

**SPECIAL JOINT MEETING OF THE COSTA MESA CITY COUNCIL
AND THE
REDEVELOPMENT AGENCY**

JUNE 14, 2004

The City Council and the Redevelopment Agency of the City of Costa Mesa, California met in a Special Joint meeting on Monday, June 14, 2004, in Conference Room 1A of City Hall, 77 Fair Drive, Costa Mesa. The Special Joint meeting was called to order at 6:35 p.m. by Chairperson Steel, followed by the Pledge of Allegiance to the Flag led by Agency Member Cowan.

ROLL CALL

Agency Members Present: Chairperson Steel
Vice-Chairperson Mansoor
Agency Member Cowan
Agency Member Monahan
Agency Member Scheafer

Council Members Present: Mayor Monahan
Mayor Pro Tem Mansoor
Council Member Cowan
Council Member Scheafer
Council Member Steel

Officials Present: City Manager Roeder
Executive Director Lamm
General Counsel Wood
Neighborhood Improvement Mgr. Ullman
Management Analyst Veturis
Planning & Development Mgr. Robinson
Special Counsel Brady
Executive Secretary Rosales

POSTING

The Notice and Call and the Agenda of the Special Joint meeting of the Redevelopment Agency and City Council were posted at the Headquarters Police Department, City Council Chambers, the Postal Office and the Mesa-Verde Public Library on Thursday, June 10, 2004.

MINUTES

On a motion by Agency Member Scheafer, seconded by Agency Member Cowan and carried 4-0 (Agency Member Monahan abstained because he was not present), the minutes of May 10, 2004, were approved.

OLD BUSINESS

**Consideration and
Action on Affordable
Housing Agreement
between Rutter 1901
Newport LLC and the
Costa Mesa
Redevelopment
Agency**

Neighborhood Improvement Manager Ullman reported the 1901 Newport Project had been the subject of a series of hearings and rehearings. The current project consisted of a revised entitlement (Alternative C), which included 145 condominiums and 415 residential spaces. Inclusionary housing requirements set forth in California Health & Safety Code were triggered by the developer's project because a portion of the project is located within the Redevelopment area that was added after 1976. When said requirements were applied, long-term covenants of 12 inclusionary units (7 low-moderate and 5 low) were required.

Ms. Ullman summarized some of the deal points in the affordable housing agreement as follows:

The affordable agreement set forth obligations, both by the developer and the Agency, to provide said units. Pursuant to the entitlement,

Rutter 1901 Newport LLC is obligated to construct seven units to qualified, eligible, low and moderate-income buyers that will be incorporated into the project. Each homebuyer will be required to enter into a homebuyer loan agreement that includes a restriction affecting occupancy and ownership for 45 years. The seven buyers will be provided with an Agency loan that will be expended towards the purchase of the unit. The loan is based on the market price of the units as estimated by the developer and a very complicated calculation of affordable housing cost, dictated by the Health & Safety Code. A market sales price of about \$377,000 and an Agency loan of \$127,500 would leave a balance of \$249,500 for which the homebuyer would receive a first trust deed loan including the down payment. When Rutter 1901 Newport LLC meets the requirement to sell the seven units, the Agency will assume the obligation to provide the remaining five very-low incomes units off site.

Regarding financing commitments, Keyser-Marston Associates did a gap analysis based on the difference between the first project the Agency reviewed (161-units) and the current project (145-units). Based on their analysis, a \$1.5 million in affordable housing assistance was merited for this project. Rutter 1901 Newport LLC will get \$892,000 in direct financial assistance for the seven inclusionary units (\$127,000 per unit). The Agency will use \$625,000 over the next ten years to build five very-low income units. Redevelopment low-moderate money or a combination of Redevelopment HOME money will be used by the Agency to build the five units. The assistance to Rutter 1901 Newport LLC for the 7 inclusionary units will come directly from the Redevelopment Housing Fund.

Regarding future sales of the units, each of the seven loans will be structured so that 1/45th will be forgiven each year of the 45 year covenant term. The loans' liens, securing each Agency loan, will be assumable by subsequent buyers in interest, if the seller or owner comply with all the affordable housing restrictions related to the sale and purchase of each unit. There is no option for the homebuyer to sell to a higher income buyer, as the loan would be accelerated and 10% interest accruing. The Agency will be required to monitor the inclusionary units for a 45-year period, including monitoring for deed restrictions, lien priorities, income and affordable housing costs. The underwriting for the first trust deed loan will need to be reviewed. A monitoring manual is in the process of being developed and upon completion will be presented to the Agency for consideration and action. An outside consultant to monitor the program and assist with underwriting will be suggested.

