

**City of Carson City
Agenda Report**

Date Submitted: February 26, 2013

Agenda Date Requested: March 7, 2013

Time Requested: 5 minutes

To: Mayor and Board of Supervisors

From: Public Works - Planning Division

Subject Title: For Possible Action: To adopt Bill No. 104, on second reading, Ordinance No. 2013-____, an ordinance approving a development agreement between Carson City and Ross Park, LLC, regarding the development of a Planned Unit Development subdivision known as Ross Park, located on 1.24 acres between Snyder Avenue, California Street, and East Appion Way, APN 009-193-01, to extend the approval of the tentative map and other matters properly related thereto. (Jeff Sharp)

Summary: The primary purpose of the development agreement is to extend the initial approval of the tentative subdivision map, which would expire on March 15, 2013. The development would consist of 23 single family detached units upon completion. Per NRS and the Carson City Municipal Code, the approval may only be extended by approval of a development agreement. No other modifications to the proposed development are requested.

Type of Action Requested:

Resolution

Formal Action/Motion

Ordinance (2nd reading)

Other (Specify)

Does This Action Require a Business Impact Statement: Yes No

Prior Board Action: Approved the ordinance on first reading on February 21, 2013, by a vote of 4 ayes and 1 nay.

Recommended Board Action: I move to adopt Bill No. 104, on second reading, Ordinance No. 2013-____, an ordinance approving a development agreement between Carson City and Ross Park, LLC, regarding the development of a Planned Unit Development subdivision known as Ross Park, located on 1.24 acres between Snyder Avenue, California Street, and East Appion Way, APN 009-193-01, to extend the approval of the tentative map and other matters properly related thereto.

Explanation for Recommended Board Action: The applicant is requesting an extension of the tentative map approval due to current housing market conditions. The development agreement is currently the only means by which the city can further extend the existing subdivision approval. If the map expires, all zoning and subdivision entitlements relating to the proposed development would be lost, and the property owner would have to re-apply for a new subdivision to develop the property in accordance with the proposed plan.

Applicable Statute, Code, Policy, Rule or Regulation: CCMC 17.09.055 (Planned Unit Developments, Time Limits for Filing Applications for Final Approval); NRS 278A.510 (Planned Development, Specification of time for filing application for final approval)

Fiscal Impact: N/A

Explanation of Impact: N/A

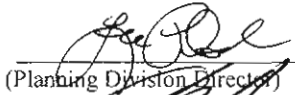
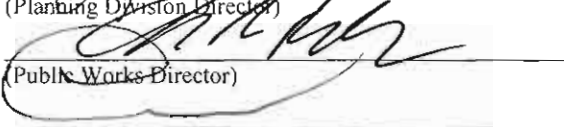
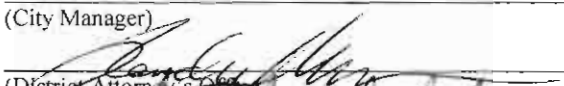
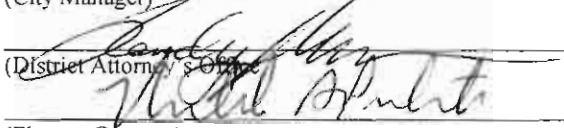
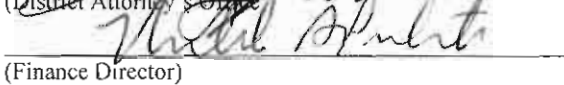
Funding Source: N/A

Alternatives: 1) Deny the agreement and require the applicant to file a final map by March 15, 2013, or allow the tentative map approval to expire.

Supporting Material:

- 1) Ordinance and Development Agreement

Prepared By: Janice Brod, Grants Program Coordinator

Reviewed By: 	Date: <u>2-26-13</u>
(Planning Division Director)	
	Date: <u>2-26-13</u>
(Public Works Director)	
	Date: <u>2/26/13</u>
(City Manager)	
	Date: <u>2/26/13</u>
(District Attorney's Office)	
	Date: <u>2/26/13</u>
(Finance Director)	

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay
2) _____

(Vote Recorded By)

BILL NO. 104

ORDINANCE NO. 2013-_____

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN CARSON CITY AND ROSS PARK, LLC, REGARDING THE DEVELOPMENT OF A PLANNED UNIT DEVELOPMENT SUBDIVISION KNOWN AS ROSS PARK, LOCATED ON 1.24 ACRES BETWEEN SNYDER AVENUE, CALIFORNIA STREET, AND EAST APPION WAY, APN 009-193-01, TO EXTEND THE APPROVAL OF THE TENTATIVE MAP AND OTHER MATTERS PROPERLY RELATED THERETO.

