



WASHOE COUNTY

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STAFF REPORT

BOARD MEETING DATE: July 14, 2020

DATE: June 12, 2020

TO: Board of County Commissioners

FROM: Julee Olander, Planner, Planning & Building Division, Community Services Department, 328.3627, jolander@washoecounty.us

THROUGH: Mojra Hauenstein, Arch., Planner, Division Director, Planning & Building, Community Services Department, 328-3619, mhauenstein@washoecounty.us

SUBJECT: Public Hearing: Second reading and adoption of an Ordinance pursuant to Nevada Revised Statutes 278.0201 through 278.0207 adopting a Development Agreement between (1) Washoe County and (2) Regal Holdings of Nevada, LLC and Charles J. Fornaro, et. al., for Highland Village, limiting the gross density to 4.2 dwelling units per acre on the portions of the property (APNs 508-020-41 and 508-020-43) zoned High Density Suburban. The term of the agreement is ten (10) years. The project is located north of Highland Ranch Parkway and north of Midnight Drive. The project encompasses a total of 2 parcels that total approximately 54.4 acres. The parcels are located within the Sun Valley Area Plan. The property is located within the Sun Valley Citizen Advisory Board boundaries and within Washoe County Commission District No.5. (APNS: 508-020-41 & 43) (Commission District 5.)

SUMMARY

The Washoe County Commission to hold the second reading of an ordinance adopting a Development Agreement to limit the number of units per acres for Highland Village.

Washoe County Strategic Objective supported by this item: Responsible Growth Management.

PREVIOUS ACTION

On June 16, 2020, the Board of County Commissioners (Board) heard and approved the introduction and first reading of an ordinance for the development agreement for Highland Village.

On June 2, 2020, the Planning Commission (PC) was updated on the status of the appeal of WRZA19-0010 (Highland Village) and presented a proposed development agreement for Highland Village limiting the number of allowed housing units. The PC was asked to provide a recommendation to the Board concerning the development agreement. The PC

AGENDA ITEM # _____

recommended approval of the regulatory zone amendment if coupled with an associated development agreement limiting the gross density to 4.2 dwelling units per acre.

On April 28, 2020, the Board reviewed the appeal of WRZA19-0010 (Highland Village). After presentations from staff, the applicant and public comment, the Board concluded that the regulatory zone amendment request could not be supported as requested. The Board remanded the item back to the PC for a recommendation on the regulatory zone amendment (RZA) request to be paired with an associated development agreement in which the applicant voluntarily agreed to limit the number of allowed units to a gross density of 4.2 dwelling units per acre.

On March 3, 2020, the PC heard WRZA19-0010 (Highland Village), in a public hearing. The PC could not make finding 2 (compatible land uses) and finding 4 (availability of facilities) and unanimously denied the proposed amendment.

On January 21, 2020, this item was heard by the Sun Valley Citizen Advisory Board (SV CAB). The CAB recommended that the regulatory zone be amended to Medium Density Suburban (MDS) and not High Density Suburban (HDS).

BACKGROUND

The proposed development agreement establishes that Highland Village will only be allowed to develop a gross density of 4.2 units per acre despite the zoning designation. The density will only include the areas with a regulatory zone of High Density Suburban (HDS). The areas with a regulatory zoning of General Rural (GR) will not be included in the gross density calculation.

The Board has adopted the RZA from Low Density Suburban (LDS) to HDS at the June 16, 2020, meeting that had been denied by the PC. The PC has recommended the development agreement at the June 2, 2020 meeting.

FISCAL IMPACT

No Fiscal Impact

RECOMMENDATION

It is recommended that the Board of County Commissioners conduct a second reading and adopt an ordinance approving a Development Agreement, which limits the gross density to 4.2 dwelling units per acre on the portions of the property (APNs 508-020-41 and 508-020-43) zoned High Density Suburban.

If adopted, the Ordinance will be effective on July 24, 2020

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be:

“Move to adopt Ordinance Number (insert ordinance number as provided by the County Clerk) pursuant to Nevada Revised Statutes 278.0201 through 278.0207 adopting Development Agreement for Charles J. Fornaro, et al., limiting the gross density to 4.2 dwelling units per acre. The approval is based on the Board's ability to make all the findings required by WCC Section 110.814.30(d), Findings ; and further to authorize the Chair to execute the final Development Agreement upon adoption of the Ordinance.”

