



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 09/07/04

AGENDA ITEM 8

WORK SESSION ITEM _____

TO: Mayor and City Council
FROM: Director of Community and Economic Development
SUBJECT: Blue Rock Country Club – Hayward 1900, Inc. (Applicant/Owner) – Request for Second Extension of Precise Development Plan No. 97-120-02 and for an Extension of Vesting Tentative Map Tract 5354

RECOMMENDATION:

It is recommended that the City Council rely on the previously approved environmental documentation and adopt the attached resolution approving a second extension of time within which a building permit application may be accepted.

DISCUSSION:

The City Council unanimously approved an addendum to the Final Supplemental Environmental Impact Report, the Precise Development Plan and the Vesting Tentative Tract Map for Blue Rock Country Club in September 2002. A building permit application is required to be submitted and accepted for processing within one year of the date of approval of a Precise Development Plan; otherwise, the developer may apply for an extension of time within which to submit the application. A maximum of two, 1-year extensions of the Precise Plan may be approved by the City Council. In September 2003, the City Council granted a one year extension, and the applicant is now seeking a second, one-year extension of time. The Vesting Tentative Map was approved for a two-year period, and the applicant is seeking a 36-month extension.

Extension of Precise Plan

In making a decision on approval of an extension of the Precise Plan, the following must be considered:

- The cause for delay in submission of the Precise Development Plan;
- Evidence of the applicant's ability to adhere to the proposed revised development schedule; and
- Whether the approved Precise Development Plan is in conformance with existing development regulations.

The applicant submitted the following information in support of an extension.

Delays were caused by litigation against the parcel, which has been resolved, as follows:

Easement Claims: The HUSD commenced condemnation proceedings over an access easement affecting the school site. This and related actions were resolved in late May 2003.

Hayward Area Planning Association et al. v. City of Hayward (Hayward 1900, Inc., Roman Catholic Bishop of Oakland, East Bay Regional Park District—Real Parties in Interest): This action was brought by HAPA and the Greenbelt Alliance to challenge the precise plan and tentative map approvals under CEQA. The Superior Court in June, 2003 confirmed the validity of the City Council vote on both the precise plan and tentative map. An appeal of the Superior Court resulted in a dismissal of the appeal in April, 2004.

Hayward Area Planning Association et al. v. Norton et al. (Hayward 1900, Inc. as Defendant-Intervenor): This action challenges the project's Section 404 permit issued by the U.S. Army Corps of Engineers based upon the U.S. Fish & Wildlife Service's biological opinion. A written decision was issued on March 29, 2004, upholding, in all respects, the validity of the Section 404 permit and the biological opinion. The plaintiffs filed a Notice of Appeal in the U.S. Court of Appeals on April 7, 2004. In May, the Court of Appeals issued an injunction pending the appeal hearing. A settlement was reached between the parties on June 7, 2004. The appeal, including the injunction, has now been dismissed.

Evidence of the applicant's ability to adhere to the proposed revised development schedule is apparent in that mitigation measures and grading activities have commenced in accordance with a revised schedule. In the fall of 2003 the applicant implemented pond mitigation work to mitigate future impacts of the development of the red legged frog. In addition, installation of over six miles of whipsnake fencing on the property was completed at the end of March, and the whipsnake trapping was completed prior to onset of grading operations.

Plans for grading were submitted in January 2004, and the City Council authorized the issuance of the Phase 1 grading, which began in June. Phase 1 grading has commenced on the school site, parts of Village A and the golf course driving range, the water tank sites, and selected mitigation sites. This will allow building construction for the school, homes and key infrastructure components, such as the new municipal water tanks. Phase 2, mass grading of the rest of the project, is planned to commence in the spring of 2005.

With respect to the school construction, the state has approved the plans and the HUSD has already received a portion of the state funding. It is expected that construction of the 650-student school building will commence in April or May, 2005, with a currently planned opening date for the fall of the 2006 school year.

