



Staff Report

Agenda Item: UPDATE MOUNTAIN GATE SUBDIVISION – Informational update and discussion regarding Empire Construction’s - Mountain Gate Subdivision.

Staff Contact: Gayle Mabery, Town Manager

Meeting Date: February 26, 2008

Background: As the Town Council is aware, the Town Manager has been including an update on the status of the Mountain Gate Subdivision in her Weekly Reports to the Town Council. For reference, the reports for the past 3 weeks have been included in your Council packets as Exhibits A, B, and C.

The Town Attorney has still received no response from Empire to his letter dated February 5, 2008 or to follow up phone calls after the letter was sent. He has also continued checking with the Bankruptcy Courts in California, and finds no verification that Empire has filed for Chapter 11 Reorganization.

Sherry Bailey attended the February 19th Mountain Gate Community Association meeting, held at 6:00 p.m. in the Men’s Lounge of the Clark Memorial Clubhouse. The Association had a 12 item agenda (see attached), including one item (#7) listed as “Town of Clarkdale”. Sherry will be prepared to give a brief verbal report to the Council about the HOA meeting, including her responses to a list of questions that the residents asked the Town to answer.

Finally, the Town Attorney has started to get telephone calls from home/land owners in Mountain Gate. It bears repeating that the Town Attorney represents the Town of Clarkdale as an organization, and not individual residents. With that in mind, he cannot provide any legal guidance for home/land owners in Mountain Gate. The Town Attorney’s staff is suggesting that any home/land owners who do call him directly secure their own legal counsel.

Town Attorney Pecharich and Town Manager Mabery will be prepared to offer further verbal updates during the Council meeting.

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

Staff Contact Person: Town Manager Gayle Mabery

Exhibit A

Town Manager's Weekly Report (excerpt) February 1, 2008

Mountain Gate Update – As you are all aware, the Town 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. Since that time, Town Staff and the Town Attorney have been working to identify the outstanding infrastructure issues and development agreement obligations that relate to the subdivision. We hope to have a fairly complete list of these items pulled together by the end of today.

We were notified yesterday (January 31) by the former President of Arizona Operations for Empire, Matt Clark (he resigned yesterday), that it is his understanding that Empire would likely be filing for Chapter 11 Reorganization with the U.S. Bankruptcy Court on February 5th. As you may know, when a troubled business is unable to service its debt or pay its creditors, it can file with a federal bankruptcy court for protection under either chapter 7 or chapter 11. A chapter 11 filing is usually an attempt to stay in business while a bankruptcy court supervises the "reorganization" of the company's contractual and debt obligations. The court can grant complete or partial relief from most of the company's debts and its contracts, so that the company can make a fresh start. Chapter 11 is quite different from Chapter 7, which is used when the business ceases operations and a trustee sells all of its assets and distributes the proceeds to its creditors on pro rata basis. Regardless of Empire's status with regard to Chapter 11, the Town will need to consider whether to make a claim with the bond company that posted the assurances for the Mountain Gate Subdivision. Ultimately, this decision will come before the Town Council, and the background information that we are preparing now will be used to provide you the information that you need in order to make that decision.

Although those assurances will likely not be in an amount sufficient to complete all remaining infrastructure in the project, we hope to be able to address the most critical needs with the money available in the assurances. Part of our assessment of the outstanding infrastructure issues and development agreement obligations consists of prioritizing those obligations from most to least critical. Any issues that cannot be addressed through the assurances will be itemized so that claims can be made through the Chapter 11 process. In addition, some of those items may not need to be addressed at this time, and can simply be “on hold” until Empire resolves its Chapter 11 issues, or sells the project to a third party (who would still be subject to the Development Agreement for the subdivision).

Outside of the Town of Clarkdale's municipal concerns, the residents and property owners of Mountain Gate are also experiencing private impacts. Some of their concerns include:

- The Community Center/Clubhouse – There had been significant delays to the construction of the HOA Community Center for Mountain Gate, and that has been a bone of contention for the property owners there who bought with the expectation of that as an amenity in their community. Although the Town had the building permit ready to issue for the Clubhouse in early January, Empire did not pick it up, and, of course, is not moving forward at this time to construct the Clubhouse.