Third party cost, detailed in pages 5 and 6 of the staff report, is an important provision of the affordable housing agreement. Pursuant to the affordable housing agreement, Rutter 1901 Newport LLC has agreed to pay half of the third-party cost, which is approximately \$44,000 from the period of August 2003 to June 14, 2004, which is when the bulk of the work occurred. Rutter 1901 Newport LLC will pay and reimburse the Agency for all third-party costs after June 14, 2004, prior to sale of any affordable units. All third-party costs will be paid prior to the issuance of the first building permit.

A long time was spent with Rutter 1901 Newport LLC regarding the construction period. A 4½ year construction period is anticipated, with the project being built in five phases.

Chairperson Steel asked if there were any questions of Staff or any discussions.

Vice-Chairperson Mansoor expressed concerns regarding the project. One concern being the City assuming the obligation to provide five very-low income inclusionary housing units. He pointed out on Page 4 that it was possible the Agency's cost to provide the units, could escalate given future construction costs. Another concern was the \$1.5 million the developer was receiving in subsidies. While he understood it was due to the calculations on reducing the number of units, he did not believe it was appropriate. On Page 6, he felt the legal costs that the Agency had incurred, should be paid for by the developer. On Page 7, he pointed out the Agency was responsible for monitoring for the next 45 years, therefore, all aspects of the inclusionary housing units were to be monitored properly. He asked if the 1901 Newport Plaza project was approved, what triggered a guarantee that the City would not be sued.

Special Counsel Brady explained Section 310 of the affordable housing agreement was a covenant by the developer not to sue the City, the Agency, Costa Mesa Citizens for Responsible Growth (CMCRG) and third parties as it related to the property, the entitlement and the actual project. If there were subsequent actions by some third party that interfered with the development of the project, they were not yet carved out. The covenant not to sue basically closed the door to the 1901 Newport Plaza project, prior hearings, the entitlement process, etc. in order to move forward with the entitlement. The covenant includes an affirmative obligation for the developer to enter into a settlement agreement, with the City and the Agency releasing and waiving each other reciprocally, for follow through and affirmation of the existing condition in the entitlement for dismissal, with prejudice, of the litigation.

Chairperson Steel opened up the session for public comment.

PUBLIC COMMENT

Mike Berry, 2064 Meadowview Lane, Costa Mesa, understood the City had taken a group of units and obligated them for 45 years. In that type of an environment and according to the Davis Strolling Act, when the homes are mortgaged, there is going to be disclosure issues that if not disclosed to everyone who purchases a unit, including banks who finance them, the City will be at great risk. He did not know if the City was getting a return for that risk.

Special Counsel Brady commented that from a legal perspective, of record, will be a set of covenants, conditions and restrictions (CC&R's) relating to the affordability restrictions. Because they are financial encumbrances, an affordable housing restriction, two lien instruments (one monetary encumbrance and a lien instrument attached to the affordable housing obligations), will be a part of any mortgage evaluation. Disclosure documents are also required to be signed by the buyers, as well as, certain assumption obligations for each subsequent home buyer during the 45 year period.

Mr. Berry said the arrangement of the parking was a third complicating issue. Theoretically, the association owns and operates all of the property connected. If connected property is not operated by the Association (not part of the Association), it cannot be funded by the Association. He understood the parking was going to be interchanged and felt that would create more problems than just disclosure because it went beyond the concept of a common interest development.

Robin Leffler, 3025 Samoa, Costa Mesa and Vice-President for Costa Mesa Citizens for Responsible Growth (CMCRG), was concerned that granting approvals before the lawsuit was dropped, would leave the City and C.M.C.R.G. vulnerable and in limbo. If the backing that Rutter 1901 Newport LLC was anticipating did not come together and the lawsuit was still open, would it create a situation? Could someone pressure the City for a financial settlement in return for dropping the lawsuit? She was not comfortable with the lawsuit being left open-ended. Recapping, Ms. Leffler said the subsidy offered substantial help with the cost of providing seven affordable units on-site and the City was taking complete responsibility for the five very-low income off-site units. Originally, Rutter 1901 Newport LLC was responsible for 14 units within the Redevelopment district and 28 outside the Redevelopment area. She has scanned multiple listings and did not find opportunities to buy 14 units in the Redevelopment Area for under \$2.5 million. Rutter 1901 Newport LLC was getting a good deal with the subsidies and the City assuming part of the obligation, giving them no apparent reason to back out. She suggested the Agency and City Council make a condition that tonight's approval be contingent on Rutter 1901 Newport LLC dropping the lawsuit or that both parts happen concurrently.

