

ORDINANCE NO. 1861

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI
RESCINDING DEVELOPMENT AGREEMENT PERTAINING TO THE
DEVELOPMENT OF 257.76 ACRES LOCATED ON THE WEST SIDE OF
LOWER SACRAMENTO ROAD BETWEEN HIGHWAY 12-KETTLEMAN LANE
AND HARNEY LANE (SOUTHWEST GATEWAY)
(DEVELOPMENT AGREEMENT GM-05-001)

=====

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

SECTION 1. The Lodi City Council passed Ordinance No. 1788 approving a Development Agreement covering the following property:

Southwest Gateway: 257.76 acres located on the west side of Lower Sacramento Road between Highway 12-Kettleman Lane and Harney Lane, Assessors Parcel Numbers: 058-030-09, 058-030-03, 058-030-04, 058-030-05, 058-030-06, 058-040-01, 058-040-02, 058-040-04, 058-040-05, and 058-040-14.

SECTION 2. Frontier Community Builders ("Frontiers"), the sole party to the above referenced Development Agreement, requested that the agreement be rescinded by letter of May 16, 2012, a copy of which is attached hereto and incorporated by reference. However, Frontiers, Citizens for Open Government and the City entered into a settlement agreement dated November 15, 2006 ("Settlement Agreement"), the obligations of which were incorporated into the Development Agreement and into the CEQA approvals set forth in Resolution 2006-209. This ordinance shall not terminate any of the obligations set forth in the Settlement Agreement. Moreover, CEQA Resolution 2006-209 shall continue in full force and obligate Frontiers to comply with all of the obligations set forth in the Settlement Agreement.

SECTION 3. The City Council hereby finds that termination of the Development Agreement is in the best interest of the City to ensure that any construction is subject to the new impact mitigation fee program, and to eliminate conditions in the Development Agreement that could present barriers to housing construction in the current economy.

SECTION 4. The City Council hereby finds that the termination of the Development Agreement is consistent with the General Plan land use designation and the zoning for the proposed Development.

SECTION 5. The City Council hereby adopts Ordinance No. 1861 rescinding the Development Agreement by and between the City of Lodi and Frontier Community Builders. However, the Settlement Agreement and CEQA Resolution 2006-209 shall continue in full force and obligate Frontiers to comply with all of the obligations set forth in the Settlement Agreement.

SECTION 6. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer for employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 7. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 8. This ordinance shall be published one time in the "Lodi News-Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall take effect 30 days from and after its passage and approval.

Approved this 19th of September, 2012


JOANNE MOUNCE
Mayor

Attest:

RANDI JOHL
City Clerk

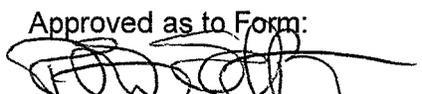
State of California
County of San Joaquin, ss.

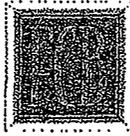
I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1861 was introduced at a regular meeting of the City Council of the City of Lodi held August 15, 2012, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held September 19, 2012, by the following vote:

AYES: COUNCIL MEMBERS – Johnson, Katzakian, Nakanishi, and Mayor Mounce
NOES: COUNCIL MEMBERS – None
ABSENT: COUNCIL MEMBERS – Hansen
ABSTAIN: COUNCIL MEMBERS – None

I further certify that Ordinance No. 1861 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.


RANDI JOHL
City Clerk

Approved as to Form:

D. STEPHEN SCHWABAUER
City Attorney



FCB HOMES

May 16, 2012

Mr. Rad Bartlem
City Manager
City of Lodi
221 West Pine Street
Lodi, CA 95240

Re: Westside and Southwest Gateway Development Agreements -
Request for Termination

Dear Rad,

Last April, 2011, I sent you a letter formally requesting termination of the Westside and Southwest Gateway Development Agreements (see attached). The letter followed nearly ten months of regular meetings with City Staff and their consultants working on Lodi's Impact Mitigation Fee Program (IMFP) update. We were convinced then that **the** Westside **and** Southwest Gateway properties should be included in the IMFP **and** the Development Agreements terminated. Now, over a year later, the IMFP update is nearly complete, and the Westside and Southwest Gateway properties are an integral part of the updated IMFP. **Clearly**, then, it is time to move forward to cancel the old Westside and Southwest Gateway Development Agreements and establish an economic framework for residential development to proceed within **the** current City limits.

