

## REPORT TO THE CITY COUNCIL

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**DATE:** August 5, 2014

**TITLE:** Developer Request for Waiver of Development Impact Fees  
- Mission Lakes Market Place

**Prepared by:** Martín Magaña, City Manager

**Reviewed by:** Steven B. Quintanilla, City Attorney

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### **RECOMMENDATION**

- 1) Open the Public Hearing;**
- 2) Take Testimony;**
- 3) Close the Public Hearing; and**
- 4) Take whatever action the City Council deems appropriate.**

### **DISCUSSION**

#### ***Development Impact Fees***

The Desert Hot Springs Municipal Code provides that development impact be imposed on the issuance of all building permits for development within the City to finance the cost of certain of public facilities and improvements required by new development. The amount of the fee is set forth in the City's Development Impact Fee Schedule.

Basically, any person who seeks to develop land within the City by applying for a building permit, is required to pay the appropriate development impact fees. The Municipal Code provides that no permits or extension of permits shall be granted unless and until the appropriate development impact fees required have been paid to the City. Incidentally, the term "building permit" includes any permits required for construction, reconstruction, remodeling, moving structures into the city, such as electrical and plumbing permits, moving permits, etc.

#### ***Fee Adjustment***

A developer may apply to the City Council for a reduction, adjustment, or waiver of any one or more of said fees, based upon the absence of any reasonable relationship or nexus between the impacts of that development and either the amount of the fee(s) charged or the type of facilities to be financed. The application must be made in writing and filed with the City Clerk not later than 10 days prior to the public hearing on the development permit application for the project. If no public hearing is required, the application must be submitted at the time of the filing of the request for a building permit. The application shall state in detail the factual basis for the claim of waiver, reduction, or adjustment.

The City Council must consider the application at the public hearing on the permit application or at a separate public hearing held within 60 days after the filing of the fee adjustment application, whichever is later. The hearing shall be noticed and conducted in the same fashion and manner as prescribed by the laws of the City for hearings on Development Permits. The decision of the City Council shall be final.

If a reduction, adjustment, or waiver is granted, any change in use within the project shall invalidate the waiver, adjustment or reduction of the fee if such change in use would render the same inappropriate.

Finally, the City Council, from time to time, and as the need may arise, set forth, by Council resolution, specific limitations which will apply to reductions, adjustments, or waivers of development impact fees .

### ***Mission Lakes Market Place***

The former Village at Mission Lakes Commercial Project (better known as Mission Lakes Market Place) has been an eyesore for years and has created a negative image on the City. The site was purchased by a new developer, Dr. Suresh Shah. Staff met with the developer and his project team to inform them of the process to reactivate building permits for the project. Part of reactivating building permits requires payment of Development Impact Fees (DIFs). The original developer never paid DIFs. The prior administration allowed the developer at that time to submit letters of credit (Exhibit 1) for DIFs in lieu of payment as required by Ordinance. The letters of credit were never collected upon because the developer went bankrupt, the lending institution upon which the letters of credit were drawn collapsed, and the project went into receivership.

Dr. Shah paid fees to reactivate the building permit and the current administration honored the agreement that the prior administration had made in writing. Therefore, DIFs have yet to be paid. Now that the project is practically completed the developer is requesting that the City Council waive all of the DIFs (Exhibit 2).

It should be noted that Dr. Shah did submit a request from the City Council back on February 11, 2011 (Exhibit 3) whereby he agreed to pay the entire DIFs due (\$259,512.39), but requested that they be paid over a three year period with the first one-third installment (\$86,504.13) due one year from the issuance of a Certificate of Occupancy (C of O) on the first building. In order to guarantee payment, the developer was willing to submit a letter of credit prior to the issuance of the first C of O for the full amount, suitable to the City Attorney, where the City could draw \$86,504.13 each year until it was paid in full. In good faith, the City issued a building permit to allow the developer to complete the project. This would allow the developer to market the project and obtain tenant commitments to start generating revenue. The developer had also requested that any permit fees not directly associated with city processing and inspection costs that were already paid under the original permit not be required to be repaid. However, there were no such fees.

Staff had no authority to defer fees. The Municipal Code provides that only the governing body can authorize a reduction, adjustment, or waiver of established fees. According to Section 17.144.080 of the Municipal Code, a developer may apply in writing for a reduction, adjustment, or waiver of any one or more of fees, based upon the absence of any reasonable relationship or nexus between the impacts of that development and either the amount of the fee(s) charged or the type of facilities to be financed.

The City Council considered his request at a public hearing. The public hearing notice was published according to the Municipal Code and mailed to all property owners within 300 feet of the property boundary ten days prior to the City Council meeting of February 15, 2011. At that meeting the City Council unanimously denied the developer's request (Exhibit 4).

On September 26, 2013, Dr. Shah met with Staff where the developer was notified that his prior request was denied and therefore the DIFs were due and payable in order for the City to issue Certificate of Occupancies for the shell buildings (Exhibit 5).

Staff met with Dr. Shah after September 26, 2013, meeting and determined that the developer paid for certain improvements that should have not been required. These entailed asphalt grinding and overlay on adjacent streets and a concrete landing for handicap access to the site. In addition, there was contractor supervision, profit and overhead tied to those items and Staff

agreed that there should be a credit towards those items. Therefore, in total, Staff agrees that a credit to the developer in an amount equal to \$17,852.00 should be granted, leaving \$241,660.39 in outstanding DIFs to be paid. The breakdown of the improvements are as follows:

Asphalt Grind and Overlay	\$13,052.00
Concrete Landing	\$3,200.00
Contractor Supervision	\$900 (estimated)
Profit and Overhead	\$700 (estimated)
<b>Total</b>	<b>\$17,852.00</b>

## **FISCAL IMPACT**

Development Impact Fees in the amount of \$259,512.39 is required of this project. However, a credit should be given in an amount equal to \$17,852.00, leaving a balance of \$241,660.39 to be paid. These funds help offset the costs of the additional burden placed on city facilities, infrastructure, and services as a result of the project.

## **EXHIBIT(S)**

1. Letter from Steven Mendoza
2. Letter from developer requesting fee waiver.
3. Letter from developer requesting fee deferral.
4. February 15, 2011 City Council Meeting Minutes.
5. Letter from Interim City Manager Bob Adams.