A few months ago, C.M.C.R.G.'s attorney suggested that in case the lawsuit went forward, that the record show a previous lawsuit where Rutter 1901 Newport LLC sued and named some citizens' groups who were exercising their first amendment right. Ms. Leffler submitted documentation for the record, hoped everything would work out and believed that Rutter 1901 Newport LLC was working in good faith. Also submitted was a fax of C.M.C.R.G.'s response to a query from City Manager Roeder regarding their legal expenses.

Ms. Leffler wanted to make sure that all the gains made were protected and the January Council decision respected. Together, improvements made to the original project included a no parking waiver, a height reduction along Bernard, on-site affordable housing and a less than 10 percent reduction in density. C.M.C.R.G. wants all the provisions to remain in place particularly, because in all the materials Ms. Leffler read, she did not see where the parking agreement was spelled out. It is important that the 41 parking spaces be reserved as open parking for residents and guests.

Lastly, Ms. Leffler requested that it go somewhere on the record about this project being a site-specific, non-precedent setting, special circumstance, never again type of project and *not* business as usual because the wrong message is being sent. Even though General Plan approvals such as the 1901 Newport Plaza are officially deemed not precedent setting, others wanting similar exemptions will always point them out as precedent. She wanted the record to reflect how unique the 1901 Newport Plaza project was and how it was truly not to be used as a precedent.

Wendy Leece, 1804 Capetown Circle, Costa Mesa, spoke in opposition of the project on the grounds that the traffic generated by the 1901 Newport Plaza project would be a hardship on a very congested 19th/Newport/Harbor area. She asked the Agency if the 1901 Newport Plaza project was passed, that the concerns of the Costa Mesa Westside citizens be taken into consideration by mitigating the traffic and issues like density that surround it because the families who move into the development should be protected. She agreed with Vice-Chairperson Mansoor that the \$1.5 million the

developer was receiving, had the appearance of favoritism and of tax dollars going to a developer. She had a problem with this and hoped it was not precedent-setting. Another problem was the City being locked into the project for 45 years and the Agency making a decision that would be very difficult to undue. Many Costa Mesa citizens were in opposition of the 1901 Newport project and they did not want it to go forward.

James Lusk, 1005 Begonia, Costa Mesa, said he was for developers and was a capitalist at heart. He asked who would be responsible if the low-income units were not sold and assuming the 1901 Newport Plaza project was profitable, why the City was obligated. As a capitalist, he was in favor of projects moving forward or dying on their own; therefore, he did not feel the City should be funding or helping to fund the 1901 Newport project. As a taxpayer, he wants his tax dollars to go elsewhere rather than to the developer. He asked when the project would go profitable and with the variances to the General Plan, what were the City's liabilities for future developers. Regarding precedence, the Agency should not hold or give benefits to one person and not allow another the same opportunity because that will be difficult to defend in the future. He asked regarding the parking spaces if they were for compact or full-size vehicles because a full-size car would consume two parking spaces. He hoped the Agency would make a wise decision for Costa Mesa and not repeat some of the past decisions.

Judi Berry, 2064 Meadowview Lane, Costa Mesa questioned Section 310 of the affordable housing agreement and asked if it meant that Rutter 1901 Newport LLC would drop the current lawsuit or that in the future Rutter 1901 Newport LLC would not sue?

General Counsel Wood told Chairperson Steel the lawsuit was a different item. The covenant that Mrs. Berry was referring to dealt with the future and the developer agreeing not to sue the City or other parties. The dismissal of the lawsuit was the third matter on the Redevelopment Agenda tonight. Rutter 1901 Newport LLC was required by the Council's earlier approval of the Master Plan for the project, to dismiss the pending lawsuit 105 days after the rezone ordinance became effective. The 105-day-period was due to end on Thursday, June 17, 2004.

Heather Somers, 313 Robin Hood Lane, Costa Mesa, expressed grave concerns regarding the 1901 Newport Plaza project. The density being more than double of what was allowed by the General Plan was among those concerns. She felt the City was "jumping through hoops" so the 1901 Newport Plaza project would go through. She too was concerned about the precedent the 1901 Newport Plaza project would be setting for future developments. There is still developable land on the north end of Costa Mesa, the Sergerstrom and Sakioka properties, which will use the 1901 Newport Plaza project as a template for what they would like to do as far as high density. She felt the density was ridiculous, going from 40 units an acre vs. 20 units that is allowable. She stated that even when the City gives density bonuses it is only 50 percent higher, making it 30 units per acre. Developers usually give the City a density bonus in the form of a land grant, parks or park benefits and none of that was happening with the 1901 Newport Plaza project. Instead, the City was paying the developer \$1.5 million that could be used on some other type of low-income, low-mod income type of housing project. She too wanted to know what would happen to the project if the units inside the project did not sell and what would happen to the

certificate of occupancy that does not get issued until the seven units sell. Who would be responsible to the lenders for that particular portion of the project? She felt that because Rutter 1901 Newport LLC has held up the City of Costa Mesa with the pending lawsuit, they should be responsible for all of the legal fees through June of 2004 and 50 percent of the remaining cost after the June date. She asked the Agency not to grant the developer an extension because it was already 6 weeks past the 105-day deadline. It was too much density and impact on that portion of the neighborhood and community, and the Agency should reconsider.