- Home Warranty Work – To our knowledge, there are still some warranty issues that need to be dealt with in some of the homes.

- Homes Under Construction – There were 3 townhomes in Mountain Gate under construction. To our knowledge, 2 of those homes had not been sold. The one that was sold was about 2 weeks away from completion. No work is continuing on those homes at this time.

- Home Owner's Association Fees – Property owners have been paying HOA fees (the majority of which are for the Community Center) since they purchased their homes/property. They have concerns about the status of those funds, which legally are supposed to be segregated and held for the HOA.

The Homeowners are in the process of scheduling a meeting about these and other concerns. Sherry Bailey and I have been invited and are planning to attend the meeting. We plan to provide the information that we have on the Town's end, and get a better understanding about the issues that the residents are facing. Legally, although the Town cannot intervene on issues between Empire and the homeowners, we are certainly all being impacted and should be communicating with each other.

Unfortunately, we aren't getting much information from Empire Companies, since all their Arizona staff have either resigned or been terminated. Town Attorney Pecharich was in contact with two of their attorneys in California last week, but they've been unresponsive to calls this week. Although the lack of communication from Empire draws that process out and leads to more and more speculation, we are still moving forward with compiling documentation on our end.

My goal is to keep a comprehensive Mountain Gate report in my Weekly Reports from this point forward, and bring issues that require Council action to you at the appropriate time. If you have questions between my Weekly Reports, please feel free to contact me. You can also direct citizens with questions to either Sherry Bailey or me.

In coordination with the Town Attorney, we will be sending written documentation to Empire with regard to the Town's identification of outstanding infrastructure and financial issues within the next few days. I will provide a copy of that letter to members of the Council when it is complete.

Exhibit B

Town Manager's Weekly Report (excerpt) February 8, 2008

Mountain Gate Update – Although we had been informed that Empire was expected to file for Chapter 11 Reorganization on February 5th, we have not received any independent confirmation that they have actually done so. Town Attorney Pecharich is researching this issue so that we have definitive information on whether or not they have filed and will update us as soon as he knows.

The past week found our staff working in coordination with Willdan to compile a comprehensive list of items that still need completion in the Mountain Gate Subdivision. As expected, the results of that effort so far show that we will not have enough money available in the performance bonds to complete all the infrastructure work. However, our preliminary figures indicate that we should have enough funding available in the bonds to address the most important needs. Once we have completed that evaluation, we will be working with the Town Attorney to come before the Council and ask for approval to make a demand on the bond company so that we can move forward and complete what needs to be done.

Mayor Von Gausig, Sherry Bailey, Mike Baker, Pat Haynie and I all attended a meeting of the neighbors in Mountain Gate last week. The meeting was called by the residents, and was intended to be a Home Owner's Association (HOA) meeting. However, because the HOA did not give specific authority to call the meeting, it ended up really being a neighborhood meeting. Although we attended the meeting as guests, we were asked to provide information from the Town's perspective. The Mayor, Sherry and I all had a chance to address the residents and answer what questions we could. In the end, we all felt that, although there are a lot of concerns among the residents, that the attendance and information presented by Town representatives went a long way toward bridging what has been somewhat of a divide between residents in Mountain Gate and others in the Town.

We were able to provide copies of the letter that the Town Attorney sent to Empire (a copy of which was included in your Council packets for the February 12th Council meeting), and answered many questions about what issues were specific to the Town, and which were private issues between homeowners and Empire.

The neighborhood meeting was held in one of the model homes, and it was overflowing with people. Out of concern for safety, we offered that future neighborhood meetings could be held in Town facilities that were sized to appropriately accommodate the large number of neighbors expected to continue attending the meetings.

Exhibit C

**Town Manager's Weekly Report (excerpt)
February 15, 2008**

Mountain Gate Update – We have still received no word with regard to Empire's supposed filing for reorganization under Chapter 11. In fact, because Rob has not located any evidence, it is our belief that they have not filed.

The Mountain Gate Home Owners Association (HOA) has scheduled their next meeting for Tuesday, February 19th. Sherry and I will be meeting with a representative of their HOA next week to review a list of questions that the residents have with regard to the project and the Town. Sherry will then attend the meeting that night and answer the questions for the residents. I'll make it a point to include that list of questions, and the answers that we provide, in my report next week.