

79
4-7-98

Gaines & Stacey
21700 Oxnard Street, #1750
Woodland Hills, California 91367
(818)593-6355--(310)394-1163
FAX--(818)593-6356

April 6, 1998

HAND DELIVERED

Dan McHugh, Esq.
City Attorney
City of Redlands
35 Cajon Street
Redlands, California 92373

RECEIVED

APR - 7 1998

CITY ATTORNEY

Re: Cities Pavilion
Development Agreement

Dear Dan:

I am advised that an attorney for the owners of the Ramirez property has requested that the legal description to the Development Agreement for the Cities Pavillion project be modified to exclude the Ramirez property. I have not seen a copy of that letter. However, as I expressed in my letter of March 3, 1998, Cities Pavillion agrees that the legal description should not include the Ramirez property. When the legal description for the Development Agreement was prepared by Ken King, he mistakenly included all of the property which had been within the "Concept Plan" approved by the City on August 1, 1995. A letter from Ken King to this effect is enclosed. At the City's request, this Concept plan had included the Ramirez property.

At the City Council hearing on March 17, 1998, you suggested that a formal process may be necessary to modify the legal description to exclude the Ramirez property. I do not agree. The correction of a legal description where there has been a mutual mistake of fact by the parties to an agreement is not such an amendment to the Development Agreement that the statute would require a new ordinance to make that modification. Indeed, the correction to the legal description removing the Ramirez property does not amend the Development Agreement but would reflect the actual intent of the City and Cities Pavillion.

Accordingly, I am enclosing a document which, when executed and recorded, would remove the Ramirez property from the legal description for the Development Agreement. This Modification and Correction to Legal Description for Development Agreement has been executed by Cities Pavillion. The City Council may, by

Dan McHugh, Esq.
March 3, 1998
Page 2

resolution, authorize the Mayor to sign this instrument. When recorded, this instrument will serve the purpose to remove the Ramirez property from the legal description to the Development Agreement. As set forth in Section 8.4 of the Development Agreement, I repeated the covenant by Cities Pavillion to indemnify and defend the City in any action which would challenge this manner of eliminating the Ramirez property from the legal description. It seems clear that if Ramirez wants the description to exclude his property, the City wants the description to exclude his property and Cities Pavillion wants the description to exclude his property, then the manner I propose is the manner in which we should proceed.

Despite the fuss which has arisen over this issue, the erroneous inclusion of the Ramirez property in the legal description has no effect whatsoever on the owners of the Ramirez property. The Development Agreement does not bind Ramirez in the use of his property because he did not sign it or consent to it. The Development Agreement does not create a cloud or encumbrance on the title. The recorded Development Agreement with the erroneous legal description has no effect on the Ramirez property and does no injury to Ramirez because Ramirez did not ask to be part of the Development Agreement and Cities Pavillion did not propose any development of the Ramirez property. Unlike the remaining property, Cities Pavillion has never claimed an interest in the Ramirez property.

Even though the Development Agreement with the erroneous legal description has no effect upon Ramirez and causes no injury, it remains prudent to correct the error. The manner in which I propose to correct the error is legally proper.

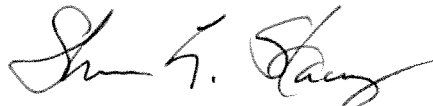
The error in the legal description does not impugn the Development Agreement as it applies to the remaining property. *Government Code* §65010 provides that no action by a City Council shall be invalid or set aside on the grounds of an error unless the error is prejudicial. "Prejudice" results if it is more probable than not that the decision would have been different absent the error. *Lucas Valley Homeowners Assn., Inc. v. County of Marin* (1991) 284 Cal.Rptr. 427. Technical errors such as those in a legal description of property are not prejudicial. *Hayssen v. Sonoma County Board of Zoning Adjustments* (1986) 217 Cal.Rptr. 464. There is no basis to believe that the unanimous vote of the City Council to approve the Development Agreement was affected in any manner by the incorrect legal description provided by Mr. King. Indeed, the plans shown by Cities Pavillion never reflected development on the Ramirez property.

Dan McHugh, Esq.
March 3, 1998
Page 3

As to the Porch property, there is no need for the City to take any action whatsoever. At this date, Mrs. Porch has expressed no desire or urgency concerning her property. Cities Pavillion continues to maintain that it has the requisite equitable interest to support the application of the Development Agreement to the Porch property. The City lacks any legal authority to modify the Development Agreement unilaterally and must have the consent of Cities Pavillion to do so. See, Section 8.6 of the Development Agreement and *Government Code* §65868. Cities Pavillion does not consent to any modification to the legal description which would remove the Porch property. As you know, Mrs. Porch is represented by Guay Wilson. To my knowledge, neither he nor Mrs. Porch have communicated any request that the Porch property be excluded from the legal description. Absent any such request, there is no reason to seek any action whatsoever regarding the Porch property.

I urge you to advise the Council that the most expeditious manner in which the Ramirez issue can be resolved is to adopt a resolution authorizing the Mayor to sign the correction to the legal description.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Sherman L. Stacey", written in a cursive style.

SHERMAN L. STACEY

SLS/sh

cc: Mr. Tim Alexander
Guay Wilson, Esq.

Recorded in Official Records, County of
San Bernardino, Errol J. Mackzum, Recorder
39.00

Recording Requested By and
When Recorded Mail to:
Timberlake Group Int. Inc.