Attachments: A. Ordinance
B. Development Agreement, containing:
Exhibit A (Legal Description)

cc:

Applicant: Regal Holdings of Nevada LLC, 3495 Lakeside Dr., #249, Reno, NV
89509, Email: ray@pezonella.com

Property Owner: Charles J. Fornaro, et al, 3936 Eagle Cir., Slatington, PA 18080

Consultant: John Krmptic , 1East 1st Street, Reno, NV, 89501
Email:johnk@klsdesigngroup.com

DRAFT: June 16, 2020

WORKING COPY/Information Only

APNs 508-020-41 and 508-020-43

Mail Tax Statements To:
Charles J. Fornaro
3936 Eagle Cir.
Slatington, PA 18080

Recording Requested By County Clerk.
When recorded, copy to Community Services Department.
Attention: Planning and Building Division

Notice: Per NRS 239B.030, this document does not contain personal information as defined in NRS 603A.040

Summary: To adopt a Development Agreement for Highland Village.

BILL NO. _____

ORDINANCE NO. _____

TITLE:

An Ordinance pursuant to Nevada Revised Statutes 278.0201 through 278.0207 adopting a Development Agreement between (1) Washoe County and (2) Regal Holdings of Nevada, LLC and Charles J. Fornaro, et. al., for Highland Village, limiting the gross density to 4.2 dwelling units per acre on the portions of the property (APNs 508-020-41 and 508-020-43) zoned High Density Suburban. The term of the agreement is ten (10) years.

The project is located north of Highland Ranch Parkway and north of Midnight Drive. The project encompasses a total of 2 parcels that total approximately 54.4 acres. The parcels are located within the Sun Valley Area Plan. The property is located within the Sun Valley Citizen Advisory Board boundaries and within Washoe County Commission District No.5. (APNS: 508-020-41 & 43)

WHEREAS:

- A. Following a first reading and publication as required by NRS 244.100 (1), and after a duly noticed public hearing, this Board of County Commissioners desires to adopt this Ordinance; and

DRAFT: June 16, 2020

C. This Board of County Commissioners has determined that this ordinance is being adopted pursuant to requirements set forth in Chapter 278 of NRS, and is therefore not a "rule" as defined in NRS 237.060 requiring a business impact statement.

SECTION 1.

The Development Agreement for Highland Village attached hereto as Attachment A-1 are hereby APPROVED by this ordinance. The Chairman is authorized to execute and deliver it for recording in the official records of Washoe County.

SECTION 2. General Terms.

1. All actions, proceedings, matters and things heretofore taken, had and done by the County and its officers not inconsistent with the provisions of this Ordinance are ratified and approved.
2. The Chairman of the Board and the officers of the County are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this ordinance. The District Attorney is authorized to make non-substantive edits and corrections to this Ordinance.
3. All ordinances, resolutions, bylaws and orders, or parts thereof, in conflict with the provisions of this ordinance are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, bylaw or order, or part thereof, heretofore repealed.
4. Each term and provision of this ordinance shall be valid and shall be enforced to the extent permitted by law. If any term or provision of this ordinance or the application thereof shall be deemed by a court of competent jurisdiction to be in violation of law or public policy, then it shall be deemed modified, ipso facto, to bring it within the limits of validity or enforceability, but if it cannot be so modified, then it shall be excised from this ordinance. In any event, the remainder of this ordinance, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected.

DRAFT: June 16, 2020

Proposed on _____ (month) _____ (day), _____ 2020.

Proposed by Commissioner _____.

Passed _____ (month) _____ (day), _____ 2020.

Vote:

Ayes: Commissioners _____

Nays: Commissioners _____

Absent: Commissioners _____.

Attest:

Nancy Parent, County Clerk

Bob Lucey, Chair
Washoe County Commission

This ordinance shall be in force and effect from and after the 24th day of the month of July of the year 2020.

