



REQUEST FOR CITY COUNCIL ACTION

MEETING DATE:

June 5, 2019

DEPARTMENT:

City Attorney

DIVISION:

City Attorney

- ☒ Motion
- ☐ Resolution
- ☐ Ordinance - Introduction
- ☐ Ordinance - Adoption
- ☐ Public Hearing

TITLE:

Settlement of Claim: Ave 6E Investments v City of Yuma

SUMMARY RECOMMENDATION:

Authorize settlement of United States District Court Case No. 2:09-CV-00297-JWS, Avenue 6E Investments, LLC v. City of Yuma.

REPORT:

This lawsuit in federal court stems from the Yuma City Council's denial in September 2008 of a rezoning application for approximately 42 acres of land on the west side of Avenue 6E and south of the 36th Street alignment. At the time, the 42 acres was known as Belleza II. The developer-plaintiffs sought to rezone the 42 acres from 145 lots of R-1-8 zoning (8,000 square foot lots) to a maximum of 198 lots under R-1-6 zoning (6,000 square foot lots). Neighbors on two sides of the proposed development and others protested the rezoning. The City Council voted 5-2 to deny the rezoning request.

After the denial, in 2009 Plaintiffs filed suit alleging disparate treatment and disparate impact claims under the federal Fair Housing Act and denial of Equal Protection under the U.S. Constitution. The disparate treatment claim was based on neighbors' comments during meetings and letters stating that an increase in density, loss of value to the neighboring properties, "large families, unattended children, parking and crime" constituted "code words." Plaintiffs' theory, which the 9th Circuit Court of Appeals endorsed, was that such code words "provide plausible circumstantial evidence that community opposition to Developers' proposed development was motivated in part by animus." The 9th Circuit remanded for trial to a jury.

On the disparate impact claim the 9th Circuit held that if Plaintiffs could demonstrate that the rezoning denial had a disparate impact on the ability of Hispanic homebuyers to purchase more affordable housing, this would be alternative grounds for relief. "Drawing all inferences in Developers' favor, these allegations demonstrate a historical background of stratification by race and class, indicating the City's denial of Developers' application to build moderately priced housing will have a disparate impact on

Hispanics by denying them affordable opportunities to move into communities long dominated by more affluent Whites.” [All quotes are from the 9th Circuit opinion].

Trial was set to begin on May 21, 2019. Plaintiffs allege approximately \$8 million in damages including attorneys’ fees and costs of trial. The City denies any wrongdoing and attributes any statements of the neighbors who protested the rezoning to concerns with the falling real estate market during the financial and mortgage industry meltdown of 2008, and reliance on a previously platted R-1-8 subdivision to an R-1-6 subdivision.

Reviewing the facts and evidence and the risks associated with taking this matter through trial, the City Attorney, seeks to settle this matter without any admission of fault, any disparate treatment, any disparate impact, or any other cognizable cause of action under federal law or state law. The proposed settlement in the accompanying settlement agreement includes \$1 million dollars to be paid by the City upon completion of the rezonings and the remainder of the \$2.85 million settlement amount to be paid by the City’s then (2008-2009) insurance carrier, together with the following:

The Plaintiffs will designate 360 acres for affordable housing development (homes priced at an average \$138,000) with the settlement amount withheld from payment until any necessary general plan amendments and rezonings are completed on the 360 acres to achieve an average density of 5 dwelling units per acre. This means no more than 1,800 homes will be built on the designated 360 acres. The rezoning is a legislative decision of the City Council which cannot be accomplished by contract; City staff, however, will agree to recommend any necessary general plan amendments and rezonings to the Planning and Zoning Commission and City Council. If the necessary rezonings are accomplished, the settlement payment will be released to the Plaintiffs. If the necessary rezonings fail, the Parties will go back to the District Court for resolution.

The City will construct $\frac{3}{4}$ of a mile of 40th Street, from Avenue 6 $\frac{3}{4}$ E to Avenue 7 $\frac{1}{2}$ E, as contemplated in the Infrastructure Improvements Plan on the City’s schedule in accordance with the Capital Improvements Program. Assuming the City can legislatively amend the Infrastructure Improvements Plan to include a bridge crossing of the A Canal at 40th Street (with a resulting increase in development fees), the bridge will also be constructed by the City on the City’s schedule in accordance with the Capital Improvements Program. The City may use development fees or any combination of development fees and other revenues to pay the cost of both the bridge and the $\frac{3}{4}$ mile of 40th Street. There will be no development fee exemptions or other exemptions in the 360 acre development, but during the rezoning, the City will not be able to exact the cost of this segment of 40th Street or the 40th Street A Canal bridge as a condition of the rezoning or platting (i.e., require the developer to construct this public infrastructure). The net result of this action provides a subsidy for upwards of a thousand units of future affordable housing for Yuma families earning less than \$46,000 in the City of Yuma and provides additional opportunities for home ownership for low-moderate income families.

The Plaintiff also agrees to dedicate land for a minimum 10-acre park within the 360 acre development. The 10-acre land dedication for the park may be used for retention/detention of storm water runoff from the proposed 360 acre development.

The City Attorney’s Office believes this settlement is reasonable and in the City’s best interests under the circumstances which include the costs of trial and potential legal exposure faced by the City. Adoption of this motion authorizes and directs the City Attorney’s Office to settle the Avenue 6E Investments v. City of Yuma lawsuit in accordance with these terms and the City Administrator to execute the attached proposed Settlement Agreement on behalf of the City.

FISCAL REQUIREMENTS	CITY FUNDS:	\$1,000,000.00	BUDGETED:	\$1,000,000.00
	STATE FUNDS:	\$0.00	AVAILABLE TO TRANSFER:	\$0.00
	FEDERAL FUNDS:	\$0.00	IN CONTINGENCY:	\$0.00
	OTHER SOURCES:	\$1,850,000.00	FUNDING FOR THIS ITEM IS FOUND IN THE FOLLOWING ACCOUNT / FUND / CIP: 502-20-10.6305	
		\$0.00		
		\$0.00		
TOTAL:	\$2,850,000.00			
FISCAL IMPACT STATEMENT:				
ADDITIONAL INFORMATION	SUPPORTING INFORMATION NOT ATTACHED TO THE CITY COUNCIL ACTION FORM THAT IS ON FILE IN THE OFFICE OF THE CITY CLERK:			
	1. 2. 3. 4. 5.			
IF CITY COUNCIL ACTION INCLUDES A CONTRACT, LEASE OR AGREEMENT, WHO WILL BE RESPONSIBLE FOR ROUTING THE DOCUMENT FOR SIGNATURE AFTER CITY COUNCIL APPROVAL?				
SIGNATURES	CITY ADMINISTRATOR:			DATE:
	Jay Simonton, Iterim City Administrator			6/3/2019
	REVIEWED BY CITY ATTORNEY:			DATE:
	Richard W. Files			6/3/2019
	RECOMMENDED BY (DEPT/DIV HEAD):			DATE:
WRITTEN/SUBMITTED BY:			DATE:	