amended plat.

Before an amended plat may be recorded, the Weber County Recorder requires a "vacating ordinance" to be recorded. The vacating ordinance on your agenda is necessary for the plat, as amended by the Planning Commission, to be recorded.

It is requested, therefore, that you grant the appeal of Westside Investment from the decision of the North Ogden Planning Commission amending the Cove PRUD Final Development Plan by modifying the decision of the Planning Commission to conform to the amended plat.

It is requested that you adopt the ordinance vacating a portion of the Cove PRUD plat.

I look forward to answering your questions.

Sincerely,

Dave Carlson