

City of Calistoga

Staff Report

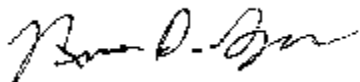
TO: Honorable Mayor and City Council

FROM: Ken MacNab, Planning and Building Manager

DATE: July 17, 2012

SUBJECT: Vineyard Oaks Subdivision Project - Development Agreement Amendment

APPROVAL FOR FORWARDING:



Richard D. Spitler, City Manager

1
2 **ISSUE:** Consideration of an Ordinance amending the approved Development
3 Agreement for the Vineyard Oaks Subdivision project to extend the term of the
4 agreement to July 18, 2014 and to change the timeframe for payment of required
5 development impact fees.

6
7 **RECOMMENDATIONS:** Introduce Ordinance and waive first reading.

8
9 **BACKGROUND:** On June 3, 2008, the City Council approved the Vineyard Oaks
10 Subdivision project to subdivide approximately 18 acres of land into 15 single-family lots
11 located at 2400 Grant Street. On June 17, 2008, the City Council adopted Ordinance
12 No. 652 authorizing the execution of a Development Agreement between the City and
13 the owners of the subject properties (Ira and Lois Carter) and the project applicant
14 (BNK, LLC) of the Vineyard Oaks Subdivision Project. The term of the Development
15 Agreement is for a period of (5) years from the effective date.
16

17 On April 21, 2009, the City Council approved an amendment to the executed
18 Development Agreement, specifically Exhibit F (Special Public Benefits) and Exhibit H
19 (Utility Capacity Allocation and Connection Fees), amending the timeframe for the
20 payment of fees for the project. A copy of the Development Agreement and First
21 Amendment to the Development Agreement is provided in Attachment 5.

22
23 On May 7, 2012, a formal request was submitted by Ira and Lois Carter to extend the
24 term of the approved Development Agreement for the Vineyard Oaks Subdivision
25 project and to modify provisions of the agreement regarding payment of required
26 development impact fees (Attachment 6). This request is the result of BNK, LLC (the
27 project developer) no longer having any relationship with the project. The Carter's are
28 currently looking for a new developer to purchase the property and build the project.

29
30 On May 23, 2012, the Planning Commission held a public hearing to consider the
31 Carter's request. After receiving a staff report and oral and written testimony from the
32 public, the Planning Commission passed a Resolution recommending that the City
33 Council approve the requested amendments to the

34
35 **DISCUSSION:** The property owner is requesting to amend the approved Development
36 Agreement to: (1) extend the term of the agreement until July 18, 2014 as allowed
37 pursuant to Section 2.02 of the agreement; (2) amend the timeframes stipulated in the
38 Development Agreement for payment of affordable housing fees and water and
39 wastewater connection fees; and (3) allow for possible renegotiation of the stipulated
40 affordable housing, water and wastewater connection fees.

41
42 The approved Development Agreement for the Vineyard Oaks Subdivision project sets
43 forth the amount and timeframe for payment of affordable housing in-lieu fees, water
44 and wastewater connection fees (see Table 1 below). A portion of each fee is required
45 to be paid within 180 days of the date of recordation of the Final Subdivision Map for the
46 project. The remaining portion of each fee is due to paid in full on the earlier of (1)
47 issuance of a building permit for home construction, or (2) the four year anniversary of
48 the Effective Date of the Development Agreement (July 18, 2012).

49
50 TABLE 1 – SCHEDULED IMPACT FEE PAYMENTS
51

Fee Category	Fee Amount	DA Reference
Affordable Housing	\$600,000.00	Section 4.01
Water Connection Fee	\$327,073.50	Section 5.03
Wastewater Connection Fee	\$608,219.82	Section 5.03
TOTAL:	\$1,535,293.32	--

52
53 The Final Subdivision Map for the project has not been approved by the City or
54 recorded, and no building permits have been issued for home construction on any lot

55 within the subdivision. Per the terms of the current Development Agreement, payment
56 of the fees listed in Table 1 above is due in full on July 18, 2012.

57
58 As stated in the letter from the Carter family, payment of these fees by the four year
59 anniversary date is problematic because the original developer (BNK LLC) is no longer
60 involved with the project and the family is in the process of attracting a new buyer to the
61 property. The Carter's are interested in deferring payment of these fees until the
62 property is under new ownership and the Final Subdivision Map for the project is
63 recorded. The Carter's have also indicated that due to changes that have occurred in
64 the housing market they would like the new owner/developer of the property to have the
65 option of renegotiating the stipulated fee amounts with the City.