Lori McDonald, 284 Walnut, Costa Mesa, asked in the event the developer went broke and he did not go through with the project, did the City have an alternate plan in place?

Executive Director Lamm responded that regardless of the developer's financial ability, the project had been approved and entitled by the City Council. Therefore, it was a valid project that was in place. The only issue tonight was whether or not the Agency would provide the \$1.5 million affordable housing assistance. If Rutter 1901 Newport LLC closed its doors and moved, the underlying property owner or partners could assume the entitlement or, the property could be sold. He explained that entitlement runs with the land regardless of who owns it and their financial condition.

Ms. McDonald asked if it would be an issue for the City if no one purchased the land.

Executive Director Lamm responded the 1901 Newport Plaza land was extremely valuable; therefore, someone would own it. The entitlement would run with it and the project would be very viable for someone to build.

Ms. McDonald asked how a huge construction project could be managed for four years or longer without a significant health and safety risk to the citizens of Costa Mesa and new tenants. The intersection near 1901 Newport was already a deathtrap causing serious accidents and injuries. The City was leaving itself open to lawsuits in the future due to the many responsibilities being imposed by the developer that she felt was uncalled for. She did not think Rutter 1901 Newport LLC deserved a subsidy and asked that the General Plan be kept as it was.

Chairperson Steel asked Neighborhood Improvement Manager Ullman if she had a comment.

Neighborhood Improvement Manager Ullman said 45 and 55 year covenants were statutorily and standard in affordable housing. Regarding the concern of what would happen if the affordable units did not sell, Ms. Ullman explained the affordable housing agreement gave the City the option to rent if the developer indicated there was not a market for home ownership units. The City, however, would want to fulfill the obligation of providing affordable units because it is a legal obligation within a 10-year period.

Heather Somers, 313 Robin Hood Lane, Costa Mesa, asked for clarification regarding the potential of changing the project into a rentership because that completely changed the complex and all the CC&R's for the entire property.

Special Counsel Brady responded that the rentals would not be on the 1901 Newport Plaza site. The opportunity would exist for Rutter 1901 Newport LLC to identify that they had difficulty selling the units as for sale affordable units. In compliance with the affordable housing agreement, Rutter 1901 Newport LLC is not allowed to receive the first certificate of occupancy for the last phase of the project, where the affordable units are, unless and until they have sold and closed escrow for all seven of the affordable units. The City will not be providing any direct financial assistance to the affordable buyers unless and until they are ready to close escrow. If the fact pattern were to arise during the 3½ construction period and the units could not be sold, Rutter 1901 Newport LLC could approach the Agency to renegotiate. The City has no legal obligation to pay any money to Rutter 1901 Newport LLC, unless it is money towards close of escrow on an affordable unit.

In regards to several other issues, there are affirmative covenants recorded against the property, in addition to the entitlement, that relate to the parking obligations related to the 40, unassigned open parking spaces. The entitlement in the municipal code, require that the parking spaces be open and unassigned. In Section 403 of the agreement, there is a covenant that is going to be recorded against the property that says the same. The parking agreement that relates to coordination between the commercial property and residential property was identified as an issue. Rutter 1901 Newport LLC was required to move forward with the commercial property owner and create the agreement that establishes the residential parking. The residential ownership, first the developer and then the Association, as the developer transfers to the Association, will have a perpetual, non-subordinate, exclusive easement over a full-level of the 5-level parking structure and specific easement rights for access, ingress and egress that cannot be interfered with. There are quiet enjoyment covenants and affirmative obligations that their costs only relate to that residential area that they assume no responsibilities concerning the commercial area, as it relates to costs, insurance, long-term capital charges with minor potential exceptions relating to improvements in the actual residential area. If in fact, the residential had built their own parking structure and owned it, they would have an obligation for certain costs. The City is attempting to limit the Association's costs that relate only to the one-level of the residential area.

Ms. Somers intercepted and said Special Counsel Brady's explanation was not answering the question that she was posing. She wanted specifics regarding the five units.

