

AGENDA ITEM NO.

15

COUNCIL MEETING01/24/13

January 24, 2013

**FROM:** FRANCINE M. KANNE,  
Interim City Attorney



**SUBJECT:** CONSENT TO A LEGAL REPRESENTATION WAIVER WITH STOEL RIVES, LLP, TO ALLOW THE FIRM TO ASSIST GRANVILLE HOMES OR RELATED AFFILIATE WITH THE ENTITLEMENT PROCESS FOR THE WESTLAKE PROJECT, AND AUTHORIZE THE INTERIM CITY ATTORNEY OR DESIGNEE TO EXECUTE THE CONSENT

## RECOMMENDATIONS

Staff recommends that City Council:

1. Consent to a Legal Representation Waiver ("Consent") with Stoel Rives, LLP, to allow the firm to assist Granville Homes or related affiliate with the entitlement process for the Westlake Project, and authorize the Interim City Attorney or Designee to execute the Consent.

## EXECUTIVE SUMMARY

Conflict of interest rules governing the legal profession limit an attorney's ability to represent a client in certain circumstances without written consent after a full disclosure. Here, Stoel Rives, LLP, currently represents both the City and a Granville Homes' affiliate in litigation involving a project located on "L" Street. The firm has requested the City give its informed, written consent to allow Stoel Rives, LLP, to assist Granville Homes or a related affiliate with the entitlements for the Westlake Project currently being processed by the City.

## BACKGROUND

Conflict of interest rules governing the legal profession limit an attorney's ability to represent a client if that representation will be directly adverse to another client, or if that representation may be materially limited by the lawyer's responsibilities to another client, unless both: (1) the lawyer reasonably believes that the representation will not adversely affect the relationship with the other client, and that the representation itself will not be adversely affected; and (2) the client or clients consent in writing after consultation with a full disclosure of the material facts.

Here, the law firm of Stoel Rives, LLP, currently represents both the City and a Granville Homes' affiliate, FFDA Properties, LLC, in the pending litigation matter of *Citizens for the Restoration of "L" Street v. City of Fresno, et al.*, Fresno County Superior Court Case No. 11CECG04172, and before the Fifth District Court of Appeal (the "L' Street Lawsuit"). The representation is at no cost to the City; FFDA Properties, LLC, is paying for the attorney's fees and costs pursuant to an indemnification agreement with the City. In acknowledging the firm's representation, Stoel Rives, LLP previously informed the City and acknowledged its other commitments to Granville Homes and related affiliates by stating:



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TIMOTHY M. TAYLOR  
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January 4, 2013

**VIA ELECTRONIC MAIL**

David Hale, Esquire  
Shannon Chaffin, Esquire  
Office of the City Attorney  
City of Fresno  
2600 Fresno St., Second Floor  
Fresno, CA 93721

**Re: Legal Representation Waiver**

Dear Mr. Hale and Mr. Chaffin:

Several years ago, Granville Homes, Inc. requested that Stoel Rives LLP (the "Firm") provide assistance with respect to the entitlement process for a proposed new residential development project in the City of Fresno, the Westlake project. Within the last few weeks, Granville requested the Firm's assistance with respect to negotiating and drafting a development agreement for the Westlake project.

As you know, the Firm has performed, and continues to perform, work for the City on matters unrelated to the Westlake project. More specifically, the Firm represents the City in *Citizens for the Restoration of L Street v. City of Fresno, et al.*, both in Fresno County Superior Court, case no. 11 CE CG 04172, and before the Fifth District Court of Appeal (the "L Street Lawsuit"). Neither of these proceedings have anything to do with the Westlake project, nor should they be affected by the Firm's work on behalf of Granville with respect to the Westlake project. The firm has no confidential information from its representation of the City that can be used by or to the benefit of Granville in the Westlake project entitlement process. Additionally, the Firm's representation of the City in the L Street Lawsuit was specifically undertaken pursuant to an agreement in which the Firm's continuing representation of Granville in the L Street Lawsuit, and other private development matters, was acknowledged and accepted by the City. We believe the existing acknowledgement is sufficient to address our representation of Granville in matters



David Hale, Esquire  
Shannon Chaffin, Esquire  
January 4, 2013

If you have any questions, please contact me at the number below, or in my absence Elizabeth York at (916) 319-4662.

Very truly yours,

Timothy M. Taylor

I hereby consent to the Firm's representation of Granville under the terms outlined above.

THE CITY OF FRESNO

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: January \_\_\_\_, 2013