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October 6, 2020

City Council
c/o City Clerk
City of San Dimas
245 East Bonita Avenue
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Ref. #: 9686

**RE: Via Verde Ridge Homeowners Association
Specific Plan 11 | Proposed Change
Objection to Proposed Amendment to Specific Plan 11**

Dear Council Members:

Our firm serves as general counsel to the Via Verde Ridge Homeowners Association (“Association”). In that capacity, the undersigned has been directed to contact you concerning proposed changes to Specific Plan 11 (“SP 11”).¹ In particular, we have been informed that the City Council (“Council”) for the City of San Dimas (“City”) is considering four (4) options for amending the SP 11 as it relates to grading within Planning Area I (“PA I”). A summary of the aforementioned options are as follows:

- Option 1: Codify the 200 cubic yards allowed by the Development Plan Review Board (“DPRB”).
- Option 2: Allow unlimited grading on a lot with the exception that no grading may be performed within the scenic easement other than what is currently allowed.
- Option 3: Allow grading limits to be established based on a percentage of buildable lot area.
- Option 4: Increase the current allowable 200 cubic yards to a size the Council deems appropriate.

For the reasons set forth herein, the Association objects to each of the options identified above, and respectfully requests that no changes be made to SP 11.

¹ Adopted in 1983, SP 11 was the result of a compromise between the City and owners within the boundaries of the area governed by SP 11. In other words, SP 11 struck a balance between those residents that desired no (or very limited) grading activities, and those that desired unfettered grading activities.

DISCUSSION

As you are aware, the Association is a common interest development formed for the purpose of managing and maintaining the community known as Via Verde Ridge. The community is comprised of four Planning Areas, including PA I. PA I is what is commonly referred to as the “custom built lots.” To maintain architectural and aesthetic continuity, the Association has established architectural guidelines (“Guidelines”) governing the construction and modification of residential dwellings within the community. “Maintaining a consistent and harmonious neighborhood, one that is architecturally and artistically pleasing, confers a benefit on the homeowners by maintaining the value of their properties.” (*Dolan-King v. Rancho Santa Fe Assn.* (2000) 81 Cal. App. 4th 965, 976.) Preserving “the aesthetic quality and property values within the community” is recognized as an “important function” of an association. (*Coben v. Kite Hill Community Assn.* (1983) 142 Cal.App.3d 642, 648.) It is for this reason that the Guidelines are faithfully and uniformly applied to all properties.

As correctly noted in the September 22, 2020 Agenda Item Staff Report (“Report”), same correctly points out that the Association’s governing documents track the original language contained in SP 11; viz., “...only that earth movement necessary for roadway access and excavation for retaining-type building foundations where there will be no visible signs of grading beyond the structure’s main walls.” Any modification to SP 11 would therefore create a conflict between the Association’s governing documents and SP 11.

Despite the conflict, the Association’s governing documents would nevertheless control. As noted in the California Supreme Court case of *Nabrstedt v. Lakeside Village Condominium Association*, common interest developments are considered “a little democratic subsociety” which may be “more restrictive...than may be existent outside the [association].” (*Id.*) Owners must therefore “give up a certain degree of freedom of choice which he [or she] might otherwise enjoy in separate, privately owned property.” (*Id.*) More to the point, “a land use, violative of [covenants, conditions and] restrictions, may be enjoined even though zoning permits it...” (*Mullaly v. Ojai Hotel Co.* (1968) 266 Cal. App. 2d 9, 12 (citing *Rice v. Heggy* (1958) 158 Cal. App. 2d 89, 92 (“...such rezoning by no means compelled the trial court to declare that appellants were entitled to construct [improvements] which would violate the deed restrictions”).)

Accordingly, any amendment to SP 11 would not serve to permit owners within the Association, and, in particular, PA I, to exceed grading limitations imposed by the Association’s governing documents. Rather, it would only serve to create an adverse relationship between property owners, the City, and the Association. Such an adverse relationship is likely to result in meritless lawsuits against the Association, the cost of which will necessarily be borne by its members (i.e., the Council’s constituents). Alternatively, the Association may be forced to litigate a dispute with an owner who may incorrectly believe that, since SP 11 permits such grading activities, Association approval is not required. Either way, an amendment to SP 11 would only foster division amongst the community.

It is also unclear as to the purpose behind the proposed change. Certainly the proposed change would be inconsistent with the intent of SP 11, which is to: (1) “minimize the alteration of significant natural landforms, vegetation and landmarks, (2) “provide an enriched residential environment with aesthetic cohesiveness, harmonious massing of structures, and interfacing of open space,” and “minimize the

impact of new development into the surrounding viewshed, especially as seen from adjacent existing development.” (*San Dimas Municipal Code*, Sect. 18.518.010.) The proposed change would necessarily deteriorate the existence of natural landforms and vegetation by allowing owners to perform additional grading. Same would also substantially, and negatively, impact the surrounding viewshed, especially as viewed from residents that live along Paseo Susana. As one resident accurately notes, an amendment to SP 11 could result in “our lovely hillsides flattened and subdivided to construct huge homes that don’t blend in with the existing neighborhood.”

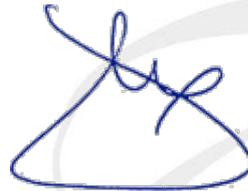
One owner within the community, Mr. John Begin, has submitted comments in support of the proposed amendment to SP 11. In particular, he recommends Option 2, which would permit unlimited grading outside of the scenic easement area. He alleges that the “current policy obviously does not work otherwise this 37 year-old tract would be 100% developed.” To be sure, there are seven (7) lots within PA I that have not been developed. However, after inquiring with several owners of undeveloped lots, their decision not to develop is unrelated to the grading limitations imposed by SP 11 (or the Association’s governing documents). Moreover, of the twenty-nine (29) lots that have been developed, all have been built without any grading problems with the property owners. Thus, Mr. Begin’s statement is misleading and predicated on self-interest.

In summary, the Association’s governing documents limit grading activities in PA I to “only that earth movement necessary for roadway access and excavation for retaining-type building foundations where there will be no visible signs of grading beyond the structure’s main walls.” The Association has the right and duty to enforce this limitation despite any amendment to SP 11. (See *Posey v. Leavitt* (1991) 229 Cal. App. 3d 1236, 1247.) Thus, the proposed amendment serves no purpose other than to placate the desires of one resident: Mr. Begin.²

In light of the foregoing, the Association respectfully requests that the Council vote against any amendment to Specific Plan 11. Thank you in advance for your consideration.

Very truly yours,

TINNELLY LAW GROUP



MATTHEW T PLAXTON, ESQ.

MTP:kk
cc: Board of Directors – Via Verde Ridge Homeowners Association

² Mr. Begin’s construction company, JB Contractors, Inc., made a substantial campaign contribution to Councilmember Eric Weber. According to California Form 460, Schedule A, on January 21, 2020, JB Contractors, Inc. contributed \$2,500.00 to Councilmember Weber’s 2020 campaign. Therefore, to avoid the appearance of impropriety, Councilmember Weber should recuse himself from participating in the discussion of this matter.