Special Counsel Brady responded the five units were very-low income units and would not be on-site.

Ms. Somers referred to the seven units that would be on-site and mentioned if the seven units were not filled, the certificate of occupancy would be left unfulfillable for the remaining units.

Special Counsel Brady added, "nor would the City have spent the money."

Ms. Somers asked where that put the City as far as being responsible for the total of twelve units, because the funds had been designated through the City, for that to happen.

Special Counsel Brady responded the affordable housing agreement is set up so that the Agency does not assume the obligation for the inclusionary units unless and until, the seven units are sold; therefore, it remains the contractual and legal obligation of the developer. The agreement states that if the Rutter 1901 Newport LLC fails to sell the seven units within the timeframe set up within the agreement, they must identify how the units would be brought online, including putting up liquid assets in order to follow through. If the project did not get built, the inclusionary obligations would not come into play. The inclusionary obligations come into play solely because market units are built on a portion of the project area that was added to the project area post 1976. If Rutter 1901 Newport LLC received the entitlement but the project was never funded and constructed, there would be no inclusionary housing obligations. Inclusionary housing is triggered by the actual construction of units.

Ms. Somers asked they go back to her original question. She asked Special Counsel Brady if she was talking about the entire project being finished and the developer not being able to sell the seven units.

Special Counsel Brady reiterated the project could not be finished without selling the seven inclusionary housing units.

Ms. Somers asked Special Counsel Brady if she was talking about preemptive sales of the seven units without actually having them on-site.

Special Counsel Brady responded Rutter 1901 Newport LLC would not get a certificate of occupancy for any unit in the last phase unless and until the seven inclusionary housing units are sold to affordable buyers.

Ms. Somers added the units would be sold as “ghost” buildings that were not built yet but were going to be preemptive sales.

Special Counsel Brady responded no.

Ms. Somers stated she did not understand what Special Counsel Brady was explaining. She asked if the whole project had to be done and the seven units sold before a certificate of occupancy is issued for the last phase of the project.

Special Counsel Brady responded the seven units were in the last phase.

Chairperson Steel intercepted the discussion and told Ms. Somers and Special Counsel Brady that if they wanted to take up the discussion afterwards that would be fine.

Ms. Somers stated to Chairperson Steel that what she was asking was a key element that needed to be answered because the City was responsible for \$1.5 million dollars for a project that might not sell.

Chairperson Steel told Ms. Somers that she obviously was not satisfied with Special Counsel Brady’s answer. He asked Staff if there was anyone who could give Ms. Somers a better answer.

Dave Eadie of 1901 Newport LLC, stated that Rutter 1901 Newport LLC has to build the last phase and will not receive certificates of occupancy until the seven units, within the last phase, are sold. There will be a number of units that will not have a certificate of

occupancy until the seven units are physically built and sold.

Special Counsel Brady added the escrow for the seven units also had to be closed.

Ms. Somers stated she understood that and asked what would happen if the units did not sell?

Mr. Eadie said he thought the answer he gave was very good.

Ms. Somers said it did not answer her question at all. She was asking what would happen to the City and the City's responsibility of the \$1.5 million dollars if the units are built but do not sell because there was not a market for people to purchase them at the selling price?

Special Counsel Brady responded the City would not have spent any money at that point in time. The money is only paid directly to the moderate buyer as a \$127,500 dollar loan. That money would come out of escrow and go to the actual developer because they were the seller. However, if the units do not sell, the City would not have spent any of the Agency's money. If the units did not sell at all, there is a provision in the agreement where the Agency can negotiate with the developer how he is going to put the twelve units, not just the seven, preferably as rental units but could be rental or owner occupancy, somewhere else. Whether it is in the project area or if it is outside the project area, but within the City limits, then it would be 24 units. That remains the contractual and legal obligation of the developer. Legally, financially, wholly theirs unless and until the seven units are sold and closed escrow with actual buyers.

Ms. Somers said that answered her question.

Martin Millard, 973 Harbor Boulevard, No. 264, Costa Mesa, opined that putting low-income condominiums in this project was not practical. He thinks the developer will want to put the affordable units some place else in the City. He thought the Agency as a body, should consider where the affordable units should be located. He suggested the developer could perhaps purchase property on Shalimar and build low-income senior housing.

An unidentified woman asked why there was no affordable housing in Costa Mesa now and if not built within the project, how would more units be found in Costa Mesa and not necessarily on Shalimar?

Chairperson Steel asked Neighborhood Improvement Manager if she wanted to answer the question.