ATTACHMENT A-1

AGREEMENT

THIS AGREEMENT (“Agreement”) is made by and between **Regal Holdings of Nevada, LLC** (legally authorized representative of the “Landowner”), and the **COUNTY OF WASHOE**, a political subdivision of the State of Nevada, (“County”).

1. GENERAL.

1.1 Property. The Landowner is the owner of real property located in Washoe County, Nevada known as Assessor’s Parcel Numbers 508-020-41 and 508-020-43 in Washoe County, Nevada (the “Property”) as more particularly described in Exhibit A, attached hereto, which is subject to County’s Sun Valley Area Plan.

1.2. Regulatory Zone Map Amendment. Portions of the Property have a County regulatory zone of High Density Suburban (“HDS”), which, but for this Agreement, allows a density of up to seven single family dwellings per acre. The development of the Property must be conducted pursuant to the provisions of the Development Agreement and the Washoe County Development Code (the “Code”).

2. AGREEMENT CONCERNING DEVELOPMENT OF LAND.

2.1 Compliance with NRS 278.0201 and Code. This Agreement is an agreement concerning the development of land under NRS 278.0201 and Article 814, Development Agreements of the Washoe County Development Code. The Landowner is the owner of fee title to the Property, and therefore has a legal interest in the Property. In compliance with NRS 278.0201(1), the following covenants, terms and conditions are set forth:

2.1.1. The land which is subject to this Agreement is APN 508-020-41 & 43 which is described in Exhibit A: Legal Description.

2.1.2. The permitted uses on the Property and the residential density or intensity of use shall not exceed a gross density of 4.2 units per acre, whether detached or attached, for the Property for all areas within the High Density Suburban (HDS) regulatory zone.

2.1.3. The building standards and land uses will comply with all other standards of the HDS regulatory zone.

2.1.4. The development of the Property shall comply with all other applicable standards of the Washoe County Master Plan and the Washoe County Development Code.

2.1.5. The duration of this Agreement shall be for ten (10) years from the date of signing by the Board of County Commissioners, provided that all the terms of this Agreement shall remain binding and enforceable regarding construction or development commenced, and any related permits, or any use permit in existence at the time of expiration of this Agreement.

2.2 Code and Changes to the Law. The parties agree that changes in federal, state or county law concerning public health, safety or welfare will apply to any final map or other permit.

2.3 Public Notice. Any and all public notices required to be given in connection with this Agreement shall be given in accordance with Section 110.814.25 of the Code

2.4 Assumption of Risk. The Landowner acknowledges and agrees that the Landowner is proceeding voluntarily and at its own risk in entering into this Agreement and without advice, promises or guarantees of any kind from the County, other than as expressly set forth herein. The Landowner waives any claims for damages against the county that might arise out of, or relate to, a subsequent court determination that this Agreement or any provision in it is invalid and/or unenforceable, including any claim based on NRS 278.0233(1) regarding the requirements, limitations, or conditions imposed pursuant to this Agreement.

2.5 Default and Termination of Agreement. Subject to paragraph 2.6 below, this Agreement shall become null and void, at the option of the non-breaching party, in the event of noncompliance with any material term or deadline set forth in this Agreement if the breaching party fails to fully cure such noncompliance after reasonable written notice and opportunity to cure, provided that all the terms of this Agreement shall remain binding and enforceable regarding construction or development commenced, and any related permits or any use permit in existence at the time of termination of this Agreement.

2.6 Breach. Any nonperformance of any obligation hereunder when due, without adequate legal excuse, shall constitute a breach of this Agreement. Any nonperformance of any material obligation hereunder when due, without adequate legal excuse, shall constitute material breach of this Agreement, authorizing but not requiring the non-materially-breaching party to terminate the Agreement.

3. MISCELLANEOUS PROVISIONS.

3.1 Time is of the Essence. Time is of the essence in this Agreement.

3.2 Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act except those of the waiving party, which shall be extended by a period of time equal to the period of the delay.

