STAFF MEMO

DATE OF COUNCIL MEETING: NOVEMBER 23, 2020 / AGENDA ITEM NO. 14 & 15

To: Mayor and City Council
From: Travis Parker, Director of Planning, 303-987-7908
Subject: SETTLEMENT AGREEMENT FOR WHITE FENCE FARM LAWSUITS

SUMMARY STATEMENT:
Two lawsuits have been filed against the City regarding potential development at 6263 W. Jewell, the former site of the White Fence Farm Restaurant. City staff has been working with both parties, Crescent Communities LLC and UNIFIED Under the Wilson Property ODP, for a number of months to reach a negotiated settlement agreement acceptable to all sides. All parties have accepted the attached agreement and recommend approval of the two associated resolutions approving the settlement agreement and granting Authority to Continue under Section 14.27 to the project.

BACKGROUND INFORMATION:
In March of 2019, Crescent Communities submitted a site plan to develop the property at 6263 W. Jewell as an apartment complex. In May of 2019 the neighboring Wild Flower Patio Homes HOA requested and received the City’s interpretation of certain provisions of the zoning ordinance and official development plan as they applied to the proposal. Those interpretations were appealed by the HOA. In January of 2020, the Board of Adjustment met on the appeal and did not overturn the City’s interpretations. The HOA and neighboring HOAs filed suit against the City based on these actions.
Also in January of 2020 the City Council met to establish housing allocations for the year under Article 14.27 and to choose whether to grant Authority to Continue without allocations to projects submitted prior to the July 2019 election. The Council chose not to grant Authority to Continue to this project in resolution 2020-08 and Crescent subsequently filed suit against the City based on this action.
Beginning in August of this year both plaintiffs began formal mediation with each other and the City to find a mutually acceptable negotiated agreement. Over the past three months, the parties have worked diligently and in good faith to reach agreement. The attached settlement agreement is the result of that work and is acceptable to all parties subject to City Council approval.
Highlights of the agreement include, but are not limited to:
1. Lawsuits will be dismissed by both plaintiffs
2. Residential unit count will be lowered from 235 to 202
3. The fourth story will be removed from the proposed east building and half of the west building
4. A minimum of 299 parking spaces will be provided
5. Access to and from Harlan Circle will be limited to emergency vehicles only
6. Developer will consult with the HOA on building architecture
7. Parties have agreed to new maintenance responsibilities in Sanderson Gulch
8. Lakewood will conduct additional future traffic studies at the Jewell & Illif intersection
9. Lakewood will install parking signs agreed to by the HOA along S. Harlan Circle and attached cul-de-sacs

10. Lakewood will grant Authority to Continue under 14.27 to the project

**BUDGETARY IMPACTS:**
There are no budgetary impacts beyond legal fees already incurred if the agreement is approved. Any future expenditures of City funds is subject to appropriation by Council. Rejection of the agreement would likely result in the resumption of the two lawsuits. The claims brought by the HOA plaintiffs are limited to declaratory and injunctive relief and, if plaintiffs were to be successful, would not expose the City to any financial liability. The claims brought by Crescent also seek declaratory and injunctive relief, but contain an additional claim for damages for alleged violations of Crescent’s constitutional and property rights resulting from the adoption of resolution 2020-8. The City would also incur legal fees and expenses if the litigation were to resume.

**STAFF RECOMMENDATIONS:**
City staff joins both plaintiffs in recommending approval of the settlement agreement and granting Authority to Continue to this project. A letter from the Wild Flower Patio Homes HOA and UNIFIED Under the Wilson Property ODP recommending approval is attached.

**ALTERNATIVES:**
Should Council choose to reject the proposed agreement, the litigation will likely resume. Due to the parties’s good faith efforts to reach the proposed settlement agreement, little progress has been made in the litigation. In fact, the cases are currently stayed due to the possibility of a full resolution. If litigation were to resume, the HOA claims might result in the questions of the City’s interpretations being remanded to the Board of Adjustment. Crescent’s claims against the City relating to the Authority to Continue and resolution 2020-8 would also resume. Due to settlement efforts, insufficient progress has been made to fully assess the merits of those claims. As noted above, there is a claim for damages asserted against the City that, if successful, could present significant potential liability.

**PUBLIC OUTREACH:**
The mediation process including draft agreements have been legally confidential until this time. Only parties to the lawsuits have been involved.

**NEXT STEPS:**
If this agreement is approved by Council, Crescent will submit a revised site plan conforming with the terms of this agreement. Such site plan and associated building plans would be processed administratively by City staff.

**ATTACHMENTS:**
- Resolution 2020-46
- Proposed Settlement Agreement and exhibits
- Letter of support for the settlement agreement and Authority to Continue from the Wild Flower Patio Homes HOA and UNIFIED Under the Wilson Property ODP

**REVIEWED BY:**
Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Timothy P. Cox, City Attorney