

TO: TOWN COUNCIL

FROM: TOWN MANAGER

RE: PUBLIC HEARING

HERITAGE PARK SUBDIVISION REVERSION TO ACREAGE

### **ISSUE**

The Heritage Park Subdivision has not initiated any building to complete the subdivision since receiving approval in 2006 and the Council approved initiating a reversion to acreage process at the October 13, 2009 meeting.

### **RECOMMENDATION**

Continue public hearing to December 8, 2009 to approve a reversion to acreage as allowed by law.

### **CEQA**

There are no CEQA issues associated with a reversion to acreage resulting from owner failure to implement a subdivision map.

### **MONEY**

Costs are unknown at present though there would be legal time and paper work.

### **DISCUSSION**

Heritage Park Subdivision has a history of problems dating back to the 1990's. A final map was issued in 2006 for Phases II & III but no work has been done on the subdivision to date. Council first considered reverting this subdivision to acreage in July 2008 but held off based on a request from Umqua Bank that held the title at the time due to foreclosure, to allow the Bank to conclude a property sale to a developer. Sycamore Homes (Kevin Stevens 916-925-7559) acquired the property. Sycamore and the Town agreed to incorporate the following in the subdivision:

- The berm needs to be maintained (paid for) by the subdivision
- Include park feature – possibly eliminate lots 29, 65, 66, 67, & 68.
- Vary the house designs and sizes to avoid a cookie cutter series of houses
- Senior housing might be considered
- Provide some affordable units
- No two story houses adjacent to existing neighbors and possibly next to the freeway
- Design review will be required
- LEED housing (green building)
- Change from 39 to 29 lots

Since the July 2008 meeting Council has continued to hold off proceeding with acreage reversion in November 2008, February 2009, May 2009 and July 2009. Though Mr. Stevens has met with the Parks, Recreation and Open Space Committee and discussed with staff the legal issues of getting the subdivision from 40 lots to 29 lots, there does not appear to be sufficient or timely action occurring that will result in this project moving beyond a hope and a dream.

It has been 3 years since final map was issued. The subdivision has sat without any improvements, been part of foreclosure proceeding in October 2009, there is uncertainty as to the availability of bonds or other forms of security to do the public works, and no lots have been sold or could be sold for that matter until the public works are installed.

### **REVERSION TO ACREAGE**

Pursuant to State Law at Government Code 66499.11 et seq Council can consider a reversion to acreage which would have the effect of removing the approved subdivision map from the property and requiring any subsequent owner to submit a new map if the owner wished to develop the property.

Government Code section 66499.16 requires findings:

- (b) Dedications or offers of dedication to be vacated or abandoned by the reversion to acreage are unnecessary for present or prospective public purposes; and
  
- (c) Either:
  - (1) All owners of an interest in real property within the subdivision have consented to reversion; or
  
  - (2) None of the improvements required to be made have been made with two years from the date the final or parcel map was filed for record, or within the time allowed by agreement for the improvements, whichever is later; or
  
  - (3) No lots shown on the final map or parcel map have been sold within five years from the date such map was filed for record.

**RECENT EVENTS**

In October 2009 the Heritage Park property was acquired, at public auction, by Brent Speckert, (916-784-9562) representing a family run loan brokerage and real estate business. Mr. Speckert has been talking to Mr. Lincoln Leaman (916-995-6572) of Warmington Homes about developing the site. Staff will be meeting with Mr Leaman and Mr Speckert prior to the November meeting and will report the results of that discussion.

At this point, due to a noticing requirement, it is necessary to hold over the revocation hearing to the December meeting.