Neighborhood Improvement Manager responded that normally developers work with realtors to find market-rate or substandard apartments. After appearing before the Agency, a gap analysis is done to determine the cost to build the units as a market rate project versus the cost as an affordable project. That is where the Agency's assistance comes in. You either have to do new construction which is difficult in Costa Mesa, or you have to find substandard, under utilized units for sale and make them affordable.

The unidentified woman stated she thought substandard implied that Costa Mesa had substandard citizens. With a big development like the 1901 Newport Plaza Residences in Costa Mesa, why shouldn't everyone be there?

James Lusk, 1005 Begonia, Costa Mesa, began to address the Agency and Chairperson Steel told him he had already spoken.

Mr. Lusk responded that the issue of noise intrusion had been brought up.

Chairperson Steel allowed Mr. Lusk to continue.

Mr. Lusk said he was hyper-sensitive to noise intrusion. He asked how far into other areas would be a noise intrusion because there was a requirement that he has quiet use and enjoyment of his property. He also asked how far the noise intrusion from this project would extend into areas that are not specific, on campus to the project.

Chairperson Steel asked Staff if anyone could answer Mr. Lusk's question.

Executive Director Lamm reiterated and clarified the subject was not the approval of the 1901 Newport Plaza Residences project. The project had been approved, designed and entitled; therefore, it could not be overturned or appealed. The subject tonight was the affordable housing agreement between the Agency and Rutter 1901 Newport LLC as to whether or not they would provide the future seven residential housing subsidies and the five off-site units. The issue of noise he could not even get into.

Mr. Lusk commented he did not expect the Agency to get into the issue of noise intrusion but he expected the developer to extend it into his plan. He suspected the developer had already capitalized the 24 units outside the plan and he did not think anyone was convinced that the seven units would be sold inside the project. He was optimistic that the sound intrusion from the organization was going to extend into the residential areas and as a developer, Rutter 1901 Newport LLC would be responsible for that quiet enjoyment and private use of his property under California State Law.

Chairperson Steel closed the item for public comments.

MOTION

Agency Member Monahan made a motion to adopt Resolution No. 03-2004 approving the affordable housing agreement by and between the Redevelopment Agency and Rutter 1901 Newport LLC and authorize the Chairperson, Executive Director and Agency Secretary to execute the agreement including minor modifications which are in substantial conformance with the form of the agreements submitted in the report and approve Budget Adjustment #04-001 transferring funds from the First Time Home Buyer Program and the Redevelopment Agency Low-Mod set-aside fund to the legal expenditures account for the 1901 Newport Plaza project. Agency Member Cowan seconded the motion.

**Approved
Carried**

The motion carried 3-2, Chairperson Steel and Vice-Chairperson Mansoor voting no.

Amendment to 1999-2004 Implementation for the Downtown Redevelopment Plan to Include Inclusionary Housing Provisions and Inclusionary Housing Plan for the 1901

Management Analyst Veturis reported the 1901 Newport Plaza project did have statutory requirements. The project had been approved with revisions from a 161-unit to a 145-unit condominium project on January 20, 2004. With the recent approval of the affordable housing agreement, both requirements triggered inclusionary housing requirements. The 78 units that are part of the project will be on Redevelopment property that was adopted after January 1, 1976; therefore, of those 76 units, 15% or 12 affordable units, were required to be built. Forty percent of the 12 affordable

**Newport Plaza
Residences Project**

units or 5 units, were required to be for very-low income households and the remaining (7 units) were for low-moderate income households. With the affordable agreement in place and all the revisions, it is necessary to amend the implementation plan for the project and the inclusionary housing plan that were previously adopted. Two actions needed to take place for consistency – the Agency resolution approving the amended 1999-2004 Implementation for the Downtown Redevelopment area, and also the Agency resolution approving the amended Inclusionary Housing Plan for the 1901 Newport Plaza Residential project.

Chairperson Steel asked if there were any questions or discussion from Staff and opened the item for public comment.

PUBLIC COMMENT

Martin Millard, 973 Harbor Boulevard, No. 264, opined the developer would most likely be looking outside the project to meet the 12-unit requirement. If he understood the law correctly and the developer went outside the Redevelopment area, the developer would have to come up with double the number of units. With that in mind, it seemed to him the Agency should be considering the Redevelopment extension that was now being considered along 9th Street and expanding it into some residential areas because that was where the affordable units might have to come from.

Heather Somers, 313 Robin Hood Lane, Costa Mesa, asked what guarantee was there regarding the closure of the legal suit against the City and against the Costa Mesa Citizens for Responsible Growth.

