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May 4, 2007

Laurel Prevetti
Deputy Director
Planning, Building & Code Enforcement
200 East Santa Clara Street
San Jose, CA 95113

Re: Funding Agreement – San Jose/Evergreen Community College District
Comments

Dear Laurel:

As we have discussed, the San Jose/Evergreen Community College District will not have an opportunity to review and consider the latest draft of the Funding Agreement which was released on May 2, 2007, until after the May 15th City Council meeting. However, in order to facilitate the review and consideration of the latest draft of the Funding Agreement (“Agreement”) I have the following comments:

1. After funding the Amenity monies to be paid by the developers in Phases I and II, whatever that amount is determined to be, there should be no further requirement for Amenity Funds to be paid in order to begin construction of any affordable housing units. This change will allow the affordable housing to be constructed expeditiously.
2. Market rate housing at the College Site should be allowed to begin as soon as that portion of the Amenity Funds that is ultimately determined to be allocable to the College Site have been paid. This is necessary because the College District’s portion of those funds will be less than the amount of funds required for any single Phase as set forth in Exhibit E. Without this change, the College project would not be able to go forward unless other developers were also moving forward with their project.
3. Section 1.02. The second sentence should be modified to read “after the Phase I and II contributions.”
4. Section 2.01. The last sentence needs to be rewritten to reflect the intention of the parties. It is currently unintelligible.

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5. Section 2.02. It is my understanding that all of the transportation improvements described in Section 2.02(A) through (F) are intended to be the "Base Transportation Improvements" that are referred to in Phase II of Exhibit E. However, I cannot find a reference for a definition of Base Transportation Improvements. The transportation improvements referred to herein should be defined as such.

6. Section 2.02(A)(1) – second paragraph. I do not believe this language is consistent with the understanding of the parties with regard to timing of funding of Phase I and Phase II. It is my understanding that applications for rezoning, maps and other land use entitlements will be processed but that the first building permit will not be issued until the full amount of Amenity Funds due under Phase II has been received by the City.

7. Section 2.02(1). Throughout this section, there are several references to the Property Owners funding, constructing and completing improvements. My understanding is that the Property Owners will deliver funds to the City and that the City will be responsible for funding, constructing and completing all improvements described therein.

8. Section 3.02. In order to make this Section consistent with the provisions of the Evergreen Development Policy, I suggest adding the following language to this section which repeats some of the language in the Evergreen Development Policy. Add the following: "The Property Owners shall enter into a parkland agreement that will require the satisfaction of their respective parkland obligations cumulatively rather than on a project-by-project basis. Entering into said cumulative parkland agreement, will be required as part of the first phase of development."

9. Section 4.02. As you know, the College District has not yet agreed to dedicate two (2) acres to the City for the library. There is nothing in the December 12, 2006 memorandum from the councilmembers which requires frontage property. Any public utilities necessary for the site would be at the cost of the City. The College District will be happy to discuss this issue further with the City.

10. Section 5.02. I am unclear as to what "development rights" are being referred to. Please clarify. Failure to obtain adequate commercial development rights should also be a ground for nullifying the Agreement.

11. Section 5.03. The Agreement should be voidable by the College District as to the College District's obligations therein if the College District does not receive satisfactory entitlement approvals.

12. Section 6.02. Notification should be within thirty (30) days.

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13. Section 6.03. Delete this section. It is no longer necessary based on current discussions.

14. Section 6.05(A). This section should be clarified to state that each Property Owner will only be responsible for any such claims arising on its land.

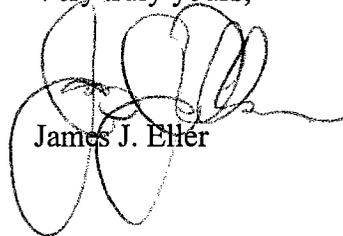
15. Section 6.05(B). This section should be simplified and modified to read as follows: "Each Property Owner shall require in any agreement to as sign or transfer all or any portion of its rights, duties, obligations or interest in this Agreement in connection with an assignment or transfer of all or any portion of the undeveloped Opportunity Sites, that any such assignee or transferee ("Transferees", each a "Transferee") agree to be bound by the provisions of Section 6.05(A) herein.

16. Exhibit E. With regard to the Pool Units, you must define the "Start of Construction".

17. Exhibit E. The reference to construction cost increases should be clarified to be consistent with the provisions of Section 3.01 which provides that the construction costs will be increased beginning 2008. Such increase would reflect an annual increase not a two (2) year increase from 2006.

As we have discussed, there have been a couple of recent additions by the City to the College District's proposed project which makes the project overburdened economically. The College District intends to discuss with the City various ways to define the project in a way which is acceptable to the College District and the City. Please do not hesitate to contact me if you have any questions regarding any of the above.

Very truly yours,



James J. Eller

14860

cc: Developer Group