66
67 The Planning Commission and staff are supportive of the owner's request to extend the
68 term of the approved Development Agreement and the timeframes for payment of
69 development impact fees. The Planning Commission and staff recognize that changes
70 have occurred in the local, state and national housing markets since the project was
71 approved in 2008 and understands the necessity of allowing the new owner/developer
72 of the project to the option to renegotiate stipulated impact fee amounts. Therefore, the
73 Planning Commission and staff are recommending the following (see Attachments 2
74 and 3 for additional detail):

75
76 Term of Agreement
77
78 1. Grant the request to extend the term of the agreement to July 18, 2014.

79
80 Timeframe for Payment of Fees
81
82 2. Amend Section 1 of Exhibit F (Special Public Benefits) of the Development
83 Agreement to eliminate the "four year anniversary date" provision and stipulate
84 that after the initial affordable housing in-lieu fee payment of \$100,000 is made
85 within 180 days of the date of recordation of the Final Subdivision Map, the
86 remaining \$500,000 (plus accrued interest) shall be paid prior to issuance of a
87 building permit for home construction on each lot.

88
89 3. Amend Sections 1 and 2 of Exhibit H (Utility Capacity Allocation and Connection
90 Fees) of the Development Agreement to eliminate the "four year anniversary
91 date" provision and stipulate that after the initial payment of 25% of the total
92 water and wastewater connection fee is made within 180 days of the date of
93 recordation of the Final Subdivision Map, the remaining 75% of the total water
94 and wastewater connection fee (plus accrued interest) shall be paid prior to
95 issuance of a building permit for home construction on each lot.

96
97 With regard to future renegotiation of stipulated development impact fees, Section 10.07
98 of the Development Agreement (Amendment) establishes provisions for amendment of
99 the Agreement. The new owner/developer of the property may request an amendment

100 to the fee amounts stipulated in the approved Development Agreement at any time
101 during the Term of the Agreement in accordance with procedures set forth in
102 Government Code Section 65868 and Calistoga Municipal Code Chapter 17.39
103 (Development Agreements).

104
105 **ENVIRONMENTAL REVIEW:** In accordance with the California Environmental Quality
106 Act (CEQA) and its Guidelines, a Mitigated Negative Declaration was prepared and
107 adopted by the City Council for the Vineyard Oaks Subdivision Project on June 3, 2008.
108 No changes to the approved project are being proposed as part of this request.
109 The request to amend the approved Development Agreement has been reviewed
110 pursuant to the California Environmental Quality Act (CEQA). Section 15061(b)(3), the
111 “general rule” exemption, states that where it can be seen with certainty that there is no
112 possibility that the activity in question may have a significant effect on the environment
113 the activity is not subject to CEQA. It has been determined that the activity in question,
114 a request to extend the term of the Development Agreement for one additional year (as
115 provided for in the current Agreement) and amend the Development Agreement to defer
116 scheduled payment of certain development impact fees, will not have any impact on the
117 environment and therefore is exempt from CEQA under the general rule.

118
119 **FISCAL IMPACT:** Long-term fiscal impacts and economic benefits to the City of
120 Calistoga associated with implementation of the proposed project in terms of increased
121 revenue production (sales tax, property tax, development impact fees and processing
122 fees) and special benefits to the City are still maintained with approval of the proposed
123 Development Agreement amendment.

124
125 **ATTACHMENTS:**

- 126
127 1. Draft Ordinance No. XXX
128 2. Draft Ordinance Exhibit A
129 3. “Track-Changes” version of Exhibit A
130 4. Vineyard Oaks Subdivision Development Agreement
131 5. Correspondence from Ira and Lois Carter dated May 1, 2012
132 6. Site Vicinity Map
133 7. Approved Tentative Subdivision Map
134 8. Draft Second Amendment to Development Agreement

135

DRAFT ORDINANCE NO. XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, AMENDING THE DEVELOPMENT AGREEMENT (DA 2007-02) FOR THE VINEYARD OAKS SUBDIVISION PROJECT (MITIGATED NEGATIVE DECLARATION, TENTATIVE TRACT MAP 2007-02 AND DESIGN REVIEW 2008-01), A 15-LOT RESIDENTIAL SUBDIVISION LOCATED AT 2400 GRANT STREET WITHIN THE "RR", RURAL RESIDENTIAL ZONING DISTRICT. (APN 011-010-057)

