

## **Apricot Lane Farms Restaurant and Market Place**

### **Information Sheet**

**The City was saddened and disappointed to learn that Apricot Lane Farms (ALF) Restaurant and Market Place decided to not move forward with the proposed Apricot Lane Farms Restaurant and Market Place on High Street. The project is exactly the type of project the City Council and Moorpark community have wanted for High Street, and the City is hoping that the applicants will reconsider their decision to abandon the project.**

- The City has balanced enthusiasm and excitement for this project with the legal obligation to protect the public interest. In fact, both sides have risk and costs.
- While ALF has the usual risks for a business and associated start-up costs without guarantee the project will be built, the City spent about \$80,000 for legal costs related to terminating Maria's lease, preparation of the Disposition and Development Agreement (DDA), and on appraisals and preparation of a parcel map. This does not include staff time that was not billed back to ALF. Typically for development projects, City staff and legal services costs would be required to be reimbursed by the Developer.
- The City of Moorpark has been committed to this project from day one.

**We understand ALF's occasional frustration with the required entitlement permit and building permit approval process, including the recently required soils testing. The numerous decisions by the City Council in support of this project are a testament to the City's strong commitment to working with you to make this project come to fruition, including the City Council's approval of the commercial planned development and conditional use permits in November 2016, and the Council's recent approval last month of the Disposition and Development Agreement for the sale of the City's property on High Street to Apricot Lane Market Holdings, LLC.**

- The City is vested and invested in the project. The City assumed risks that the property would be sold and a project not built, because ALF requested and the City conceded to not require the customary performance guarantees and accept the risk. This was done to save ALF over \$500,000. The City believed in ALF and even before the formal DDA negotiation commenced the City moved forward to terminate the lease with Maria's, because ALF didn't want to purchase property with a tenant.
- The City has made substantial public investment on High Street including relocation of the fire station and Post Office, acquiring the High Street Arts Center, and several million dollars for infrastructure improvements.

- The City has faith in the ALF project and proceeded without the usual required information. Organizational documents and financial documents weren't provided by ALF until well into the DDA process.
- The City has experience in working with developers to overcome project constraints. The Moorpark Marketplace is a good example where the City had to work with the developer to relocate the planned Caltrans yard next to the freeway ramp, approved the pylon sign requested by Target and the Los Angeles Avenue entrance with a traffic signal relatively close to the freeway ramps, and facilitated early plan check to ensure Kohls was a tenant.
- As with many projects, unanticipated factors occurred during the DDA process for ALF that added time including:
  - The prevailing wage issue (as discussed later).
  - Finding the fledging owls and waiting seven weeks for them to leave the nest (3/15 – 5/8).
  - Noise – On the same day (March 15) the owls were found and the Council was scheduled to award the Building Demolition Bid, the City received a letter from an attorney representing a High Street property owner stating removal of the buildings on the south side of High Street would cause noise impacts on her clients' property. The demolition award item was pulled from the agenda. The City Attorney opined that the City was at risk of a lawsuit if it did not address the stated concerns by conducting a noise study. Such a study would have taken about 4 months and beyond that did not guarantee avoiding potential litigation if there was not consensus on the study's findings. An option was to work with the property owners to delay demolition of the existing structures until a grading permit was issued for the project and building plans submitted for plan check. The High Street property owner agreed with this option, and language was added to the DDA. This along with its prevailing wage issue resulted in ALF agreeing to assume responsibility for the demolition.
  - Preparation of the legal description for the Apricot Lane Farms parcel. Originally a Certificate of Compliance process was planned to be used to save time. However, a 2008 lot line adjustment on the property had created property line issues. The City and ALF mutually agreed to proceed with a parcel map to subdivide all of the property and it was added to the DDA as a condition to close escrow. To try to save time, ALF elected at its cost, to also proceed with the Certificate of Compliance, and it was mutually agreed ALF surveyors would do the work. On May 19, 2017 the City and ALF surveyors reached agreement on the legal description to be used for the Certificate of Compliance.
  - Soil liquefaction concerns requiring study and developing means to address it.

