



COUNCIL AGENDA: 04-27-10
ITEM: 2.8

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Albert Balagso

SUBJECT: SEE BELOW

DATE: 04-05-10

Approved

Date

4-14-10

COUNCIL DISTRICT: 7

SNI AREA: N/A

**SUBJECT: FIRST AMENDMENT TO PARKLAND AGREEMENT WITH ROEM
DEVELOPMENT CORPORATION**

RECOMMENDATION

Approval of the First Amendment to the Turnkey Parkland Agreement with ROEM Development Corporation, for Planned Development Permit PD06-062, associated with Tentative Map No. PT05-113 and Final Tract Map 9831 to extend the date to complete the park improvements from February 27, 2012 to February 27, 2015.

OUTCOME

Approval of the recommendation in this memorandum would defer the completion date of the new turnkey park from February 27, 2012 to February 27, 2015 in accordance with Council action on February 9, 2010 to avoid budget impacts to the General Fund for maintenance costs for new parks until funding has been identified. The new park construction date would be scheduled for Fiscal Year 2012-2013 and completed in Fiscal Year 2014-2015.

BACKGROUND

Tentative Map Number PT05-113 and Final Tract Map Number 9831 authorize Roem Development Corporation to construct 721 multi-family units and 117 single-family attached units on a 29.5 gross-acre site located on the southwesterly corner of Goble Lane and Monterey Road ("Project"). Chapter 19.38 of the San José Municipal Code (Parkland Dedication Ordinance) requires residential developers to dedicate land for neighborhood and community parks, construct park or recreational improvements, or pay a parkland fee in lieu of dedication or

construction to help meet the demand for neighborhood and community parkland generated by the development of new residential subdivisions ("Parkland Dedication Obligation").

In February 2007, City entered into a Parkland Agreement ("Original Parkland Agreement") with ROEM Development Corporation (ROEM) requiring ROEM to construct park improvements and dedicate an approximately two-acre neighborhood park site (APN 455-09-061) to City to satisfy their Parkland Dedication Obligation for the Project. The proposed park elements consist of a basketball court, volleyball court, barbeque areas and picnic tables, stoves and trash receptacles, game table areas, art monument, site furnishings, landscaping, turf and irrigation, concrete walkways, security lighting and park signage. The proposed park must be constructed by February 27, 2012 under the terms of the Original Parkland Agreement.

On February 9, 2010, Council approved a strategy to delay park construction of new parks until maintenance funding could be identified including the turnkey park to be constructed by Roem Development Corporation under the Original Parkland Agreement. Park construction schedules were to be extended to at least Fiscal Year 2011-2012 unless alternative maintenance sources could be identified.

ANALYSIS

Prior to Council action on February 9, 2010, the developer had already indicated that they would like to delay the park construction due to the slow pace of construction of their units. The First Amendment to the Parkland Agreement with Roem Development Corporation will delay completion of the park from approximately February 2012 to February 2015. This aligns with the City's strategy to defer the budget impact caused by the maintenance of new parks. All other terms and conditions of the Original Parkland Agreement not modified by the First Amendment will remain in place.

EVALUATION AND FOLLOW UP

This memo will not require any follow-up from staff.

POLICY ALTERNATIVES

Alternative #1: Do Nothing

Reason for not recommending: The City's budget could be impacted by the maintenance costs of this new turnkey park in Fiscal Year 2011-12 instead of deferring them to Fiscal Year 2014-15.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, this memorandum will be posted on the City's website for the April 27, 2010 City Council agenda.

COORDINATION

This memorandum has been coordinated with City Attorney's Office, City Manager's Budget Office, and the Department of Planning, Building and Code Enforcement.

FISCAL/POLICY ALIGNMENT

This Council item is consistent with Council approved Budget Strategy Memo General Principle #2, "We must focus on protecting our vital core City services".

COST IMPLICATIONS

No funding is needed to approve the First Amendment to the Parkland Agreement with Roem Development, L.P.

HONORABLE MAYOR AND CITY COUNCIL

04-05-10

Subject: **First Amendment to Parkland Agreement with Roem Development Corporation**

Page 4

CEQA

CEQA: Resolution No. 72877.

/s/

ALBERT BALAGSO

Director, Parks, Recreation and

Neighborhood Services

For questions please contact Marybeth Harasz, Senior Landscape Architect, 408-793-4183.