Doc No. 19980137528
11:42am 04/13/98

205 30054527 03 15

City Clerk
City of Redlands
P.O. Box 3005
Redlands, California 92373

1	2	3	4	5	6	7	8	9	0
PG	FEE	APP	GIMS	PH CPY	CRT CPY	ADD NM	PEN PR	PCOR	
6	7	15		1500					
			5			2	6	U	
NON ST	LN	SVY	CIT-CO	TRANS TAX		DA	CHRG	EXAM	

MODIFICATION AND CORRECTION TO LEGAL DESCRIPTION
FOR DEVELOPMENT AGREEMENT

This Modification and Correction to Legal Description for Development Agreement is made this 6th day of April, 1998, by Cities Pavilion Partners, a California Limited Liability Corporation (the "Developer") and the City of Redlands, a municipal corporation (the "City").

On January 20, 1998, the City caused to be recorded in the Office of the County Recorder of San Bernardino County, California, a Development Agreement dated October 21, 1997 between Developer and the City (the "Development Agreement") relating to certain real property located within the jurisdiction of the City. The Development Agreement was recorded as Instrument No. 19980018321, Official Records, San Bernardino County.

A legal description of the real property intended to be covered by the terms of the Development Agreement was attached to the Development Agreement as Exhibit "A". Said legal description included property which was not intended by the parties to be included in the Development Agreement. Now, therefore, the parties intend to modify and correct said legal description by excluding from said legal description certain real property not intended to be included therein. The real property to be excluded from the legal description of the real property covered by the Development Agreement is attached to this Modification and Correction to Legal Description for Development Agreement as Exhibit "A".

The City and Developer hereby modify the legal description of the real property set forth in Exhibit "A" to the Development Agreement to delete from said legal description that real property described in Exhibit A attached to this instrument.

In accordance with the provisions of Section 8.4 of the Development Agreement, Developer shall defend, indemnify and hold harmless City, its elected officials, officers, employees and agents from and against any and all claims, losses, damages, causes of action, injuries and actions, including costs and attorneys' fees, arising out of, or in connection with, City and Developer's execution of this Modification and Correction of Legal Description to Development Agreement.

Executed the day and year first written above.

CITY OF REDLANDS, a municipal corporation

By: Geni A. S. Banda

Geni Banda, Mayor Pro Tempore

Attest:

Sonia Gayle
[Deputy] City Clerk

CITIES PAVILLION PARTNERS
a California Limited Liability Corporation
By: Timberlake Group International, Inc.
Its Managing Member

By: H. T. Lindsay Alexander Pres.
H. T. Lindsay Alexander, President

Attest:

[Signature]
Secretary of the Corporation

EXHIBIT "A"

**LEGAL DESCRIPTION
RAMIREZ PROPERTY
APN 167-141-05, 06**

The North 12 acres of the East 30 acres of the North one-half of the Northeast one-quarter of Section 21, Township 1 South, Range 3 West, San Bernardino Meridian, in the City of Redlands, County of San Bernardino, State of California.

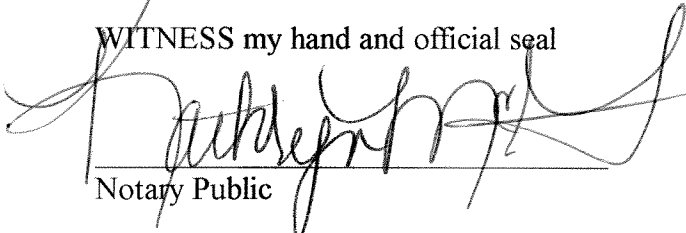
Excepting therefrom those portions lying within a public street.

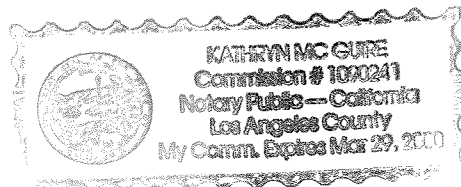
STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On April 6 1998, before me, Kathryn McGure, a Notary Public in and for said County and State, personally appeared H. T. Lindsay Alexander, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal


Notary Public



STATE OF CALIFORNIA

)SS

COUNTY OF _____

)

On _____ before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or entity upon behalf of which the person(s) acted, executed the instrument

WITNESS my hand and official seal

Signature _____

(This area for official notary seal)

GOVERNMENT CODE 27361.7

I certify under penalty of perjury that the Notary Seal on the document to which this statement is attached reads as follows:

NAME OF NOTARY: KATHRYN MCGUIRE

DATE COMMISSION EXPIRES: MARCH 29, 2000

COUNTY WHERE BOND IS FILED: LOS ANGELES COUNTY

COMMISSION NUMBER: 1090241

PLACE OF EXECUTION: SAN BERNARDINO DATE: 4-13-98

SIGNATURE: Kathryn McGuire

I certify under penalty of perjury under the laws of the State of California that the illegible portion of this document to which this statement is attached reads as follows:

PLACE OF EXECUTION: _____ DATE: _____

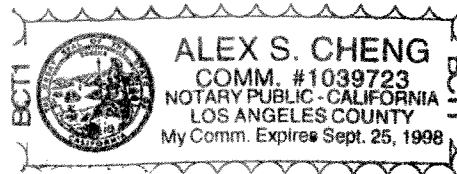
STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On April 3rd 1998, before me, Alex S. Cheng, a Notary Public in and for said County and State, personally appeared Pedro J. Lopez, personally ~~known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Alex S. Cheng
Notary Public



STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

On April 10, 1998, before me, Linda Emmerson, a Notary Public in and for said County and State, personally appeared Geni Banda and Lorrie Poyzer, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Linda Emmerson
Notary Public

