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Reply to: Reno

October 4, 2018

*Via Email [tgardner@cityofsparks.us](mailto:tgardner@cityofsparks.us)*

City of Sparks Planning Commission  
c/o Chairman Dian VanderWell  
431 Prater Way  
Sparks, Nevada 89431

**Re: D'Andrea Community Association: D'Andrea PUD Handbook Amendment  
PCN18-0040  
Hearing Date: October 4, 2018**

Dear Commissioners:

Our firm represents IPC D'Andrea, LLC ("IPC D'Andrea"), the owner of approximately 118 acres of land described as APN 402-100-58 located in the D'Andrea master planned community ("IPC Property"). The IPC Property includes 12.25 acres currently entitled under the D'Andrea Planned Development Handbook for development of 72 units in Monticello Village.

IPC D'Andrea acquired the Property through foreclosure following the economic downturn<sup>1</sup>. The rights acquired by IPC D'Andrea specifically include all "permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Premises", including the administration, implementation and amendment of the Development Handbook with respect to the IPC Property. IPC D'Andrea has been actively marketing the IPC Property for sale since that time, and has entered several contracts since foreclosure which for various reasons have fallen out of escrow following extended discussions and negotiations with the City and D'Andrea Community Association ("HOA") over the buyer's intended development plans. IPC D'Andrea has continued to market the IPC Property for sale, and is currently under contract to sell the IPC Property to National Landscape Acquisition LLC.

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<sup>1</sup> IPC D'Andrea acquired the interests of Insymphony Private Capital, LLC, which foreclosed on the IPC Property by Trustee's Deed on March 27, 2013. See Document No. 4219348, Document No. 4219720 and Document No. 4296490, Official Records Washoe County. Notwithstanding rumors to the contrary, the former owner Will Gustafson has no ownership interest or involvement whatsoever in IPC D'Andrea LLC.

IPC D'Andrea was shocked to learn that the City and HOA, without any notice, communication or involvement whatsoever of IPC D'Andrea, have been in extended discussions over stripping IPC D'Andrea of entitlements to develop Monticello Village. We understand these private discussions lead to the HOA filing the above referenced application to amend the Handbook and zoning on the IPC Property. It is perplexing at best that the City would facilitate, let alone accept, an application from a third party which proposes to strip valuable entitlement rights without even consulting with the property owner. It is even more troubling that IPC D'Andrea only learned of this proposal a few weeks ago through statutory postcard notices mailed to all neighboring owners.

IPC D'Andrea, as owner of the land impacted by the proposed amendment, adamantly opposes any proposal to remove Monticello Village from the Development Handbook and strip IPC D'Andrea of its rights to develop 72 units on its Property. We believe the HOA application is fatally flawed for a number of reasons, and clearly fails to satisfy the requisite procedures or findings to amend the Development Handbook.

First, the proposed amendment to the Development Handbook arguably constitutes an administrative action against IPC D'Andrea, as it has the force and effect of terminating development rights held solely by IPC D'Andrea through the actions of a public body. NRS 241.034 requires that before any administrative action may be taken against IPC D'Andrea, written notice by certified mail no less than 21 days prior to the public meeting. No such notice was provided in this matter, raising compliance issues under the open meeting law.

Second, the HOA lacks standing to file an application to change zoning on property owned by IPC D'Andrea, as a person must have a cognizable property right or legal claim in property to apply for a land use change. *See generally, Kay v. Nunez*, 122 Nev. 1100 (2006). NRS 278A is clear that applications to amend a final Development Handbook may be filed only by the owner/developer, or in limited circumstances by the local governing body or "residents of the planned unit development." NRS 278A.410 and 278A.420. That being said, NRS 278A.420 only authorizes "residents" to seek amendments to provisions involving the residents' "rights to enforce the provisions of the plan." Nothing in NRS 278A gives a resident or non-resident third party such as the HOA any right to seek or secure an amendment to land use and density development rights of a property owner under a Development Handbook.<sup>2</sup> IPC D'Andrea is the only owner of any land within Monticello Village or the

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<sup>2</sup> We recognize that S.M.C. 20.02.012(G) states that a PUD may be amended by owners of real property within the PUD or any other person to the extent expressly authorized by the Development Handbook; however, we question the enforceability of those portions of the ordinance to the extent they are not authorized by or consistent with NRS 278A. The City's authority is limited to the exercise of powers expressly delegated by the Legislature, and nothing in NRS 278A authorizes the City to adopt by ordinance broader powers of amendment than found in NRS 278A. Moreover, allowing any person without a cognizable property interest in the property impacted by the amendment to

larger 118 acre parcel within which Monticello Village is located, and therefore is the only non-governmental person with standing to amend density and land use entitlements on the IPC Property.