Fiscal effect: N/A

The Board of Supervisors of Carson City does hereby ordain:

SECTION I:

WHEREAS, Carson City desires to enter into a development agreement with Ross Park, LLC, concerning the development of land know as Assessor's Parcel Numbers 009-193-01, located between Snyder Avenue, California Street, and East Appion Way, Carson City Nevada.

WHEREAS, the Carson City Board of Supervisors finds that the contents of the development agreement conform to the Carson City Municipal Code 17.08 and Nevada Revised Statues 278.0203; and

WHEREAS, the Board finds that the provisions of the development agreement are consistent with the Carson City Master Plan and the original approval of Planned Unit Development Tentative Map.

NOW, THEREFORE, the Board hereby approves by ordinance the attached development agreement between Carson City and Ross Park, LLC, for the development of land know as Assessor's Parcel Numbers 009-193-01, said agreement being attached and incorporated herein as Exhibit "1".

The Board further directs that the City Clerk shall cause a certified copy of this ordinance and original agreement to be filed with the Carson City Recorder.

PROPOSED on _____, 2013.

PROPOSED BY Supervisor _____

PASSED _____, 2013.

VOTE:

AYES:

NAYS:

ABSENT:

ROBERT L. CROWELL, Mayor

ATTEST:

ALAN GLOVER, Clerk-Recorder

This ordinance shall be in force and effect from and after the _____ day of the month of _____ of the year 2013.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT made and entered into this _____ day of _____, 2013, by and between ROSS PARK, LLC, a Nevada limited liability company as Developer of that certain project known as ROSS PARK PUD, hereinafter referred to as “DEVELOPER,” and CARSON CITY, a consolidated municipality of the State of Nevada, hereinafter referred to as “CARSON CITY.”

RECITALS:

1. ROSS PARK PUD, is a proposed development encompassing 1.24 acres of real property, more or less, located in Carson City, Nevada, more particularly described in Exhibit “A”;
2. On March 15, 2007, the Carson City Board of Supervisors approved a Right –Of-Way Abandonment (AB-07-011) and a Tentative Planned Unit Development (TPUD 07-011) for Twenty-Three (23) single family detached units. A copy of the official minutes and conditions of approval of such action, thereto are attached hereto as Exhibit “B” and incorporated herein by this reference (“THE PROJECT”);
3. On April 5, 2007, the Carson City Board of Supervisors approved a Zoning Map Amendment (ZMA 07-009) for THE PROJECT to MFA-PUD;
4. Due to certain market and economic conditions that have developed since THE PROJECT tentative map approval, the DEVELOPER and CARSON CITY believe that it is mutually beneficial to enter into a Development Agreement and each mutually desire that THE PROJECT be developed in accordance with this Development Agreement.
5. CARSON CITY and DEVELOPER desire to hereinafter have the provisions of

this Development Agreement govern the development activities of THE PROJECT.

NOW THEREFORE, for good and valuable consideration, and the mutual covenants, conditions, and promises herein contained, the parties do agree as follows:

I.

PROJECT CHARACTERISTICS

THE PROJECT is a planned unit development project within the MFA-PUD zoning designation together with all of the uses accessory to and customarily incidental to the above-referenced zone.

Based upon the present tentative planned unit project map, THE PROJECT will be comprised of Twenty-Three (23) single-family dwelling units, open space and common areas as set forth in the approvals. The density is 18.5 units per acre.

The aforementioned approval of THE PROJECT Zoning Map and this Development Agreement shall serve as the intent by CARSON CITY to approve THE PROJECT, provided that all of the requisite conditions set forth herein are met.

II.

ADMINISTRATION OF THE PROJECT

THE PROJECT shall be developed in accordance with the approvals by the Carson City Board of Supervisors set forth in Exhibit "B" with the following characteristics and requirements:

2.1 Phasing

THE PROJECT development is anticipated to be developed in one phase.

2.2 Height and Size of Proposed Buildings

All buildings shall conform to the Exhibit B conditions and Carson City standards for MFA-PUD zoning with respect to height and size.

2.3 Utility Connections

Within THE PROJECT, telephone, gas, cable and electrical power shall be provided by DEVELOPER to the building sites or dwelling unit and shall be placed underground to each lot or parcel. Public utility easements shall be granted and set forth on the final map.

