

DATE: October 24, 1988

TO: The Honorable Mayor Maureen O'Connor
FROM: City Attorney
SUBJECT: Creation of Development Rights by the Approval
of Final Maps and Subdivision Improvement
Agreements

Questions have been raised by your office concerning what rights, if any, are created by the approval of a final map and subdivision improvement agreement.

The approval of a final map is a ministerial action. The City Council is obligated to approve the final map if it conforms to the tentative map and the conditions of approval have been satisfied. The approval of the final map does not create vested rights which would enable the subdivider to obtain building permits and construct buildings. The California Supreme Court in *Avco Community Developers, Inc. v. South Coast Regional Com.*, 17 Cal.3d 785 (1976) held that vested rights to construct buildings arose only upon the issuance of building permits. Installation of streets, utilities and dedication of a park did not vest the right to obtain a building permit. As a result of this decision, at least in part, the legislature adopted the concepts of vesting maps and development agreements.

The approval of a subdivision improvement agreement does not convey any rights to the issuance of building permits, nor does the installation of the public improvements covered by the agreement convey such rights. While the *Avco* decision does not make specific reference to a subdivision improvement agreement, the factual discussion clearly indicates that one was involved since improvements were installed following the filing of the final map. *Avco* raised numerous issues in an unsuccessful attempt to establish vested rights to construct buildings but the existence of a subdivision improvement agreement was not one of them. In addition, no reported cases have been found that raise the issue even though subdivision improvement agreements have been used for approximately 40 years.

A subdivision improvement agreement is a contract between the subdivider and the City which the subdivider uses to satisfy the conditions of the tentative map. The subdivider may install all public improvements before presenting the final map for approval. If the public improvements are not installed before the final map is presented, California Government Code Section 66462 provides that the City shall require a subdivision improvement agreement. The approval of a subdivision improvement agreement does not

constitute any representation to the subdivider that building permits will be issued, it is simply the acceptance by the City of the subdivider's promise to complete the specified public improvements. With the approval of the final map, the subdivider has received all that he is entitled to under the Subdivision Map Act and the City is entitled to receive the public improvements under the subdivision improvement agreement. Since the ultimate development of the property is not a condition precedent to the subdivider's obligation to install public improvements, that obligation under the subdivision improvement agreement exists regardless of other problems that may arise in the future. Any expectations concerning future development cannot be based on the approval of a final map, other than a vesting map, much less a subdivision improvement agreement, based on the holding in *Avco*. Development expectations must be traced to the general plan, community plan, or zoning but these are subject to amendment or the enactment of other regulatory provisions which may affect those expectations.

Since the City is required by California Government Code Section 66458(a) to approve final maps if the map conforms to the tentative map and since the approval of the final map does not create any vested rights to development, according to *Avco*, the approval of the final map and subdivision improvement agreement would not provide the subdivider with a basis on which to sue the City if development was impeded because of actions that had nothing to do with the final map approval process.

Due to the limited function of a subdivision improvement agreement, no disclosure language has been added to our standard form such as that found in the resolution approving a vesting tentative map. The subdivision improvement agreement provides for action by the City to enforce the subdivider's obligations. Since the only act required to be performed by the City is approval of the final map and subdivision improvement agreement, once that is done the subdivider has no need to bring an action because he has received that for which he bargained.

A further question has been raised concerning the process for City Council action on final maps. California Government Code

Section 66458 (a copy of which is attached) addresses this matter. The City Council is obligated to approve a final map provided the final map conforms to the approved tentative map. Such action must occur at the meeting at which the City Council receives the map or the next meeting following that at which it receives the map (California Government Code Section 66458(a)). Should the City Council fail to act within the time frame specified, the map is deemed approved and the City Clerk is

obligated, as a ministerial matter, to certify or state that the map has been approved (California Government Code Section 66458(b)). The time frame for action is compressed by the language of Subdivision (c) of Section 66458 of the California Government Code. The meeting at which the City Council receives the map is defined as the day on which the City Clerk receives the final map. Therefore, the final map must be presented to the City Council at the next meeting following receipt of the final map by the City Clerk. This requirement is qualified by the requirement that the agenda of the City Council be published 24 hours in advance of the meeting.

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By

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Chief Deputy City Attorney

FCC:ta:600(x043.2)

Attachment

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