**ATTACHMENTS**

- 6 pages Planning Guide and Government Code excerpts providing legal information on reversion to acreage
- 1 page Map of Heritage Park subdivision as approved in 2006
- 1 page Map of Heritage Park subdivision with revisions developed by Sycamore Homes in December 2008

## Town of Loomis

### DRAFT RESOLUTION 09 - \_\_\_\_

#### **A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOOMIS FINDING THAT THE HERITAGE PARK ESTATES SUBDIVISION PHASE 2 & 3 SHOULD BE REVERTED TO ACREAGE AS PROVIDED IN LAW**

WHEREAS, the Town of Loomis approved the final map for the Heritage Park Estates Subdivision Phase 2 & 3 on March 14, 2006; and

WHEREAS, the land has been vacant for years before the Heritage Park Subdivision was approved and has continued vacant during the almost three years since the final map was approved; and

WHEREAS, the required construction of public improvements has not been started or completed; and

WHEREAS, there is uncertainty as to the validity of bonds that were put up for surety on the public works improvements because the developer, Gridiron Development, lost the property in foreclosure proceedings in 2008; and

WHEREAS, the new owner of the Heritage Park Subdivision, \_\_\_\_\_, has not filed new surety with the Town to do the public works improvements; and

WHEREAS, no entity has come forward to build out Heritage Park Estates in the manner in which it was approved; and

WHEREAS, no entity has come forward to build out Heritage Park Estates in any other way that the Town might consider;

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. The Heritage Park Subdivision Phase 2 & 3 revert to acreage as provided in law at Government Code Section 66499.11 et seq and that the Public Works Director/Engineer shall cause this reversion to acreage to be immediately recorded with Placer County.

- 2. That the recorded easements known as \_\_\_\_\_ shall be retained by the Town of Loomis being necessary for current and/or prospective public purposes.
  
- 3. That the recorded easements known as \_\_\_\_\_ shall be vacated or abandoned by the Town of Loomis because these easements are deemed unnecessary for current and/or prospective public purposes.

PASSED AND ADOPTED this 10<sup>th</sup> day of November 2009, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAINED:

\_\_\_\_\_  
Walt Scherer, Mayor

ATTEST:

\_\_\_\_\_  
Crickett Strock, Town Clerk

APPROVED FOR FORM:

\_\_\_\_\_  
Dave Larsen, Town Attorney

## Reversions and Exclusions

- I. REVERSION TO ACREAGE
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    - 2. Procedure
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      - b. Findings; Conditions §12.3
      - c. Recording Final Map; Release of Fees §12.4
    - 3. Refund of Unused Subdivision Fees §12.5
  - B. Alternative Procedures
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    - 2. Merger and Resubdivision §12.7
    - 3. Merger of Contiguous Parcels Under Common Ownership §12.8
    - 4. Lot Line Adjustment §12.9
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### I. REVERSION TO ACREAGE

#### A. Formal Reversion

##### §12.1 1. Nature and Purpose

Reversion to acreage is a procedure authorized by statute (Govt C §§66499.11-66499.20¼), under which previously subdivided property may be reverted to unsubdivided acreage (Govt C §66499.11). The formal reversion procedure is seldom used. Instead, alternative procedures of filing a new final map or parcel map over a previously subdivided parcel are more often used because the subdivider usually

wants to substitute a new subdivision map for the old one rather than abandon the subdivision altogether. Govt C §66499.20½. See §12.7.

Proceedings to revert property to acreage may be initiated by the legislative body of the local agency on its own motion or by petition of all owners of record of real property within the subdivision. Govt C §66499.12. Local agencies typically initiate formal reversion proceedings (as opposed to merger and resubdivision under Govt C §66499.20½; see §12.7) to eliminate a previously approved subdivision map when the improvements required as map conditions have not been made within the applicable time limits or when no lots in the subdivision have been sold. When some, but not all, required improvements have been made, reversion may not be available under Govt C §66499.16, but the local agency may recover on the security for the improvements (see §§10.26-10.37) and may make the improvements itself.

## 2. Procedure

### §12.2 a. Initiation; Fees; Public Hearing

Formal reversion proceedings may be initiated by the local agency's legislative body on its own motion or by petition of all owners of record of property in the subdivision. Govt C §66499.12. A petition by property owners must be in a form prescribed by the local agency and must contain the following (Govt C §66499.13):

- Adequate evidence of title to the real property in the subdivision;
- Sufficient data to enable the legislative body to make the required findings and determinations;
- A final map that delineates dedications that will not be vacated and dedications that are a condition to reversion; and
- Any other pertinent information that the local agency requires.