With respect to consistency with the development regulations, the project is subject to the terms of the development agreement. There have been no changes proposed in the project since the 2002 Precise Plan and Tentative Map Approvals. The Precise Plan conforms to the development agreement and all applicable development regulations.

Vesting Tentative Map Extension

The City Council approved the Tentative Map and Precise Plan in 2002 for a two-year period. Under Section 10-3.246 of the City's Municipal Code, the City Council may extend the vesting tentative map beyond the initial 24 month time period "for whatever time it deems appropriate," provided that the cumulative total of time extension(s) does not exceed 36 months. Such extensions may only be approved for tentative maps approved in connection with development agreements. The applicant is seeking approval of a 36-month extension. This time frame is requested because (1) only limited grading will take place this season; (2) grading activities will extend through the next building season, and (3) it will provide greater assurances regarding the development rights. Also, the 36-month extension requested would obviate the need to apply for yet another extension.

Compliance with Development Agreement

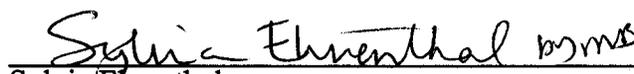
In accordance with the requirements of the City's Development Agreement section of the Municipal Code, the developer has applied for a review to determine whether or not the developer has complied with the terms and conditions of the Development Agreement. The Planning Director is charged with the responsibility of making that determination. Based on the information provided, the Planning Director finds that the terms and conditions of the Agreement have been met during the most recent review period.

Prepared by:



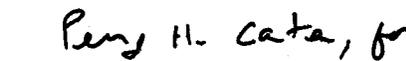
Dyana Anderly, AICP
Planning Manager

Recommended by:



Sylvia Ehrenthal
Director of Community and Economic Development

Approved by:



Jesús Armas, City Manager

Attachments: Exhibit A. Letter from Applicant, dated June 17, 2004
Draft Resolution

8/31/04

JUN 21 2004

PLANNING DIVISION

June 17, 2004

Ms. Dyana Anderly
Development Review Services Administrator
Community & Economic Development
Department
City of Hayward
777 B Street
Hayward, CA 94541

Re: Blue Rock Country Club Project -- Request for Extensions of Precise Plan
No. 97-120-02 and Vesting Tentative Tract Map 5354

Dear Ms. Anderly:

As you know, Blue Rock is subject to a 1998 development agreement, precise development plan and vesting tentative map that all are in effect. The project approved by these items remains the same. Since the City Council's approval of the precise plan and tentative map in September 2002, we have been proceeding diligently with the project. Due to litigation in both state and federal court concerning the project and the significant mitigation and site preparation work that is required for this project, we have not commenced grading at the site. Now that the litigation is over, and with City Council's May 11, 2004 approval of our grading plans, grading will begin shortly.

Last year, the City Council approved a one-year extension of time to submit a building permit to keep the precise plan in effect. With the final amended conditions of approval for the tentative map, the City informed us that the tentative map would expire in September 2004 unless we have an approved final map or request an extension. Therefore, in proceeding with our grading plans this season, we now request:

- A one year extension of time to submit the building permit and
- A 36 month extension of the tentative map

This letter includes our requests for extension, and sets forth the reasons for our requests.

PRECISE PLAN EXTENSION

The City's Municipal Code authorizes the Council to approve two one-year extensions of time to submit a building permit under an approved precise development plan (Municipal Code Sect. 10-1.2565(a)). The Council approved the precise plan on September 10, 2002. By Resolution No. 03-131, adopted on September 23, 2003, the Council approved a one-year extension of time to submit a building permit.

In July 2003, we advised you that site work would begin this spring (see attached copy of Joanna Callenbach's July 8, 2003 letter). Even with the continuous pending litigation, we proceeded as planned during 2003-2004 and were on track to commence grading last month until the U.S. Court of Appeals issued an injunction preventing construction. As you are aware, we have reached a settlement in the case, the case has been dismissed, and the injunction dissolved.