At your request, I will outline below the main reasons we feel the Development Agreements should be cancelled.

1. The Development Agreements did not address the actual impacts resulting from new residential development.

When the Westside and Southwest Gateway projects were moving through the entitlement process, the City's existing impact fee program "originally adopted in 1991" had not been updated for 15 years. While the fees had **been** periodically increased over time, **many** of the underlying assumptions about program **funding** had changed **and** it was those **old** fee programs that provided **the basis** for the Agreements. Furthermore, other fees were included in the **Agreements**, some of which bore little or no relationship to growth **impacts** from the Westside and Gateway projects.



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209-957-8112 FAX 209-957-3618 WWW.FCBHOMES.COM



Now, nearly six years later, the **City** has the cumulative benefit of precise plans for the Westside **and** Southwest Gateway and a new General Plan. The City's Staff is also approaching the end of a two year comprehensive study of growth impacts via the **IMFP**' which include the Westside and Southwest Gateway properties. Their work, along with the Council's ultimate approval, will result in **an** updated, tailored **IMFP**. The new **IMFP** will **be** a far better and more accurate way to mitigate impacts **from** both the Westside and Gateway projects in comparison to the mitigation sought by the Agreements.

2. The Development Agreements have a fifteen year term. were never implemented and cannot be completed before they expire.

The national, state **and** local housing **markets** were at historic levels when the Development Agreements were approved in 2006. The fifteen year term of the Agreements seemed reasonable at the time given the active **market** conditions. However, the market **has since** plummeted to historic lows. Furthermore, City Staff, consultants, **and** developers are not expecting new residential development to even begin for another *two to* three years. By that time, the Development Agreements will only **have** approximately seven years remaining before they expire. This is less than **half** the time that **was** deemed appropriate under the best **of market** conditions and **will** simply not be sufficient time to complete these projects. **At** a minimum, the Development **Agreements** need to be renegotiated to account for this fact alone. However, as noted, it **would** be more accurate and efficient to put **the entire City** under one (updated) **IMFP**. Having to renegotiate the Development Agreements, **regularly** monitor compliance, and account for **all** funds and programs separate from the **IMFP** would be time consuming and an unnecessary financial burden for everyone **involved**.

3. The Development Agreements required predetermined lump sum payments for certain fees that cannot be financed without a robust **and** consistent housing market.

Historically, the City's **IMFP** **has** been designed to be a "pay-as-you-go" system. This allowed the **pace** of development to mirror the acceleration or decline of the housing market. The proposed updated **IMFP** will likewise operate on a "pay-as-you-go" basis. This is **a** more sustainable way to manage growth, particularly in a **community** like Lodi - where the long term residential **growth** rate is relatively slow. Development in Westside **and** Southwest Gateway will likely occur in phases by multiple development interests. While **this is** consistent with **how** development in Lodi **has** occurred **for** many years, it makes the payment of large, **lump sums** on a predetermined schedule **virtually** impossible to finance.

Development Agreements with lump sum payments work best on large scale projects expected to be completed in a predictable **fashion**. They can even work effectively on small projects when the completion can be reasonably forecasted. However, in a community like Lodi, this structure **will** not work effectively on larger scale areas of development over longer (less economically predictable) periods of time.

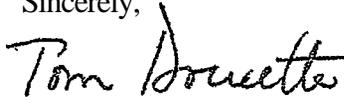
Summary

While the issues outlined above are not exhaustive, they highlight several important factors which underscore the need to terminate the Westside and Southwest Gateway Development Agreements. Alternatively, these Development Agreements could be renegotiated, **but that** should be weighed against the inclusion of these projects in the updated IMFP program.

The Agreements were executed during **an** unprecedented "Housing Bubble" fueled by the "Irrational Exuberance" of a dysfunctional financial system. These dynamics no longer exist and will not return in our lifetime. **The housing** market, as well as the overall economy, is struggling to find its footing following one of the worst recessions in history. Fortunately, the City has **moved** on and set a course to **plan** for sustainable future growth base **on** realistic assumptions.

The Westside **and** Southwest Gateway projects will be a major component of the City's planned growth **plans** for the next ten to fifteen years. With this in mind, it is our belief that it **will** be more efficient, balanced **and** productive to utilize the updated IMFP for the Westside and Southwest Gateway projects once it is adopted by the City Council.

Sincerely,



Thomas P. Doucette
President