**The City has been and continues to be very committed to achieving successful development in the downtown and on High Street. We hope ALF will reconsider their decision, and the City Council and the entire city staff remains committed to working with you to bring your unique farm-to-table food market, restaurant, and microbrewery to High Street in Moorpark.**

- Lack of private investment on High Street and vacancies in commercial projects are a result of market forces. The 2016 Commercial Demand Study documents the issues and provides options such as principally mixed-use zoning and conversion of some of the vacant commercial land to other uses such as high density housing.
- The City understands differences between an ALF type project on High Street and large residential projects as far as concessions and fees.
- The City worked creatively with ALF to avoid concessions that would trigger requirements to pay prevailing wages and a potential 30% cost increase.
  - The labor code states that any public assistance to a project would trigger prevailing wage.
  - The City Attorney opined that the demolition had to be completed prior to the DDA being approved in order to not appear as if the City were providing assistance to the project.
  - This presented a challenge to ALF for their timeline.
  - The only way to not affect their timeline was for them to take on the demolition with no write down of costs, because, again, the assistance could trigger prevailing wage for their project.
  - There is a de minimus exception rule in the prevailing wage law that would allow the City to provide assistance to a project, so long as the amount of assistance was found to be de minimus in the total project costs, which is generally believed to be 1.5% of the project.
  - The City offered to make a de minimus exception finding for the project; however, it would require ALF to provide their project budget in order for the City Council to make the finding that the assistance was less than 1.5% of the total project cost.
  - ALF elected to move forward, pay full fair market value for the land and demolish the structures themselves.
  - If prevailing wage requirement is triggered, the City could be obligated to pay the added costs. If a court or Department of Industrial Relations ruled to require the contractor to pay prevailing wages then the contractor could seek to cover its costs and penalties from the City unless the agreement with the developer required it to pay prevailing wage rates. On a \$10,000,000 construction budget, this would be about \$3,000,000. The city can avoid this by requiring payment of prevailing wages in the DDA. This requirement was not included in the ALF project DDA.

**The City supports Economic Development, business attraction and retention and has demonstrated its cooperation with the Business Community. The City has challenges and constraints for commercial business. The 2016 Commercial Demand Study and a September 2016 Report (presented at the September 7, 2016 City Council Meeting) addressed this matter. The City works to ensure City codes are applied fairly and consistently and when appropriate, approves changes to codes and regulations to assist businesses.**

- The City takes economic development and business promotion activities seriously. For example, Harley Davidson Motorcycles, Smart and Final, and Tractor Supply sought out their locations in the City and received quick turn around on processing. In other cases, the City has worked to keep business here including Ralph's which was in a dispute with its landlord.
- The Home Depot site was leased for a 20-year initial term with options to extend it during a period of expansion by the company. Within months the company was no longer expanding. They continue to pay \$2,000,000 annual lease, which has about 11 years left. The property owner is content to collect the rent. The City and Brokers have attempted to interest other big box users like Ashley Furniture, Living Spaces and Sam's Club; however, the relatively short-term lease remaining and market location are deterrents.
- After being denied in the City of Thousand Oaks in 2013, the Community Market Place (high-end swap meet) sought to locate at the original Kavlico building at Princeton Avenue and the 118 Freeway. The City was supportive of this, but the adjacent business threatened to sue the City due to security concerns. The developer ultimately chose a Science Drive site for the Community Market Place. The business failed for several reasons, including location and under capitalization.
- Kmart, Fresh & Easy, Albertson's, Do it Center, Big Lots, Radio Shack, Staples, and Game Stop were corporate decisions to close locations, or the Moorpark site didn't achieve desired sales.
- Despite Redevelopment Agency assistance, a movie theater tried twice to operate in the Mission Bell Plaza and failed to secure sufficient customers to stay open.
- Ross Dress 4 Less was almost here with a planned occupancy in a portion of the former K-Mart store. Unfortunately even after a building façade was remodeled, the corporate owner of the Center rejected their own local agent's lease agreement with Ross.

- For some businesses, locating in Moorpark doesn't fit their business model, and they have locations in larger cities such as Thousand Oaks and Simi Valley. This includes Trader Joe's, Harbor Freight and Big 5.
- The owner of the approved Studio project at the west end of Moorpark continues to actively work the project, and the land use permit is valid until 2019. They continue to seek a funding partner.
- The inference that the City over regulates and is difficult is a by-product of land development where there are permits, fees, land dedications, environmental studies and high standards. The community residents expect the City to enforce standards for quality projects.
- Sometimes the City has to say no to proposals that are not appropriate for the location, such the gas station originally proposed adjacent to homes at the northwest corner of Tierra Rejada Road and Spring Road and a mini storage project on Spring Road where the Ruben Castro Center is now located.
- For the ALF Project, there were no dedications imposed, traffic and noise studies were not required, and only basic fees were required that if waived may have required payment of prevailing wage.