1 **WHEREAS**, on June 3, 2008, the City Council adopted a Mitigated Negative
2 Declaration and approved required planning actions associated with the Vineyard Oaks
3 Subdivision project. These planning actions included a Tentative Tract Map and Design
4 Review to subdivide approximately 18 acres of land into 15 single-family lots. On June
5 17, 2008, the City Council adopted Ordinance No. 652 authorizing the execution of a
6 Development Agreement between the City and the owners of the subject property Ira
7 and Lois Carter and BNK, LLC for the Vineyard Oaks Subdivision Project ("Development
8 Agreement"); and
9

10 **WHEREAS**, on April 21, 2009, the City Council adopted Ordinance No. 657
11 approving the first amendment to the Development Agreement between the City and the
12 owners of the subject properties Ira and Lois Carter and BNK, LLC for the Vineyard
13 Oaks Subdivision Project; and
14

15 **WHEREAS**, the City has been informed by the property owners, Ira and Lois
16 Carter, that neither BNK LLC nor any of the principal partners of BNK LLC have any
17 further relationship with the Vineyard Oaks Subdivision project; and
18

19 **WHEREAS**, the property owners, Ira and Lois Carter, have submitted a request
20 to the City of Calistoga to extend the term of the Development Agreement to July 18,
21 2014 and to amend the timeframe for the payment of Special Public Benefit and Utility
22 Capacity Connection Fees for the project set forth in the Development Agreement; and
23

24 **WHEREAS**, adoption of this Development Agreement amendment will not
25 conflict with any other appropriate ordinance and to the extent such conflict exists, this
26 ordinance is hereby repealed;
27

28 **WHEREAS**, the Planning Commission held a duly noticed public hearing on the
29 ordinance on May 23, 2012, and adopted Resolution PC 2012-15 forwarding a
30 recommendation that the City Council approve the ordinance; and
31

32 **WHEREAS**, the City Council of the City of Calistoga has reviewed and
33 considered this ordinance at regular meetings on June 19, 2012 and July 17, 2012,
34 noticed in accordance with state and local law, and which included written and oral staff
35 reports, proposed findings and comments received from the general public and
36 interested agencies and parties; and
37

38 **WHEREAS**, this action has been determined to not be subject to the California
39 Environmental Quality Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines;
40 and

41
42 **WHEREAS**, the City Council adopted the following findings with the introduction
43 of an Ordinance:

- 44
45 1. The City Council duly adopted Ordinance No. 547 enacting procedures
46 for entering into development agreements.
47
48 2. The Development Agreement is a contract negotiated and entered into
49 voluntarily between the City of Calistoga and the owners of the subject
50 property (Ira and Lois Carter), Developer of the Vineyard Oaks
51 Subdivision.
52
53 3. The Development Agreement furthers the public health, safety and
54 general welfare and is consistent with the General Plan and that there is
55 no applicable specific plan. City and Developer have further determined
56 that the Project is a development for which the Development Agreement
57 is appropriate. The Development Agreement eliminates uncertainty
58 regarding Existing Project Approvals and Subsequent Project Approvals,
59 thereby encouraging planning for, investment in and commitment to
60 development of the Property. Continued use and development of the
61 Property in accordance with the Development Agreement is anticipated to
62 provide substantial benefits and contribute to the vitality of the City,
63 thereby achieving the goals and purposes for which the Development
64 Agreement Statute was enacted.
65
66 4. The Development Agreement contains conditions and obligations relating
67 to the performance stated in the resolution(s) approving the project.
68
69 5. That the project known as Vineyard Oaks Subdivision is a project of
70 significance to the community and upon the community of Calistoga and
71 for that reason a development agreement is a proper use of the City's
72 authority to secure the project benefits for the community.
73

74 **NOW, THEREFORE, THE CALISTOGA CITY COUNCIL DOES HEREBY**
75 **ORDAIN AS FOLLOWS:**

76
77 **SECTION ONE:**
78

79 The Term of the Development Agreement is hereby extended for one additional
80 year beyond the Initial Term identified in Section 2.02(A) of the Development
81 Agreement.
82

83 **SECTION TWO:**
84

85 Based on the above findings and the conditions and obligations the City Council
86 adopts this Ordinance to amend the Development Agreement, specifically Exhibit F
87 Special Public Benefits and Exhibit H Utility Capacity Allocation and Connection Fees to
88 amend timelines for payment of certain fees.

89 **SECTION THREE:**

90
91 The City Council hereby adopts an amendment to the Development Agreement
92 for the Vineyard Oaks Subdivision Project to incorporate the modifications in
93 substantially the same form as set forth in Exhibit A, attached hereto and incorporated
94 herein by reference, and authorizes the City Manager to execute the second amendment
95 to the Development Agreement upon the effective date of this Ordinance.

96
97 Upon execution of the second amendment to the Development Agreement by all
98 parties, the City Clerk is hereby directed to record the first amendment to the
99 Development Agreement with the Napa County Recorder's Office.

100
101 **SECTION FOUR:**

102
103 If any section or portion of this ordinance is for any reason held to be invalid
104 and/or unconstitutional by a court or competent jurisdiction, such decision shall not affect
105 the validity of the remaining portions of this ordinance.

106
107 **SECTION FIVE:**

108
109 **THIS ORDINANCE** shall take effect thirty (30) days after its passage and before
110 expiration of fifteen (15) days after its passage, shall be published in accordance with
111 law in a newspaper of general circulation published and circulated in the City of
112 Calistoga.

113
114 **THIS ORDINANCE** was introduced with the first reading waived at the City of
115 Calistoga City Council meeting of the ____ day of _____ 2012, and was passed
116 and adopted at a regular meeting of the Calistoga City Council on the ____ day of
117 _____ 2012, by the following vote:

118
119 **AYES:**

120 **NOES:**

121 **ABSTAIN: GINGLES, SLUSSER**

122 **ABSENT:**

123
124
125 _____
126 **MICHAEL DUNSFORD, Vice-Mayor**

127 **ATTEST:**

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130 _____
131 **AMANDA DAVIS, Deputy City Clerk**

EXHIBIT A to Ordinance No. XXX

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EXHIBIT F

Special Public Benefits

1. Funds for Affordable Housing.

Chapter 17.08 of the Calistoga Municipal Code, development of the Project requires that twenty percent (20%) of the homes in the subdivision be made available to families of low or moderate income. Alternatively, the Developer may provide other methods of addressing housing needs including a cash payment to the City. An in-lieu payment of Six Hundred Thousand Dollars (\$600,000) shall be made into the Calistoga Affordable Housing Trust Fund. The Developer shall provide \$100,000 of the in-lieu payment to City no later than one-hundred and eighty (180) days from the date of recordation of the Final Subdivision Map. The balance of said in-lieu payment shall be made in equal payments prior to the issuance of a building permit for home construction on each lot resulting from the Project subdivision. Said in-lieu payment shall be secured by a first position lien on each lot until such time as paid in full. The obligation secured by the lien shall provide that interest shall accrue at an interest rate equal to the last quarter annualized Local Agency Invest Fund (LAIF) rate as of the lien date plus two percent (2%). The principal and accrued interest shall be due in full prior to or upon issuance of a building permit for home construction on the lot.

2. Additional Funds for Recreational Purposes.

Chapter 17.10 of the Calistoga Municipal Code requires that prior to Final Subdivision Map approval subdivision of the Property, Three Thousand Dollars (\$3,000) per lot be paid as a Quality of Life fee for the provision of land, structures and physical improvements for cultural and recreational purposes. No later than one-hundred and eighty (180) days from the date of recordation of the Final Subdivision Map, Developer shall pay to the City an additional sum of Eight Hundred Thousand Dollars (\$800,000) to be used for recreational purposes.

3. Grant Street Improvements.

The developer shall pay the City the full costs of the Grant Street improvements made by City. Said payment is estimated to be \$200,000 to the City for the full cost of Grant Street reconstruction (the segment from Mora Avenue to Garnett Creek Court). Actual costs shall be determined by the City following the completion and acceptance of the work by City. City shall provide reasonable accounting of all costs to Developer. Developer shall pay Grant Street Improvement costs in full no later than one-hundred and eighty (180) days from the date of recordation of the Final Subdivision Map.

43 **EXHIBIT H**

44 **Utility Capacity Allocation and Connection Fees**

45
46
47 1. Water Allocation and Connection Fees.

48
49 The City shall reserve 9.75 acre feet of potable water for the Project. This allocation shall
50 be assigned in equal portions to the resulting lots for home construction.

51
52 The water connection fee for the Project shall be set at the rate in effect at the time of the
53 approval of the Final Subdivision Map. Twenty-five percent (25%) of the total fee for
54 the lots shall be paid no later than one-hundred and eighty (180) days from the date of
55 recordation of the Final Subdivision Map. The balance of the water connection fees shall
56 be allocated in equal shares to each residential lot. Upon recordation of the Final
57 Subdivision Map, a lien subordinate only to other City liens shall be recorded against
58 each lot securing payment of the remaining seventy-five percent (75%) of the connection
59 fee for that lot. The principal and accrued interest shall be due in full prior to or upon
60 issuance of a building permit for home construction on the lot.

61
62 2. Waste Water Allocation and Connection Fees.

63
64 The City shall reserve 6.21 acre feet of waste water treatment capacity for the
65 development. Said allocation shall be assigned in equal portions to the resulting lots for
66 home construction.

67
68 The waste water connection fee for the Project shall be set at the rate in effect at the time
69 of the approval of the Final Subdivision Map. Twenty-five percent (25%) of the total fee
70 for the lots shall be paid no later than one-hundred and eighty (180) days from the date of
71 recordation of the Final Subdivision Map. The balance of the waste water connection
72 fees shall be allocated in equal shares to each residential lot. Upon recordation of the
73 Final Subdivision Map, a lien subordinate only to other City liens shall be recorded
74 against each lot securing payment of the remaining seventy-five percent (75%) of the
75 connection fee for that lot. The principal and accrued interest shall be due in full prior to
76 or upon issuance of a building permit for home construction on the lot.

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EXHIBIT A to Ordinance No. XXX

TRACK CHANGES VERSION

Additions noted in *italics*, deletions noted in ~~strikeout~~

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EXHIBIT F

Special Public Benefits

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2. Additional Funds for Recreational Purposes.

Chapter 17.10 of the Calistoga Municipal Code requires that prior to Final Subdivision Map approval subdivision of the Property, Three Thousand Dollars (\$3,000) per lot be paid as a Quality of Life fee for the provision of land, structures and physical improvements for cultural and recreational purposes. No later than one-hundred and eighty (180) days from the date of recordation of the Final Subdivision Map, Developer shall pay to the City an additional sum of Eight Hundred Thousand Dollars (\$800,000) to be used for recreational purposes.

3. Grant Street Improvements.

The developer shall pay the City the full costs of the Grant Street improvements made by City. Said payment is estimated to be \$200,000 to the City for the full cost of Grant Street reconstruction (the segment from Mora Avenue to Garnett Creek Court). Actual costs shall be determined by the City following the completion and acceptance of the work by City. City shall provide reasonable accounting of all costs to Developer. Developer shall pay Grant Street Improvement costs in full no later than one-hundred and eighty (180) days from the date of recordation of the Final Subdivision Map.

43 **EXHIBIT H**

44 **Utility Capacity Allocation and Connection Fees**

45 1. Water Allocation and Connection Fees.

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48
49 The City shall reserve 9.75 acre feet of potable water for the Project. This allocation shall be
50 assigned in equal portions to the resulting lots for home construction.

51
52 The water connection fee for the Project shall be set at the rate in effect at the time of the
53 approval of the Final Subdivision Map. Twenty-five percent (25%) of the total fee for the lots
54 shall be paid no later than one-hundred and eighty (180) days from the date of recordation of the
55 Final Subdivision Map. The balance of the water connection fees shall be allocated in equal
56 shares to each residential lot. Upon recordation of the Final Subdivision Map, a lien subordinate
57 only to other City liens shall be recorded against each lot securing payment of the remaining
58 seventy-five percent (75%) of the connection fee for that lot. The principal and accrued interest
59 shall be due in full ~~on the earlier of (1) issuance of a building permit for home construction on the~~
60 ~~lot, or (2) four years from the Effective Date of this Agreement~~ *prior to or upon issuance of a*
61 *building permit for home construction on the lot.*

62
63 2. Waste Water Allocation and Connection Fees.

64
65 The City shall reserve 6.21 acre feet of waste water treatment capacity for the development. Said
66 allocation shall be assigned in equal portions to the resulting lots for home construction.

67
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69 approval of the Final Subdivision Map. Twenty-five percent (25%) of the total fee for the lots
70 shall be paid no later than one-hundred and eighty (180) days from the date of recordation of the
71 Final Subdivision Map. The balance of the waste water connection fees shall be allocated in
72 equal shares to each residential lot. Upon recordation of the Final Subdivision Map, a lien
73 subordinate only to other City liens shall be recorded against each lot securing payment of the
74 remaining seventy-five percent (75%) of the connection fee for that lot. The principal and
75 accrued interest shall be due in full ~~on the earlier of (1) issuance of a building permit for home~~
76 ~~construction on the lot, or (2) four years from the Effective Date of this Agreement~~ *prior to or*
77 *upon issuance of a building permit for home construction on the lot.*