

TOWN OF  
APPLE VALLEY, CALIFORNIA

AGENDA MATTER

Subject Item:

ADOPT ORDINANCE NO. 373 - A REQUEST TO TERMINATE DEVELOPMENT AGREEMENT (DA) NO. 2004-001 BETWEEN THE TOWN OF APPLE VALLEY AND NEW CENTURY/SUMMERS, LLC, ESTABLISHING THE STANDARDS, CRITERIA AND TIME FRAME FOR DEVELOPMENT OF THE PROJECT AREA LOCATED ON THE SOUTHWEST CORNER OF JESS RANCH PARKWAY AND BEAR VALLEY ROAD WITHIN THE JESS RANCH PLANNED UNIT DEVELOPMENT (PUD) AND THE TOWN OF APPLE VALLEY.

Summary Statement:

At its January 8, 2008 meeting, the Town Council reviewed and introduced Ordinance No. 373 as it relates to terminating Development Agreement No. 2004-001 between the Town of Apple Valley and New Century/Summers, LLC establishing the standards, criteria and time frame for development of the project area located on the southwest corner of Jess Ranch Parkway and Bear Valley Road, within the Jess Ranch Planned Unit Development (PUD) and the Town of Apple Valley. As part of the requirements to adopt a new Ordinance, Ordinance No. 373 has been scheduled for adoption at the February 12, 2008 Town Council meeting.

Recommended Action:

Adopt Ordinance No. 373

Proposed by:         Planning Division        

Item Number         

Town Manager Approval:   

Budget Item  Yes  No

**ORDINANCE No. 373**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, MAKING FINDINGS AND DETERMINATIONS TERMINATING AND CANCELLING DEVELOPMENT AGREEMENT NO. 2004-001, A DEVELOPMENT AGREEMENT BETWEEN NEW CENTURY ENTERTAINMENT/SUMMERS, LLC, (DEVELOPER) AND THE TOWN OF APPLE VALLEY FOR THE DEVELOPMENT OF THE SILVERADO AT APPLE VALLEY DESTINATION/ENTERTAINMENT CENTER PROJECT ON PROPERTY GENERALLY LOCATED SOUTH OF BEAR VALLEY ROAD, WEST OF JESS RANCH PARKWAY, EAST OF THE MOJAVE RIVER AND NORTH OF THE LOGICAL EXTENSION OF TOWN CENTER DRIVE (APN 434-541-31).**

The Town Council of the Town of Apple Valley, State of California, does ordain as follows:

**Section 1. Recitals.**

(i) Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley was adopted by the Town Council on October 24, 2000; and

(ii) Chapter 9.04 “Development Agreements” of Title 9 (Development Code) of the Municipal Code of the Town of Apple Valley delineates the requirements and specifications for the adoption and cancellation of a Development Agreement; and

(iii) Development Agreement No. 2004-001, adopted by the Town Council on June 8, 2004, is an agreement between the Town of Apple Valley and New Century/Summers, LLC, for the development of a 16-screen cinema megaplex, to anchor of the “Silverado At Apple Valley” project, on property generally located south of Bear Valley Road, west of Jess Ranch Parkway, east of the Mojave River and north of the logical extension of Town Center Drive, known as the project site (Assessor Parcel No. 434-541-31), which property is more specifically described in Exhibit “A” attached hereto, entitled “LEGAL DESCRIPTION”, a copy of which Agreement (including said “LEGAL DESCRIPTION”) was recorded on August 6, 2004 as Document No. 2004-0569034, in the office of the County Recorder of the County of San Bernardino, State of California; and

(iv) The Director of Community Development determined that the Development Agreement was in default in that the initial Developer was unable to obtain adequate financing to allow the timely performance of the Agreement by Developer to occur, and it is hereby found and determined the Agreement was and remains in default; and said initial Developer agreed to the termination and cancellation of said Agreement; and

(v) The project site has been sold, the project contemplated by the

Development Agreement and known as “Silverado at Apple Valley” was terminated and development thereof did not proceed; instead, the current property owner submitted to the Planning Commission for approval and the Planning Commission based thereon approved a different project not contemplated by said Development Agreement, namely the Development Permit and Special Use Permit on February 7, 2007, and a Tentative Parcel Map on November 7, 2007, for Jess Ranch Marketplace Phase III, including a cinema, restaurants, a fitness center and retail tenants; and said current owner, Apple Valley III Alliance/Riley, LLC, has requested termination and cancellation of said Development Agreement; and