Attachment

**RECORDING REQUESTED
BY CITY OF SAN JOSE:**

When Recorded, Return To:
City of San José
200 East Santa Clara Street
San José, CA 95113
Attn: City Clerk, 2nd Floor West Wing

Final Tract No. 9831

**FIRST AMENDMENT TO
PARKLAND AGREEMENT
FOR
TENTATIVE MAP NO. PT05-113
BETWEEN
CITY OF SAN JOSE
AND
ROEM DEVELOPMENT CORPORATION**

(Chapter 19.38 of SJMC)

This First Amendment ("First Amendment") to Parkland Agreement for Tentative Map No. PT05-113 is made and entered into by and between the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and ROEM DEVELOPMENT CORPORATION, a California corporation ("Developer") as of the date of execution by City.

RECITALS

A. On February 27, 2007, City and Developer entered into an agreement entitled "Parkland Agreement for Tentative Map No. PT05-113 Between City of San Jose and Roem Development Corporation" ("Original Parkland Agreement") under which Developer agreed to satisfy its Parkland Dedication Obligation relating to Tentative Map No. PT05-113 by constructing park improvements on approximately 87,120 square feet of real property located near the southwesterly corner of Goble Lane and Monterey Highway located in the City of San José and dedicating the completed park to the City (APN 455-09-061) ("Park Site").

B. The Original Parkland Agreement was recorded in the Office of the Santa Clara County Recorder on March 7, 2007 as document 19330255. The Final Map for Tentative Map No. PT05-113 was approved by City Council and recorded in the Santa Clara County Recorder's Office on April 19, 2006. Under the terms of the Original Parkland Agreement, the completion of park improvements and dedication of the Park Site from Developer to City was to occur by the fifth year anniversary of the date of execution of the Original Parkland Agreement, which is on or before February 27, 2012.

C. On February 9, 2010, City Council approved a recommendation to defer construction on certain park and recreational capital projects, including the Park Site, until maintenance funding is identified.

D. City and Developer desire to amend the Original Parkland Agreement to extend the date of the construction of improvements and transfer of the completed park (APN 455-09-061) from Developer to City for an additional three (3) years from the date of the execution of the Original Parkland Agreement to February 27, 2015 to allow additional time for City to identify maintenance funding for the Park Site.

In view of the above, the parties agree as follows:

SECTION 1. SECTION 2. "OFFER OF DEDICATION; DESIGN AND DEVELOPMENT OF PARK IMPROVEMENTS" is amended in its entirety to read as follows:

- "A. Developer affirms its irrevocable offer to dedicate to City approximately 87,120 square feet of real property located near the southwesterly corner of Goble Lane and Monterey Highway ("Park Site") as identified on the Tentative Map for the Development and as shown in the conceptual plan for the Park Improvements depicted on the attached **Exhibit A** ("Park Site Plan"). Developer shall be responsible for all costs incurred in the conveyance of the Park Site to City in accordance with the requirements and specifications set forth in this Agreement.
- B. Developer shall be responsible for the development of plans and specifications for, and the construction of Park Improvements on the Park Site consistent with the Park Site Plan and as more particularly described in this Agreement. Developer shall develop plans and specifications for the Park Improvements ("Project Specifications") for the review and approval of the Director of PW, as more particularly described in the attached **Exhibit B**.
- C. The parties acknowledge that the size, dimensions, and other particular characteristics of the Park Improvements have not been determined as of the date of execution of this Agreement. The parties, however, agree that the Park Improvements shall consist of the following types of improvements: basketball and volleyball court, two (2) children's play lots, barbeque areas with picnic tables, stoves and trash receptacles, game table areas, art monument, site furnishings, landscaping, turf and irrigation, concrete walkways, security lighting and standard park signage.
- D. Developer shall be responsible for all costs incurred for planning, design, construction, and supervision of the construction of all Park Improvements, including without limitation, City's plan review and inspection. Developer shall cause all labor and material incorporated in the Park Improvements to be furnished in accordance with the requirements and specifications set forth in this Agreement.
- E. The Park Improvements shall be completed and the Park Site dedicated to City on or before February 27, 2015. The City's Director may, at the City Director's discretion, grant extensions of the completion requirement specified in this subsection."

SECTION 2. All of the terms and conditions of the Original Parkland Agreement not modified by this First Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF the day and year hereinafter written.

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal
corporation

JOHNNY V. PHAN
Deputy City Attorney

By: _____
LEE PRICE, MMC
City Clerk

Date: _____
200 East Santa Clara Street
San Jose, CA 95113

"DEVELOPER"

ROEM DEVELOPMENT
CORPORATION,
A California Corporation

By: _____
Robert Emami
President

1650 Lafayette Street
Santa Clara, CA 95050
(408) 984-5600

- All Subdivider's signatures must be accompanied by an attached notary acknowledgement.
- Proof of authorization for Subdivider's/Owner's signatures is required to be submitted concurrently with this First Amendment.