2.4 Final Map Financial Assurances

The approval of the anticipated final map of THE PROJECT shall require a bond, cash deposit, lender set aside letter, letter of credit, an irrevocable certificate of deposit or other approved security to ensure completion of all or any portion of the public improvements equal to 150% of the approved engineer's cost estimate. DEVELOPER, at its discretion and option, may install any such public improvements prior to the recordation of the final map in lieu of posting such security. Public improvements include streets, sidewalks, curb and gutter, street lighting, sewer collection system, electric, water distribution systems, drainage system improvements and gas lines where the same are dedicated to public agency or body. Any assurance provided shall be periodically reduced in accordance with City approval in order that the entire assurance will be exonerated on final completion or improvement construction, except for a ten percent (10%) retention in accordance with CCMC 17.11.015.

2.5 Grading, Drainage, and Erosion Control Measures

The grading, drainage, and erosion control plan shall be submitted with the final map of THE PROJECT and shall be subject to approval by the City. The drainage design shall be in accordance with Title 18 Appendix, Carson City Development Standards, Division 14 Storm Drainage.

2.6 Restrictive Covenants

Prior to the filing of the final map of THE PROJECT, DEVELOPER shall prepare and submit to the City, Covenants, Conditions and Restrictions (CC&Rs) intended to apply to THE PROJECT. Said CC&Rs shall be reviewed by the Carson City Planning Division.

2.7 Expiration by Inaction

This Agreement adopted pursuant to CCMC 17.08 requires that THE PROJECT shall be diligently pursued and the approvals referenced above (if no extension has been granted) shall expire if the final map and commencement of construction of THE PROJECT is not recorded and begun by March 15, 2016.

2.8 Further Covenants

CARSON CITY shall not require any payments, contributions, economic concessions, or other conditions for approvals, contemplated within or by this Development Agreement other than as provided herein, or as provided in the Board of Carson City Supervisor's approval of March 15, 2007. Nothing set forth in this paragraph is to be construed to mean that Carson City cannot charge its standard permit fees.

2.9 Mutual Cooperation

CARSON CITY shall cooperate with DEVELOPER to obtain all necessary approvals, permits or to meet other requirements which are or may be necessary to implement

the intent of THE PROJECT approval in this Agreement. Nothing contained within this paragraph, however, shall require CARSON CITY or its employees to function on behalf of DEVELOPER nor shall this Agreement be construed as an implicit pre-approval of any further actions required by CARSON CITY.

2.10 Variances

As part of the approval of THE PROJECT, the DEVELOPER and CARSON CITY agreed that to avoid piecemeal, individual variance requests that THE PROJECT would be allowed the variances as set forth in the approvals attached hereto as Exhibit B.

III.

PUBLIC SAFETY COMPONENTS

3.1 Fire

All construction shall be in accordance with the Nevada Fire Code and applicable Carson City requirements.

The project shall be connected to the Carson City water system for fire suppression service, including construction of the necessary improvements to the satisfaction of CARSON CITY.

3.2 Lighting

The DEVELOPER shall install lighting as set forth in the approvals in Exhibit B.

IV.

PROJECT WATER AND WASTEWATER SYSTEM COMPONENTS

The DEVELOPER shall comply with the provisions of the Carson City Municipal Code, and make a perpetual offer of dedication of the water system sufficient to provide fire and

domestic flows, to the satisfaction of the Carson City Public Utility Department. The project subdivision shall be connected to the Carson City water system for domestic service. The project shall be connected to the Carson City wastewater treatment plant for sewer which equates to a multi-family rate service.

CARSON CITY agrees that water and sewer connection fees for the individual living units will be based on the apartment rate of 0.5 equivalent residential customer as set forth in CCMC 12.01.030 and 12.03.030. However, the water connection fees for irrigation of private yards, commonly owned landscaping, street landscaping, or any other project landscaping shall be in addition to the connection fees for the living units. The irrigation water usage shall be estimated by a qualified landscape design professional based on numbers of proposed sprinklers and drip heads, flow rates of devices to be installed, and hours of daily, weekly and seasonal operation anticipated. The daily irrigation water demand for use in determining connection fees shall be the estimated annual volume in gallons divided by 365 days per year. The water connection fees for irrigation shall be payable upon issuance of the site improvement permit.

V.

OPEN SPACE

The DEVELOPER will provide all open space and common area as approved in Exhibit B.

VI.

STREET IMPROVEMENT COMPONENTS

6.1 Curbs/Gutters

The DEVELOPER shall build all street improvements, including roadway

reconstruction, pavement widening, curb and gutters, sidewalks, drainage and street lighting to City standards as set forth in Exhibit B.