To respond to the considerations set forth in Municipal Code Sect. 10-1.2565(b)(1), (2) and (3) for an extension, we are proceeding with project implementation. The litigation responsible for delay has ended. The project can proceed on schedule, with grading and homes to be built in phases. Finally, the project itself is still consistent with the development agreement.

Litigation

We have recently resolved all of the time consuming litigation against the project, as follows:

Easement Claims: The HUSD commenced condemnation proceedings over an access easement affecting the school site. This and related actions were resolved in late May 2003.

Hayward Area Planning Association et al. v. City of Hayward (Hayward 1900, Inc., Roman Catholic Bishop of Oakland, East Bay Regional Park District—Real Parties in Interest): This action was brought by HAPA and the Greenbelt Alliance to challenge the precise plan and tentative map approvals under CEQA. The Superior Court in June, 2003 confirmed the validity of the City Council vote on both the precise plan and tentative map. An appeal of the Superior Court's decision was filed in the state Court of Appeal and was pending until recently. The appellate court dismissed the appeal in April, 2004.

Hayward Area Planning Association et al. v. Norton et al. (Hayward 1900, Inc. as Defendant-Intervenor): This action challenges the project's Section 404 permit issued by the U.S. Army Corps of Engineers based upon the U.S. Fish & Wildlife Service's biological opinion. While briefs were submitted and a summary judgment hearing was held before federal District Court Judge Illston in June, 2003, a written decision was not issued by Judge Illston until March 29, 2004. Judge Illston's decision upheld, in all respects, the validity of the Section 404 permit and the biological opinion. The plaintiffs filed a Notice of Appeal in the U.S. Court of Appeals on April 7, 2004. In May, the Court of Appeals issued an injunction pending the appeal hearing.

A settlement was reached between the parties on June 7, 2004. The appeal, including the injunction, has now been dismissed.

Schedule

In the Fall of 2003, in accordance with the resource agency and City requirements, we implemented pond mitigation work to mitigate future impacts of the development. We have worked closely throughout the year with staff of all regulatory agencies to finalize plans. Installation of over six miles of whipsnake fencing on the property was completed at the end of March, and the whipsnake trapping required prior to grading has been ongoing since April 15, 2004.

We submitted our grading plans to the City in January 2004 and have worked with staff to respond to all comments. The City Council authorized the issuance of the Phase 1 grading permit last month, a pre-construction meeting between City staff, developer, contractor and biological monitors was held this week, and we expect that City staff will issue the grading permit next week.

Phase 1 grading will occur this summer on the school site, parts of Village A and the golf course driving range, the water tank sites, and selected mitigation sites. This will allow building construction for the school, homes and key infrastructure components, such as the new municipal water tanks. Phase 2, mass grading of the rest of the project, will commence in the spring of 2005. Throughout construction and the mitigation monitoring period, we will continue to comply with City and resource agency permit requirements.

With respect to the school construction, as you know, the state has approved the plans and the HUSD has already received a portion of the state funding. Grading of this site will proceed this year. We expect that actual construction of the 650-student school building will commence in April or May, 2005, with a currently planned opening date for the fall of the 2006 school year.

Consistency with Development Agreement

The project is subject to the terms of the development agreement. There have been no changes proposed in the project since the 2002 precise plan and tentative map approvals. The precise plan conforms to the development agreement and all applicable development regulations.

VESTING TENTATIVE MAP EXTENSION

Under Section 10-3.246 of the City's Municipal Code, the City Council may extend the vesting tentative map beyond the initial 24 month time period "for whatever time it deems appropriate," provided that the cumulative total of time extension(s) does not exceed 36 months. Such

extensions may only be approved for tentative maps approved in connection with development agreements.¹ Therefore, our request in this case is appropriate.