The legislative body may charge a fee for processing reversions to acreage in an amount that will reimburse it for the costs incurred. The fee must be paid by the record owners when they file the petition for reversion or by the person or persons who request the legislative body to proceed on its own motion. Govt C §66499.14.

A public hearing must be held on the proposed reversion. Govt

C §66499.15. Notice of the hearing must be given in accordance with Govt C §66451.3, which governs notice for hearings on tentative map applications (see §9.6). Approval of reversion to acreage is a discretionary rather than ministerial function. See, e.g., *City of Los Angeles v Amwest Sur. Ins. Co.* (1998) 63 CA4th 378, 73 CR2d 729.

### §12.3 b. Findings; Conditions

Subdivided real property may be reverted to acreage only if the legislative body finds that (Govt C §66499.16):

- Dedications or offers of dedication that will be vacated or abandoned by the reversion are unnecessary for present or prospective public purposes; and
- One of the following situations has occurred:
  - All owners of an interest in real property in the subdivision have consented to reversion;
  - None of the improvements required as subdivision map conditions have been made within two years after the date on which the final map or parcel map was recorded, or within the time allowed by agreement for completion of improvements, whichever is later; or
  - No lots shown on the final map or parcel map have been sold within five years after the date on which the map was recorded.

As conditions to reversion of the subdivision to acreage, the legislative body must require (Govt C §66499.17):

- Dedications or offers of dedication necessary for the purposes specified by local ordinance following reversion;
- Retention of all previously paid subdivision fees if necessary to accomplish the purposes of the Subdivision Map Act (Govt C §§66410-66499.37) or local subdivision ordinances; and
- Retention of any portion of the required improvement security or deposits if necessary to comply with the Map Act or local subdivision ordinances.

Presumably, the dedication requirement applies only to a reversion



sought by the owners of the real property in the subdivision and not to a reversion initiated by the local agency.

#### §12.4 c. Recording Final Map; Release of Fees

Reversion to acreage becomes effective when a final map reflecting the reversion is recorded. Govt C §66499.18. When the final map is recorded, all dedications and offers of dedication applicable to the previous subdivision and not shown on the reversion final map are of no further effect. Govt C §66499.18. Approval of the reversion by the legislative body automatically terminates any previously rejected offer of dedication as long as the map contains a notation identifying the offer or offers of dedication deemed terminated. Govt C §66477.2(e). Once the reversion is effective, the local agency must return all fees and deposits to the current owner of the property and release all improvement security except for that retained under Govt C §66499.17. Govt C §66499.19. See §12.5. The local agency may not require a tax bond in reversion proceedings. Govt C §66499.20.

#### §12.5 3. Refund of Unused Subdivision Fees

The Map Act provides the procedures for obtaining refunds of unused and unnecessary subdivision fees after a reversion to acreage. Govt C §66499.19; *B & P Dev. Corp. v City of Saratoga* (1986) 185 CA3d 949, 230 CR 192. In *B & P Dev. Corp.*, the court specifically referred to refunds of park fees (Govt C §66477(f)) and of storm drainage and sanitary sewer fees (Govt C §66483.2). The court denied a refund of development fees because the developer failed to petition for a reversion to acreage, which is a prerequisite to a suit for refund. The court distinguished *Wright Dev. Co. v City of Mountain View* (1975) 53 CA3d 274, 125 CR 723, in which development fees were returned because the subdivision map had not yet been recorded and no specific statutory provisions relating to refunds had been enacted at the time.

### B. Alternative Procedures

#### §12.6 1. Parcel Map for Reversion to Acreage

When previously subdivided land is to be reverted to one parcel and the acreage consists of four or fewer contiguous parcels under

(c) The guarantee and warranty of the work, for a period of one year following completion and acceptance thereof, against any defective work or labor done or defective materials furnished, in the performance of the agreement with the legislative body or the performance of the act.