6.1 Dedications

The DEVELOPER will dedicate the corners of THE PROJECT to accommodate the intersection radii at the back of the sidewalks as set forth in Exhibit B.

VII.

PROJECT CONSTRUCTION REQUIREMENTS

All construction of THE PROJECT shall be done in accordance with the Standards Specification For Public Works Construction as adopted by CARSON CITY and all their applicable state and local codes, ordinances and statutes except as varied by the Project Approval.

The DEVELOPER may not apply for building permits until such time as the DEVELOPER has recorded a final map either through the completion of the infrastructure improvements, or posted financial assurances for such improvements for THE PROJECT. These infrastructure improvements shall include roadway frontage improvements, paved on-site access ways, underground utilities, water, sewer, drainage, landscaping, irrigation and all required common open space improvements. The DEVELOPER may not final any building permits or obtain a certificate of occupancy for any building prior to completion of the above-mentioned infrastructure improvements.

7.1 Grading and Slope

The DEVELOPER shall provide CARSON CITY with a development plan that specifies grading practices, extent of grading allowed at one time, a dust suppression program,

and erosion control and revegetation measures that effectively mitigate blowing dust and soil erosion problems associated with development of the site to the satisfaction of CARSON CITY. The applicant shall obtain an Air Quality permit and implement the approved plan and provide the State of Nevada or CARSON CITY with financial security for the required mitigation measures. The Developer shall obtain a Storm Water Pollution Prevention Permit from the State of Nevada prior to commencement of land clearing or grading activities.

VIII.

DEFAULTS, REMEDIES, TERMINATION

8.1 General Provisions

Subject to extensions of time by mutual consent in writing, failure or unreasonable delay in performing any term or provision of this Development Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Development agreement, the party alleging such default or breach shall give the other party not less than thirty (30) days notice in writing, specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured. During any such thirty (30) day period, the party charged shall not be considered in default for purposes of termination, or institution of legal proceedings, or issuance of any building permit.

After notice and expiration of the thirty (30) day period, the non-defaulting party to this Development Agreement, at its option, may institute legal proceedings pursuant to this Agreement. Following notice of intent to terminate, the matter shall be scheduled for consideration and review by CARSON CITY.

Following consideration of the facts and evidence presented in said review before

CARSON CITY, either party alleging the default by the other party may give written notice of termination of this Development Agreement to the other party.

Evidence of default may also arise in the course of periodic review of this Development Agreement. If either party determines that the other party is in default following the completion of the normal periodic review, said party may give written notice of termination of this Development Agreement as set forth in this section, specifying in said notice the alleged nature of the default, and potential actions to cure said default where appropriate. If the alleged default is not cured within sixty (60) days or within such longer period specified in the notice, or if the defaulting party waives its right to cure such alleged default, this Development Agreement shall be deemed terminated.

It is hereby acknowledged and agreed that any portion of THE PROJECT which is the subject of a final map shall not be affected by or jeopardized in any respect by any subsequent default affecting THE PROJECT. In the event CARSON CITY does not accept, review, approve or issue necessary permits or entitlements for use in a timely fashion as defined by this Development Agreement, or as otherwise agreed to by the parties, or CARSON CITY otherwise defaults under the terms of this Development Agreement, CARSON CITY agrees that DEVELOPER shall not be obligated to proceed with or complete THE PROJECT nor shall resulting delays in DEVELOPER's performance constitute grounds for termination or cancellation of this Development Agreement.

8.2 Enforced Delay, Extension of Time of Performance

In addition to specific provisions of this Development Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to

war, insurrection, strikes, walk-outs, riots, floods, earthquakes, avalanches, inclement weather, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, not parties to this Agreement, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, or similar bases for excused performance. If written notice of such delay is given to CARSON CITY within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, as may be mutually agreed upon. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation. Carson City shall not be held liable to the Developer for damages (actual, incidental or otherwise) as a result of its failure to review or approve permits and entitlements in a timely manner.

IX.

MISCELLANEOUS

9.1 Carson City Code

THE PROJECT shall comply with all ordinances and fees adopted by CARSON CITY, applied on a uniform basis to all development projects in CARSON CITY.

The final map shall comply with the Exhibit "B" conditions and be recorded in accordance with all applicable CARSON CITY ordinances.

The proposed development shall be in accord with the objective of Title 17 of Carson City Municipal Code.