3.3 Assignability of the Agreement. This Agreement shall be binding upon and inure to the benefit of all future successors in interest of the Property as described in Exhibit A (Legal

Description), and the successor shall assume the duties and obligations under this Agreement. This Agreement shall touch and concern the land and the parties agree that it runs with the land. Furthermore, Landowner agrees to record this Agreement in the office of the Washoe County Recorder against the Property to provide notice to the world of its provisions.

3.4 Entire Agreement. This Agreement is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto.

3.5 Governing Law. The parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of Nevada. The parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Nevada and venue for any action shall be solely in state district court for Washoe County, Nevada.

3.6 Days of Week. If any date for performance herein falls on a Saturday, Sunday or holiday, pursuant to the laws of the State, the time for such performance shall be extended to 5:00 p.m. on the next business day.

3.7 Written Amendments. Amendments to this Agreement shall be defined as changes which are not in substantial compliance with this Agreement. Amendments, if any, shall be approved as provided in NRS 278.0205. Changes hereto which are in substantial compliance with the overall Agreement may be requested by Owners and approved or denied by the Director of Planning and Building. The Owners may appeal an adverse decision by the Director of Planning and Building to the Board of County Commissioners by written notice filed with the Director of Planning and Building, if filed within twenty (20) days of receipt of the notice of the adverse decision unless an appeal to the Board of Adjustment is required to occur first. No oral statements or representations subsequent to the execution hereof by either party are binding on the other party, and neither party shall have the right to rely on such oral statements or representations.

3.8 Future Cooperation. Each party shall, at the request of the other, at any time, execute and deliver to the requesting party all such further instruments as may be reasonably necessary or appropriate in order to effectuate the purpose and intent of this Agreement.

3.9 Third Party Beneficiary Rights. This Agreement is not intended to create any third-party beneficiary rights in any person not a party hereto.

3.10 Interpretation. The parties hereto acknowledge and agree that each has been given the opportunity to review this Agreement with legal counsel independently. The parties have equal bargaining power and intend the plain meaning of the provisions herein. In the event of an ambiguity in or dispute regarding the interpretation of the Agreement, the interpretation of this Agreement shall not be resolved by any rule of interpretation providing for interpretation against the party who causes the uncertainty to exist, or against the draftsmen.

3.11. Counterparts. This instrument may be executed in two or more counterparts, which, when taken together, shall constitute one and the same instrument. Any signature page of this instrument may be detached from any counterpart without impairing the legal effect of any

signatures thereon, and may be attached to another counterpart identical in form thereto, but having attached to it one or more additional signature pages.

[Signatures appear on following page]

[Signature page to Development Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date above last written below.

LANDOWNER:

Regal Holdings of Nevada, LLC

By: _____

Date: _____

Name: Raymond Pezonella

Title: Manager

COUNTY:

**COUNTY OF WASHOE, a political
subdivision of the State of Nevada, by its
BOARD OF WASHOE COUNTY
COMMISSIONERS**

By: _____
Bob Lucey, Chair

Date: _____

ATTEST:

Nancy Parent, County Clerk

STATE OF NEVADA)
)ss.
COUNTY OF WASHOE)

 This instrument was acknowledged before me on July _____, 2020, by
_____ as a Manager of Charles J. Fornaro, et al.

My Commission Expires: _____

STATE OF NEVADA)
)ss.
COUNTY OF WASHOE)

 This instrument was acknowledged before me on July _____, 2020, by Bob Lucey, Chairman
of the Washoe County Board of County Commissioners.

Notary Public
My Commission Expires: _____

Exhibit "A"

LEGAL DESCRIPTION OF PROJECT PROPERTY (APN: 508-020-41 and 508-020-43)

All that certain real property situated in the County of Washoe, State of Nevada, described as follows:

The South half of the South half of the Southeast Quarter and the North half of the South half of the Southeast Quarter in Section 8, Township 20 North, Range 20 East, M.D.B.&M., Washoe County, Nevada.

EXCEPTING THEREFROM those portions dedicated to the County of Washoe, a political subdivision of the State of Nevada, by instruments recorded December 11, 1997, in Book 5069, Page 775, Document No. 2161272, Official Records and recorded April 8, 1998, in Book 5195, Page 906, Document No. 2197961, Official Records. (APN: 508-020-41 and 508-020-43)