(d) Costs and reasonable expenses and fees, including reasonable attorneys' fees.

**66499.10. Recovery method dependent upon form of surety**

Where the security is conditioned upon the payment to the contractor, his subcontractors and to persons furnishing labor, materials or equipment to them for the improvement or the performance of an act and takes the form of a deposit of money or negotiable bonds, a suit to recover the amount due the claimant may be maintained against the holder of such deposit. Where the security takes the form of a surety bond, or surety bonds, the right of recovery shall be in a suit against the surety. Where the security takes the form of an instrument of credit, the cause of action shall be against the financial institution obligating itself on such instrument of credit.

**Chapter 6. Reversions and Exclusions**

**Article 1. Reversion To Acreage**

**66499.11. Allows for reversion to acreage**

Subdivided real property may be reverted to acreage pursuant to the provisions of this article.

**66499.12. Legislative body or owners of record may initiate proceedings**

Proceedings for reversion to acreage may be initiated by the legislative body on its own motion or by petition of all of the owners of record of the real property within the subdivision.

**66499.13. Form of petition**

The petition shall be in a form prescribed by the local agency and shall contain the following:

- (a) Adequate evidence of title to the real property within the subdivision.
- (b) Sufficient data to enable the legislative body to make all of the determinations and findings required by this article.
- (c) A final map which delineates dedications which will not be vacated and dedications which are a condition to reversion.
- (d) Such other pertinent information as may be required by the local agency.

**66499.14. Fee for processing reversions**

The legislative body may establish a fee for processing reversions to acreage pursuant to this article in an amount which will reimburse the local agency for all costs incurred in processing such reversion to acreage. Such fee shall be paid by the owners at the time of filing the petition for reversion to acreage, or if the proceedings for reversion to acreage are initiated by the legislative body on its own motion shall be paid by the person or persons requesting the legislative body to proceed pursuant to this article before such initiation of proceedings.

**66499.15. Public hearing required**

A public hearing shall be held on the proposed reversion to acreage. Notice thereof shall be given in the time and manner provided in Section 66451.3.

**66499.16. Necessary findings by legislative body**

Subdivided real property may be reverted to acreage only if the legislative body finds that:

- (a) Dedications or offers of dedication to be vacated or abandoned by the reversion to acreage are unnecessary for present or prospective public purposes; and
- (b) Either:
  - (1) All owners of an interest in the real property within the subdivision have consented to reversion; or
  - (2) None of the improvements required to be made have been made within two years from the date the final or parcel map was filed for record, or within the time allowed by agreement for completion of the improvements, whichever is the later; or
  - (3) No lots shown on the final map or parcel map have been sold within five years from the date such map was filed for record.

**66499.17. Conditions of reversion**

As conditions of reversion the legislative body shall require:

- (a) Dedications or offers of dedication necessary for the purposes specified by local ordinance following reversion.
- (b) Retention of all previously paid fees if necessary to accomplish the purposes of this division or local ordinance adopted pursuant thereto.
- (c) Retention of any portion of required improvement security or deposits if necessary to accomplish the purposes of this division of local ordinance adopted pursuant thereto.

**66499.18. Effective date of reversion**

Reversion shall be effective upon the final map being filed for record by the county recorder, and thereupon all dedications and offers of dedication not shown thereon shall be of no further force or effect.

**66499.19. Return of fees and deposits; release of security**

When a reversion is effective, all fees and deposits shall be returned to the current owner of the property and all improvement security released, except those retained pursuant to Section 66499.17.

[Amended, Chapter 506, Statutes of 2000]

**66499.20. No tax bond required**

A tax bond shall not be required in reversion proceedings.

**66499.20<sup>1</sup>/<sub>4</sub>. Authorization for parcel map for reversion to acreage**

A city or county may, by ordinance, authorize a parcel map to be filed under the provisions of this chapter for the purpose of reverting to acreage land previously subdivided and consisting of four or less contiguous parcels under the same ownership.