Should any provision of this Agreement be deemed to be in conflict with the

Exhibit "B" conditions of approval, the Exhibit "B" conditions shall control.

9.2 Cost Reimbursement

The DEVELOPER may be entitled to pro rata reimbursement from adjacent property owners for water and/or sewer lines constructed by DEVELOPER, subject to requirements and limitations contained in CCMC 12.01.210 and 12.05.050.

X.

APPLICABLE LAW AND ATTORNEYS' FEES

This Development Agreement shall be construed and enforced in accordance with the laws of the State of Nevada. Should any legal action be brought by either party relating to this Development Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the court.

XI.

SUCCESSORS AND ASSIGNS

The parties hereto agree that the terms and conditions of this Agreement shall bind and inure to the benefit of the parties' successors and assigns.

XII.

ENTIRE AGREEMENT

This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, and supersedes all other agreements, written or oral, between the parties with respect to such subject matter.

XIII.

HOLD HARMLESS AND INDEMNIFICATION

DEVELOPER hereby agrees to, and shall hold CARSON CITY, its elective and appointive boards, commissions, officers, agents and employees harmless from any liability for damage or claims for property damage which may arise from DEVELOPER's or DEVELOPER'S contractors', subcontractors', agents', or employees' operations under this Development Agreement, whether such operations by DEVELOPER or by any of DEVELOPER's contractors, subcontractors, or by any one or more person directly or indirectly employed by, or acting as agent for DEVELOPER or any of DEVELOPER's contractors or subcontractors. DEVELOPER agrees to, and shall defend CARSON CITY, its elective and appointive boards, commissions, officers, agents and employees, from any suits or actions at law or in equity for damage caused or alleged to have been caused by reason of the aforesaid operations.

XIV.

PROJECT AS PRIVATE UNDERTAKING

It is specifically understood and agreed by and between the parties hereto that the subject PROJECT is a private development and no partnership, joint venture or other association of any kind is formed by this Development Agreement. The only relationship between CARSON CITY and DEVELOPER is that of a government entity regulating the development of private property within the parameters of applicable law and the owner of such private property.

XV.

FURTHER ASSURANCES

In the event of any legal action instituted by any third party or other government

entity or official challenging this Development Agreement, CARSON CITY and DEVELOPER shall cooperate and use their best efforts in defending any such action.

Effective this ____ day of _____, 2013.

ROSS PARK, LLC, a Nevada
limited liability company

CARSON CITY, a consolidated
municipality

By: ALTA RESOURCES, LLC,
a Nevada limited liability company

By: _____
ROBERT CROWELL, Mayor

By: _____
ERNESTO FLORES, Manager

Approved as to form:

CARSON CITY DISTRICT ATTORNEY

By: _____

EXHIBIT "A"

All that real property situated in Carson City, Nevada more particularly as follows:

A PORTION OF THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 15 NORTH, RANGE 20 EAST, M.D.B.&M, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 32, WITH THE NORTHEASTERLY ONE HUNDRED FOOT RIGHT-OF-WAY LINE OF THE STEWART ROAD, SAID POINT BEING FURTHER DESCRIBED AS BEARING SOUTH 33°44'34" EAST A DISTANCE OF 1586.00 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 32; THENCE SOUTH 89°54'40" EAST, ALONG THE NORTH LINE OF THE NORTH QUARTER OF SECTION 32, A DISTANCE OF 440.16 FEET TO THE NORTHEAST CORNER OF THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 32; THENCE SOUTH 0°00'58" WEST ALONG THE EAST LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 32, A DISTANCE OF 329.40 FEET TO THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 32, THENCE NORTH 89°54'36" WEST ALONG THE SOUTH LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 32, A DISTANCE OF 24.64 FEET TO A POINT ON THE NORTHEASTERLY ONE HUNDRED FOOT RIGHT-OF-WAY LINE OF THE STEWART ROAD; THENCE NORTH 51°32'00" WEST ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE, A DISTANCE OF 530.58 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER MINERAL DEPOSITS, AS RESERVED IN THE PATENT RECORDED JUNE 10, 1960 IN BOOK 85, PAGE 566, DOCUMENT NUMBER 32572 OF DEED RECORDS.

NOTE: THE ABOVE METES AND BOUNDS DESCRIPTION APPEARED PREVIOUSLY IN THAT CERTAIN DOCUMENT RECORDED FEBRUARY 25, 2005 AS DOCUMENT NUMBER 332432 OF OFFICIAL RECORDS.

APN: 009-193-01