General Counsel Wood responded the City Council had the discretion to extend the deadline or in the event the project was approved, which appeared certain, the deadline would not have to be extended. He expected the developer to file the dismissal by the deadline date of Thursday, June 17, 2004

Ms. Somers said as of this moment, there were still no guarantees that the lawsuit would be dismissed with the action.

General Counsel Wood explained if the lawsuit was not dismissed, based on a condition regarding said dismissal, the approval of the Master Plan would be nullified. Therefore, if the developer did not file the dismissal, there would be no project.

In response to Ms. Somers' inquiry, William Ross, Attorney for Rutter 1901 Newport LLC, pointed out there was a legal obligation both in the entitlement, which was a condition of the entitlement and the project, a substantive condition. He referred to Section 310.2 of the affordable housing agreement that utilized mandatory terms, from the law, concerning the dismissal obligation. He did not know what else, under the laws of the State of California, could be more certain than that.

Judi Berry, 2064 Meadowview Lane, Costa Mesa, said she was confused because earlier when she asked about Section 310, she thought it did not apply to the current lawsuit and that the current lawsuit was going to be dealt with later in the Agenda. She had asked if Section 310 applied to the current lawsuit or future lawsuits.

Special Counsel Brady responded there were multiple sub-parts to Section 310. One dealt with the future and one dealt with the existing.

Mike Berry, 2064 Meadowview Lane, Costa Mesa, also requested clarification as his understanding was the affordable housing agreement was being signed without receiving assurance that the developer would not take action. The City's protection would be, if Rutter 1901 Newport LLC chooses not to sue the City of Costa Mesa, to go forward with the project. However, if the developer chooses to sue the City of Costa Mesa, they will have to give up all ownership to the land and we will be back where we started. If the latter occurs, the City would still be sued by the developer only this time, for more money.

Robin Leffler, 3029 Samoa, Costa Mesa, thanked Special Counsel Brady for clarifying Section 310 of the affordable housing agreement and asked if Special Counsel Brady would point out where, on the agreement, the current situation was covered.

Special Counsel Brady quoted Section 310.1 "in conjunction with the foregoing covenant not to sue, the developer agrees to execute a settlement agreement with mutual releases and waivers in a form mutually agreeable between the City Attorney and the developer's Counsel, prior to and in connection with the developer's affirmative obligation to file a dismissal, with prejudice, of the pending litigation which is a condition of approval in the entitlement, which dismissal shall be cause to be filed with the Superior Court, County of Orange, within the timeframe required by the entitlement and pursuant to the settlement agreement."

Ms. Leffler asked if that meant the lawsuit would be concurrent.

Special Counsel Brady confirmed it would be concurrent by Thursday, June 17, 2004, unless the Agency, as City Council, extended the deadline.

MOTION

Agency Member Monahan made a motion to approve Resolution No. 04-2004 amending the 1999-2004 Implementation Plan for the Downtown Redevelopment Plan, as well as, approving Resolution No. 05-2004 amending the Inclusionary Housing Plan for the 1901 Newport Plaza Residences. Agency Member Scheafer seconded the motion.

Vice-Chairperson Mansoor asked Executive Director Lamm if all the inclusionary housing was in one segment of the development or if it was scattered throughout the development.

Executive Director Lamm responded the inclusionary housing was within one physical location.

Heather Somers, 313 Robin Hood Lane, Costa Mesa, requested clarification regarding the inclusionary units and asked if they would all be in one particular section.

Special Counsel Brady confirmed Ms. Somers' comment.

Ms. Somers asked if all of the low and low-mod housing would all be in one section as well.

Special Counsel Brady responded the affordable units were in Phase 5 of the project, which included both market and affordable but all of the seven affordable units were in Phase 5.

Ms. Somers said that went against the covenants because it stated very clearly in the environmental impact review that the affordable units were to be scattered throughout the entire project.

Special Counsel Brady explained part of the action before the Agency, within the inclusionary housing plan, was to allow the units to be placed in Phase 5.

Ms. Somers added that now Phase 5 was all one section.

Special Counsel Brady agreed and said the statute did allow the units to be located in one location as long as it is a part of the inclusionary housing plan and considered in an open meeting such as this.

Ms. Somers began to ask about the particular design of Phase 5.

Agency Member Monahan addressed Chairperson Steel and told him there was a motion on the floor and the project had already been approved.

Ms. Somers addressed Chairperson Steel and said she needed clarification and deserved to have an answer.

Chairperson Steel allowed Ms. Somers to ask her question and asked Special Counsel Brady to respond. He also instructed Ms. Somers that if she had any further questions, she was to take it up with Ms. Brady afterwards, as there was a motion on the floor.

