



Staff Report

Agenda Item: UPDATE MOUNTAIN GATE SUBDIVISION - Informational update and discussion regarding Empire Constructions - Mountain Gate Subdivision.

Staff Contact: Gayle Mabery, Town Manager

Meeting Date: February 12, 2008

Background: Attached is the letter written by Town Attorney Robert Pecharich to Empire Companies and the Community Development Department list of public hazards in the Mountain Gate Subdivision. Town Manager Gayle Mabery will provide Council a verbal update of the current situation at Mountain Gate.

Recommendation: This is an informational update and no action is required.

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SPECIALIZATION

February 5, 2008

Via Facsimile

Mr. Larry Day, Esq.
In-house Counsel
Empire Companies
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Ontario, CA 91764

Via Facsimile

Mr. Rich Pachulski, Esq.
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10100 Santa Monica Blvd., 11th Floor
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Re: Empire Companies/Mountain Gate Development, Clarkdale Arizona

Dear Mr. Day and Mr. Pachulski:

Please be advised this law firm represents the Town of Clarkdale, Arizona.

As you are aware, Empire Companies has an unfinished subdivision in Clarkdale, Arizona. This subdivision is known as Mountain Gate, and is to be developed in accordance with the terms set forth in the Development Agreement entered into by the Town of Clarkdale and Empire Companies.

The Town of Clarkdale, Arizona, was notified on Tuesday, January 22nd that Empire Development had "frozen" the Mountain Gate project in Clarkdale, as well as their other projects across Arizona and California. We were notified yesterday (January 31) by the former President of Arizona Operations for Empire, Matt Clark that it is his understanding that Empire would likely be filing for Chapter 11 Reorganization with the U.S. Bankruptcy Court on February 5th. It is important for you to be aware that the Town of Clarkdale has numerous concerns relating to the Mountain Gate Development, some of which relate to immediate threats to the public health and safety to the citizens of Clarkdale.

It is apparent to the Town of Clarkdale that no Empire employees are present at the Mountain Gate site. Empire and their contractors pulled off this working jobsite hastily, and left numerous hazards in their wake. I have attached a list of 14 public hazards that have been identified so far by the town of Clarkdale Building Official. This

should not be considered a complete survey, but highlights risks to the public that need to be corrected immediately

As you are aware, Empire and the Town of Clarkdale entered a Development Agreement for the Mountain Gate Subdivision on May 25, 2004. The original Development Agreement, subsequent amendments to that agreement, and the Mountain Gate Subdivision Agreement all outline Mountain Gate's obligations to the Town of Clarkdale. Although the Town of Clarkdale has not yet completed a comprehensive financial evaluation of the infrastructure that remains incomplete in the subdivision, it is readily apparent that the \$2,300,086 that remains on the Performance Bonds posted for this subdivision will not be sufficient to cover the costs of completion. Notice of default and demand for payment of these bonds will be made to the sureties of each bond for the obligations of Empire Companies owed to the town of Clarkdale.

With that in mind, the Town of Clarkdale is in the process of prioritizing which of the infrastructure is most critical for completion, and assessing a cost for completion of that infrastructure. My advice to the Clarkdale Town Council will be that the Town of Clarkdale exercise the town's rights with respect to payments of all amounts due pursuant to the Performance Bonds, and complete as much of the critical infrastructure as possible with the funds available.

The terms of the Development Agreement between the Town of Clarkdale and Empire Companies sets forth the obligations of Empire to the Town of Clarkdale, which include but are not limited to:

1. Payment of \$1,981,920.00 to the Town of Clarkdale for capacity in the Town of Clarkdale waste water treatment plant for the Mountain Gate Development.
2. Reimbursement to the Town of Clarkdale for all out of pocket and professional fees incurred by the Town of Clarkdale and related to the Mountain Gate Development. These professional fees include primary review costs by the town's primary engineer. As of December 31, 2007, Empire owed to the Town of Clarkdale, \$91,973.66 for reimbursement of such fees. Those fees continue to accrue.

You should be further aware that the residents of the Mountain Gate Development, all of whom are citizens of the Town of Clarkdale have claims separate from the Town of Clarkdale, as against Empire Companies, for the following:

1. Completion of construction of houses that are sold, but not yet completed.
2. Completion of the community center promised to the buyers of within Mountain Gate Development.

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3. Accounting and turnover of all homeowners association payments made by said residents.

Although this firm solely represents the Town of Clarkdale, you should expect claims by these residents for completion of the obligations due to them from Empire Companies. The Town of Clarkdale supports its citizens in that regard.

Finally, I have telephoned each of you on February 1st and February 2nd, 2008 only to reach your voicemail and I have not received return telephone calls. In addition, I left a voicemail for Paul Roman of Empire Companies and I have not received a return call from him either.

Please telephone me immediately.

Sincerely,

BOYLE RECHARICH CLINE
WHITTINGTON & STALLINGS, P.L.L.C.



Robert S. Recharich

RSP: jh

cc: Gayle Mabery, Town Manager
Paul Roman

Town of Clarkdale
Community Development Department
Building Division

Inspection of Mt. Gate property made on 2/1/2008

Issues that are public hazards:

1. Safety caps missing on rebar throughout the property.
2. Trash and building materials scattered at office trailer site on Chinaberry.
3. Many cable boxes, and several transformer covers have been left ajar or open.
4. On Miners Gulch, the landscapers storage yard is wide open, (the rental fence has been removed) and the materials are unsecured.
5. At Mt. Gate & King Copper, there is a recessed box that was set above the sidewalk grade, creating a tripping hazard.
6. Barricades at Mt. Gate Dr. & Bootleg and McKinnon & Miners Gulch Dr. are set in a state of disarray, and could be a safety risk.
7. At Miners Gulch & Whistle stop, there is lumber, and debris on the sidewalk.
8. The entrance to the proposed Community Center, at Cleopatra Hill & Miners Gulch, is not secured. The package plant, several pieces of heavy equipment, and a quantity of building materials are located in this area.
9. At the same location as above, but across the street, is a fuel tank, and what appears to be a possible water leak.
10. At 600, 602, & 604 Haynes, these three townhomes are still under construction. There are open trenches in the front yards of all three properties.
11. Across the street from the above townhomes, there is an open storage area, with building materials, and a forklift parked unsecured.
12. There is what appears to be water seeping from meter boxes along Alfonse Rd., and along the E. side of Cleopatra Hill Rd.
13. At Centerville Rd. and Palace Ln. there is an unsecured storage area, that also has several 5 gal. containers that appear to contain an oil of hydraulic fluid that has spilled over onto the soil.
14. At Marion Cir. And Powder Box, there is another unsecured storage area that contains building materials.

While we tried to ascertain the items that posed the most risk to the homeowners, and the public, this inspection should not be considered a complete survey of the subdivision.

Inspection performed on 2/1/2008, by Clarkdale Building Official Mike Baker, and Building Inspector Paul Grasso