Even more troubling is the fact that the HOA has no jurisdiction or control over the IPC Property in the first place. The IPC Property is expressly excluded from the CC&R's the HOA operates under. Recital J of the D'Andrea CC&R's states, in relevant part, the IPC Property is "not included in the Properties subject to this Declaration" and "[i]t is not the intention of the Declarant to annex the Golf Course to the Properties or to subject the Golf Course property to this Declaration..." See *Document No. 2348877, Official Records Washoe County, p. 3*. The IPC Property is expressly included in the definition of the Golf Course under the CC&R's. The CC&R's further provide that the IPC Property (as part of the "Club Property") is not part of the Common Elements or Common Facilities over which the HOA has any interest. See *Id., Recital G, Sec. 1.10 and 1.12*. Of particular note is Section 17.01, which states that the IPC Property "is private property owned and operated by the Club Property Owner and ... **shall be developed and improved at the discretion of the Club Property Owner.** The Club Property Owner has **the exclusive right to determine from time to time, in its sole discretion and without notice or approval of any change, how and by whom the Club Property shall be used, if at all.**" *Id.* Not only does the HOA lack statutory authority to strip the IPC Property of land use and density entitlements, it has expressly agreed IPC D'Andrea has the exclusive power to change those uses in IPC D'Andrea's sole discretion without notice to or approval of the HOA. Neither the City nor HOA has any right to impair or subvert this investment backed expectation which IPC D'Andrea is lawfully and reasonably entitled to enjoy.

Third, even if the HOA had a cognizable property interest to file the application, the failure to secure IPC D'Andrea's consent is fatal. NRS 278A.380 states that the purpose of any Development Handbook amendment must further the "mutual interest of residents and owners of the development" and must preserve "the integrity of the plan as finally approved." Moreover, NRS 278A.380 states that amendments "cannot impair the reasonable reliance of [ ] owners upon provisions of the plan." The Development Handbook expressly intended and authorizes the development of 2,330 units, 72 of which are located within Monticello Village. IPC D'Andrea has reasonably relied on the ability to develop the units in Monticello Village, and has a reasonable investment backed expectation that no unrelated third party can unilaterally impair its rights to do so. Moreover, reducing the number of units in the Project and eliminating an entire Village and stripping the IPC Property of any development rights is clearly contrary to IPC D'Andrea's interest, fails to preserve the

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modify the zoning entitlements of someone else's property without their consent is directly contrary to fundamental principles of due process and jurisdictional standing.

integrity of the plan as finally approved, is inconsistent with efficient development of the PUD and contradicts the requisite findings under Sparks Municipal Code. *See SMC 20.02.012(G)(6)*.

Finally, we note that staff has suggested the 2009 amendment to the Development Handbook was not properly approved. We disagree. The 2009 amendment simply transferred unused density to other areas of the development as approved by the City Administrator. Contrary to staff's assertion, this transfer was expressly authorized and contemplated by the original Development Handbook and only required the approval of the owner and Administrator. A planned unit development is a special purpose zoning district, and the "prime objective of [a PUD under] NRS Chapter 278A is to promote flexibility of development." *Glenbrook Homeowners Ass'n v. Glenbrook Co.*, 111 Nev. 909 (1995)(citing NRS 278A.110(3)). The Development Handbook implements this objective, stating in relevant part "there will be more refinement in the acreages and units in the villages. Therefore, it is assumed there will be adjustments as the project develops" and that changes can be made so long as the overall yield and intensity does not exceed 2,330 units. The Development Handbook then concludes "**if for any reason the total number of lots/units requested by the original Planned Development Handbook (2,330 units) can not be attained with the original village configuration, any remaining residential density and or acreage may be transferred to other areas of the planned development deemed suitable for development by the Administrator, this includes the creation of new villages where appropriate.**" Development Handbook, p. 1-3. While we recognize the amendment language on P. 1-19 of the Development Handbook suggests amendments may be processed through the HOA, the specific procedures applicable to density transfers and village creation on page 1-3 which require only Administrator approval control over the more general administrative procedures on p. 1-19. *See Sierra Life Insurance v. Rottman*, 95 Nev. 654 (1979)(a provision which specifically applies to a given situation takes precedence over one that applies only generally). This makes sense, as the HOA has no jurisdiction or cognizable interest in where an owner decides to develop density which density is already part of the units approved in the final plan.

A City "may not unreasonably or arbitrarily deprive property owners of legitimate, advantageous land uses." *Nova Horizon v. City of Reno*, 105 Nev. 92 (1989). Removing the Monticello Village entitlements will only make it more difficult to activate and develop this property, something clearly in the best interests of the public, City and residents. The proposed application by a third party HOA to strip IPC D'Andrea of lawful, valuable development rights and density rights over IPC D'Andrea's objection and absent its participation, is unreasonable, contrary to requisite findings under NRS and City code, and must be denied.

We appreciate your consideration of this request and welcome the opportunity to respond to any questions you may have at the hearing.

Sincerely,



Michael A. T. Pagui

MATP:ma

cc: Client

Jim Rundle, Planning Manager (via email [jrundle@cityofsparks.us](mailto:jrundle@cityofsparks.us))

Sparks City Clerk, Teresa Gardner (via email [tgardner@cityofsparks.us](mailto:tgardner@cityofsparks.us))

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