Special Counsel Brady responded there was an affirmative covenant in the affordable housing agreement that required the developer to construct and develop the affordable units in the same qualities, amenities, construction and design as the market units. The affordable units were anticipated to be Plan A-type, two bedroom condos. Plan A units are affirmatively required to be market units, same as the affordable. The developer cannot "value engineer" the affordable units to be of lesser quality than the market units.

Ms. Somers asked if the Plan A units would be scattered throughout the project.

Special Counsel Brady responded her understanding was yes.

Due to a motion on the floor, Chairperson Steel closed the public comment.

**Approved
Carried**

Motion carried, 3-2. Chairperson Steel and Vice-Chairperson Mansoor voting no.

Chairperson Steel turned the meeting over to Mayor Monahan for City Council Action on Old Business Item V3.

Extend deadline for dismissal of lawsuit entitled Rutter Development Corp. v. City of Costa to some later date regarding 1901 Newport Plaza

General Counsel Wood reported the City Council's approval of the Master Plan for the project last January, imposed a condition (Number 17C) that the pending lawsuit be dismissed within 105-days of the effective date of the ordinance. If the dismissal is not filed, the approval of the project for the Master Plan would be nullified and the project would not go forward.

Mayor Monahan asked if anyone wanted to speak regarding the item.

Robin Leffler, 3029 Samoa, Costa Mesa, representing Costa Mesa Citizens for Responsible Growth (CMCRG), asked when the effective date of the ordinance was.

Agency Attorney Wood responded it was 30 days after February 2, 2004, which was the date of the second reading of the ordinance.

Ms. Leffler stated she was not comfortable with things being left open-ended. If there was no extension, they would know in a couple days if there was a lawsuit or not. It concerned her that an approval was given to the developer without holding them accountable to drop the lawsuit.

Wendy Leece, 1804 Capetown, Costa Mesa, agreed with Ms. Leffler. She felt the developer had been granted his request. If the Agency kept their word, there was no need to grant an extension.

MOTION

Council Member Cowan moved not to extend the deadline and that it remain June 17, 2004, for the dismissal of the lawsuit. Council Member Schaefer seconded the motion.

**Approved
Carried**

Motion carried 5-0.

Mayor Monahan turned the meeting back to Chairperson Steel.

NEW BUSINESS

None

REPORTS

Executive Director

None

Agency Attorney

None

**Warrant Resolution
CMRA-324.**

On a motion by Agency Member Cowan, seconded by Agency Member Scheafer, Warrant Resolution CMRA-324 was approved.

**ORAL
COMMUNICATIONS**

Martin Millard, 973 Harbor Boulevard, No. 264, Costa Mesa, suspects the developer is not going to be able to put the affordable housing in the project because it is going to cause all kinds of dissention with the Homeowners group. Therefore, the developer is going to look outside the project. In order to look outside the project and unless the City wants additional low-income housing, there needs to be a Redevelopment zoned area where the developer can build 12 units and not 24 outside of it. He suspects the Agency is going to go down 19th Street, over to Vista Center which does not encompass any residential property. He felt the Redevelopment area should be extended towards Placentia to include residential areas, which would allow the developer to purchase properties and put in low-income home ownership. He felt the rental units should be acquired and included in the Redevelopment zone.

Robin Leffler, 3029 Samoa, Costa Mesa, Vice-President of Costa Mesa Citizens for Responsible Grown (CMCRG) said she appreciated the hours and accessibility of staff and the way things were patiently explained, especially by Special Counsel Brady, as well as the hours City Manager Roeder put in. Although at times she sharply disagreed with staff, she respected everyone for serving.

Paul Flanagan, 3090 Bali Circle, Costa Mesa, spoke in support of Ms. Leffler's statement. Everyone was very helpful and honest and he appreciated it very much, especially Special Counsel Brady.

Agency Member Monahan thanked the members of the Costa Mesa Citizens for Responsible Growth (CMCRG) for coming to the table and keeping their patience though originally they were opposed to the project, members of Staff who put in hundreds of hours to get to this point. The attorneys who had to “fight it out” and the developer, as well as, the public who put up with the negotiation process. If they had not come to a conclusion, they would be in Court and the alternative would be worse for everybody. It would have been no project with a lot of legal fees or it would have been a project with 161 units which is not what they finally ended up with. He passed his thanks to everyone involved and thanked God that it was finally put to bed.

Chairperson Steel echoed Mayor Monahan’s comments and added that Mr. Millard’s suggestions and comments should be noted by Staff and possibly looked into further.

ADJOURN

There being no further business for discussion, Chairperson Steel adjourned the Special Joint Meeting at 7:35 p.m.