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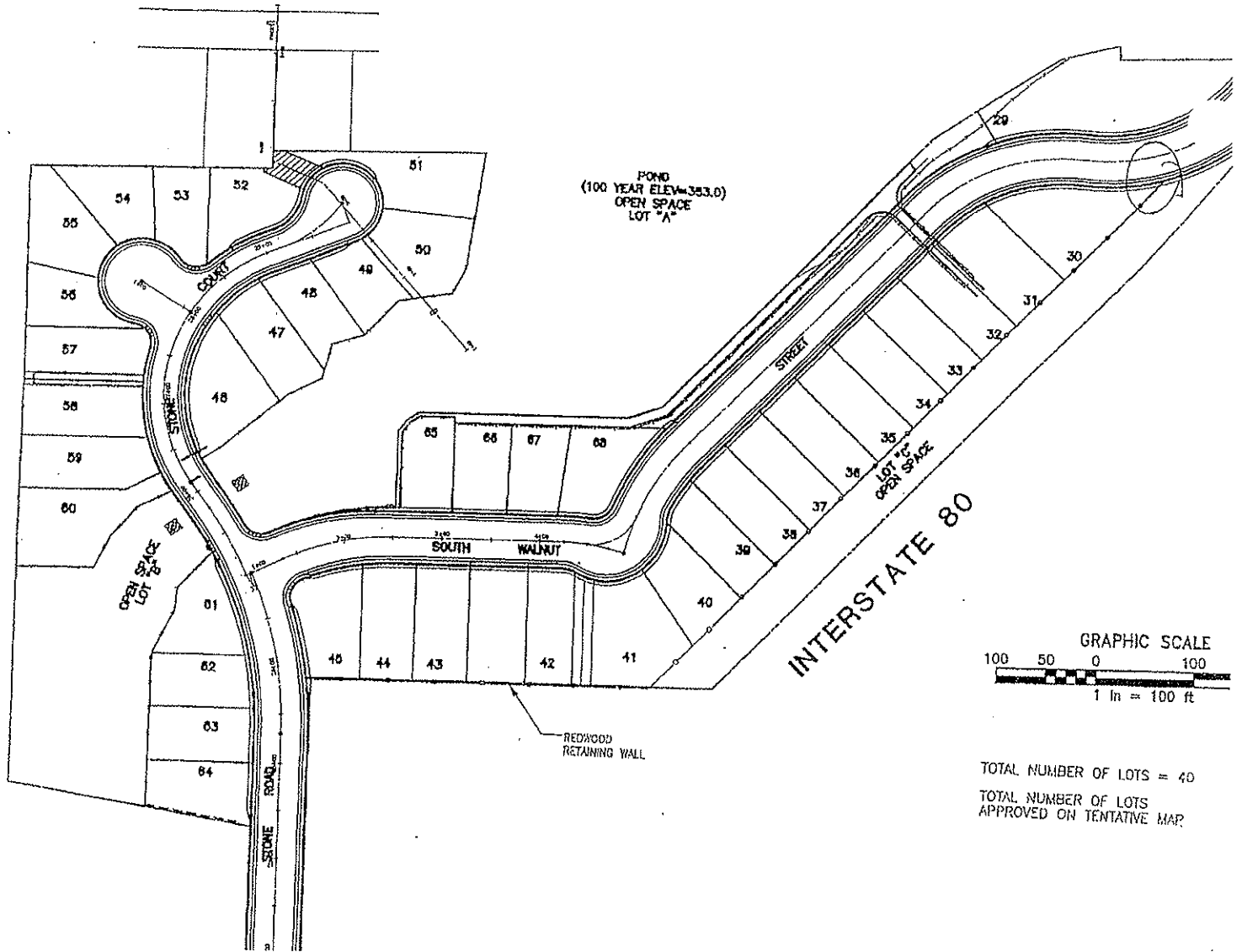
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**HERITAGE PARK SUBDIVISION AS APPROVED IN 2006**