(vi) Pursuant to its duty and responsibility to address development and the land uses identified and permitted within various zoning districts, which includes, in part, under Chapter 9.04 “Development Agreements of Title 9 (Development Code), the review and recommendation of Development Agreements and any amendments or termination thereof, pursuant to Section 9.04.040, following a duly noticed public hearing on December 19, 2007, the Planning Commission, adopted Resolution No. 2007-031, making its findings and determinations and recommending to the Town Council the termination and cancellation of said Development Agreement; and

(vii) On December 28, 2007, the termination of Development Agreement No. 2004-001 was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley, consistent with Chapter 9.13 “Public Hearings and Notice” of Title 9 (Development Code) and in accordance with state law, noting the Planning Commission’s intention to consider recommending to the Town Council termination of a Development Agreement between the Town and New Century/Summers, LLC; and

(viii) Pursuant to Section 15061(b)(3) of the State Guidelines to implement the California Environmental Quality Act (CEQA), there is no possibility the proposed cancellation will have a significant effect upon the environment and, therefore, it is exempt from CEQA; and

(ix) There is no evidence before the Town that the proposed project will have any potential for adverse effect on wildlife resources and the impacts of the Amendment are found to be De Minimis pursuant to Section 711.4 of the Fish and Game Code; and

## **Section 2. Findings.**

(i) The Town Council finds that, it can be seen with certainty there is no possibility that the termination and cancellation of Development Agreement No. 2004-001 may have a significant effect on the environment and, therefore, is Exempt from further environmental review.

(ii) The Town Council determines that there is no evidence before the Town that the proposed termination of Development Agreement No. 2004-001 will have any potential for adverse effect on wildlife resources and the impacts of the Agreement are found to be De Minimis pursuant to Section 711.4 of the Fish and Game Code.

(iii) The Town Council finds that the termination and cancellation of Development Agreement No. 2004-001 is consistent with the objectives, policies, land uses and programs specified in the General Plan and the Jess ranch Planned Unit Development, and complies with the other standards and criteria required in Chapter 9.04 "Development Agreements" and determines that consistent with the recommendation of the Planning Commission, including a determination that the proposed termination and cancellation is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the property is located, and is beneficial to the public health, safety and welfare.

(iv) The Town Council finds that Development Agreement No. 2004-001 between the Town and New Century/Summers, LLC, has been in default for a long period of time, is no longer valid or effective, its cancellation has been requested by the original property owner and party thereto and by the current owner, and should be terminated.

(v) The Town Council further finds and determines that justification exists for adoption of an ordinance to formally cancel and terminate Development Agreement No. 2004-001, which was adopted by Ordinance No. 283, finding that the Development of the project referenced in the Development Agreement, "Silverado at Apple Valley" did not timely occur, that the Development Agreement was and is in default, that both the original owner and the current owner have concurred in cancellation and termination of said Development Agreement, that said original proposed project will not be developed at the southwest corner of Jess Ranch Parkway and Bear Valley Road.

**Section 3. Termination and Cancellation of Development Agreement No. 2004-001.** Based upon the above findings and determinations, the Town Council by adoption of this Ordinance does hereby terminate and cancel said Development Agreement No. 2004-001, which Development Agreement was originally approved by Ordinance No. 283, adopted on June 8, 2004, and which affects the property identified in Recital (iii), above.

**Section 4. Notice of Adoption.** The Town Clerk of the Town of Apple Valley shall certify to the adoption of this ordinance and cause publication to occur in a newspaper of general circulation and published and circulated in the Town in a manner permitted under Section 36933 of the Government Code of the State of California, including but not limited by this reference to a summary of this ordinance in the manner permitted thereunder.

**Section 5. Effective Date.** This Ordinance shall become effective thirty days after the date of its adoption.

**Section 6. Severability.** If any portion of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications and, to this end, the provisions of this Ordinance are intended and declared to be severable.

**Section 7. Recordation.** Following the effective date hereof, the Town Clerk shall cause a certified copy of this Ordinance and/or notification thereof in suitable form for recording to be recorded in the office of the County Recorder of the County of San Bernardino, California, including Exhibit "A" hereto which describes the land which was subject to said Development Agreement.

Adopted by the Town Council and signed by the Mayor and attested by the Town Clerk this 12<sup>th</sup> day of February, 2008.

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Honorable Timothy Jasper, Mayor

ATTEST:

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La Vonda M-Pearson, Town Clerk

Approved as to form:

Approved as to content:

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Mr. Neal Singer, Town Attorney

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Mr. James L. Cox, Town Manager