City approvals for this project have occurred over a period of time. The City approved the development agreement and other items in 1998, prior to preparation of the tentative map. After a lengthy City and resource agency process, the tentative map and precise plan were prepared and approved in 2002. While we realize that the filing of final maps as we proceed with project phases may automatically extend our tentative map without the need for extension by the Council, we are requesting now that the Council approve an extension of the tentative map for the full 36 months. We make this request based upon the factors addressed in this letter, including the following: (1) only limited grading will commence this season; (2) grading activities are anticipated to be ongoing over this and the next building season, and could extend further because of the late start this season due to the litigation and injunction; (3) it will be more convenient for the Council to consider this matter once and will conserve both the City's and our resources; and (4) it will allow us to proceed with greater assurances so that we can direct our resources on getting the school and project built.

We are requesting an extension of the tentative map that tracks our scheduled implementation of the project, pursuant to the development agreement. State law and the City's Municipal Code authorize such an extension. Our request also recognizes the litigation delay (discussed above). In this case, the state court action was pending from the fall of 2002 until April of this year. Even though the injunction was in place for a short duration, the federal litigation continued until June of this year and made it more difficult to address all aspects of project implementation during this period and focused a significant amount of our attention on defending the project in court. For all of these reasons, we believe that an extension of the map is warranted and appropriate.

We appreciate all of the time and effort that you and other members of the City have spent working with us to prepare for the upcoming grading activities at the site. We respectfully request that you recommend approval to the City Council of our extension requests. Please let me know if you have any questions or need any additional information.

¹ In addition, under state law (the Subdivision Map Act), a local jurisdiction may stay the time period for an approved tentative map for the period of time, up to five (5) years, that litigation over the tentative map is or was pending. Local agencies are allowed, but not required, to establish procedures for reviewing such requests. (Refer to Government Code Sect. 66452.6.) To our knowledge, the City of Hayward has not established any specific procedures.

Ms. Dyana Anderly
June 17, 2004
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Sincerely,


for Steven E. Miller

W02-SF:FLW61409783.3

Jesus Armas, City of Hayward
Robert Bauman, City of Hayward
Michael O'Toole, Esq., City of Hayward
Maureen Conneely, Esq., City of Hayward
Joanna Callenbach, Hayward 1900, Inc.
Lori Wider, Esq., Sheppard, Mullin, Richter & Hampton

HAYWARD CITY COUNCIL

RESOLUTION NO. 04-_____

Introduced by Council Member _____

Mal
8/23/04

RESOLUTION APPROVING A 12-MONTH EXTENSION OF TIME FOR PRECISE DEVELOPMENT PLAN NO. 97-120-02 AND A 36-MONTH EXTENSION OF VESTING TENTATIVE MAP 5354

WHEREAS, in September 2002, the City Council approved an Addendum to the Final Supplemental Environmental Impact Report, the Precise Development Plan and the Vesting Tentative Tract Map for Blue Rock Country Club; and

WHEREAS, the building permit application is required to be submitted and accepted for processing within one year of acceptance of the Precise Development Plan, otherwise the developer may apply for an extension of time within which to submit the application, and the City Council may grant a maximum of two one-year extensions of time to submit the Plan if there is reasonable cause for a delay and a maximum 36-month extension of the Vesting Tentative Map as deemed appropriate; and

WHEREAS, the applicant is requesting a second one-year extension for the Precise Development Plan and a 36-month extension for Vesting Tentative Map Tract 5354; and

WHEREAS, there has been no change in circumstances requiring further environmental review and an extension of time is necessary as the delays were caused by litigation against the project which has been resolved.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward relying on the previously certified environmental documents, that a 12-month extension of time for Precise Development Plan No. 97-120-02 to submit a building permit application for processing and a 36-month extension for Vesting Tentative Map Tract 5354 are hereby approved, for the reasons set forth in the accompanying staff report.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2004

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward