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MEMORANDUM

TO: Midway City Council

FROM: Corbin Gordon

DATE: August 19, 2019

Re: Timeframes in Development and Annexation Agreements

INTRODUCTION

In recent meetings concerns have been raised regarding the length of the term we include in our annexation, master plan, and development agreements. Specifically, concern was raised regarding the grant of a 50 year term in the Homestead Master Plan Agreement.

General consensus has been to reduce the length of the term granted under each agreement. In reviewing each agreement, different timeframes are needed. In annexation agreements, there is no term. The agreement is binding from the moment it is recorded against the property.

On Master Plan and Development Agreements, the term needs to be tied to the recording of a plat. Once a plat is recorded, both agreements become binding in perpetuity. I explain this at more length below in the context of each agreement.

ANALYSIS

I. ANNEXATION AGREEMENTS

Annexation Agreements do not have a term that lapses. This is because we are negotiating with the property owner at the time for a specific type and amount of density and we do not want to have this become renegotiable in the future. For example, the Zenger annexation which recently came before the council seeking higher density than agreed to in the agreement.

Currently the language we use in our annexation agreements is as follows:

Term: This Agreement shall become effective as of the date of annexation of the Annexation Property into the City and shall continue in full force and effect from that time onward.

I do not propose that we change anything with this language.

II. MASTER PLAN AGREEMENTS

The Homestead Master Plan agreement was the impetus of analyzing our current language. The Homestead Master Plan presents unique problems that we can fix in future agreements.

The HMP granted a 50 year term on the agreement. All the developer had to do to vest under the HMP was to apply for the first phase of the development. No requirement was imposed requiring a certain time frame for plat approval or recording. And no requirement was imposed on moving approval forward once application for the first phase was submitted.

As we have learned, the developer gamed the system, applying for approval to meet the technical requirements of the agreement, but then doing nothing. This leaves the City in a situation wherein the developer could come in on year 49 and build the project in accordance with a 50 year old approval. Clearly something we do not want to see again.

We have improved our code since 2007 and now require each phase of a master plan to meet open space requirements, traffic flow requirements, and water requirements so that each phase can stand alone if future phases are not built.

I propose that on master plan agreements we place a requirement that the developer must “record a plat” of the first phase of the development within 5 years of approval of the master plan or they must start over in obtaining master plan approval.

This gives them a line in the sand. They must seek for and obtain approval of phase 1, and record the plat, in order to preserve the agreement. Once the first phase is recorded, the agreement has no expiration date – it is binding forever on the property unless the City chooses to amend it. This places the City in full control and assures that at a minimum the previously approved plan is not going to simply go away.

Allowing expiration of the agreement after the first phase is recorded creates numerous problems that need to be considered. In my opinion, it is unwise to have an expiration date on a partially completed plan. What happens if phase 1 through 3 is built of a 7 phase project? Do we want the plan to simply disappear on the last four phases, and lose all control of what could be built in those phases without any power to protect the first three phases?

It seems wiser to make it clear to the developer that once a plat is recorded within the development the master plan agreement is binding on that property forever and can only be changed if the City allows it. This takes the control away from the developer and places it with the City, which can allow changes if the City feels they are beneficial, but can also refuse to allow changes if it feels it would hurt the City.

III. DEVELOPMENT AGREEMENTS

Development Agreements have historically had a 25-year term, which I feel is unwise. A Development Agreement is designed to address the needs of the development per phase, meaning that it should have the shortest term of all of the agreements.

Once again, a Development Agreement should be tied to the recording of a plat. Once the plat is recorded, just like in the Master Plan agreement, the agreement is binding on the property forever.

Our City code already establishes a one-year window to record the plat in any phase, and the Developer can apply for three additional one-year extensions. I think we need to simply put this language in our development agreements, and we should be good to go.

If the Developer fails to record the plat during the time given, all approvals for that phase go away and the Developer must seek approval again.

The principal here is that the agreement becomes binding in perpetuity once the plat is recorded, and nothing can be changed in the plat unless the City grants approval. The term should only be tied to the time allowed to record the plat. Once the plat is recorded the agreement is binding forever.