Overview

What is the Planning Commission’s Role in Reviewing Development Agreements?
Background

- Why do we have the Development Agreement statutes? Government Code section 65864 et. seq.
- Legislative attempt to soften the impact of *Avco Community Developers Inc. v. South Coast Regional Comm.* (1976) 17 Cal.3d 785

Avco Case

- Leading case on “common law vested rights” for 40 years
- Facts of case
- Court’s Holding
  - Only when a property owner has a valid building permit;
  - Incurred substantial liabilities in good faith reliance on the permit;
  - Property acquires vested right to complete construction in accordance with the terms of the permit
Avco Case, cont.

- Developer had Zoning, Tentative and Final Maps and grading permits
- BUT no building permit for construction
- No vested right to complete construction
- Harsh result for Developer!

DA Statutes Adopted 1979

- Legislative purpose and findings:
  - Lack of certainty in approval of development projects
    - Results in waste of resources
    - Escalates housing costs
    - Discourages investment/commitment in comprehensive planning
    - Results in lack of public facilities such as streets, sewers ...
DA Statute - Contents

• Mandatory contents:
  – Duration of DA (10-20 years)
  – Permitted uses of property
  – Density or intensity of use
  – Maximum height and size of buildings
  – Fees frozen – unless new citywide fees
  – Dedication of land for public purposes

DA Contents, cont.

• Other terms and conditions for subsequent actions – but they cannot prevent/delay development of project
• Conditions for construction of project (Milestones)
• Conditions on financing of public facilities and/or reimbursement
• Examples
DA Procedures

- Adopted by Ordinance at a public hearing
- Planning Commission review
- City Council review
- Findings that DA is consistent with General Plan and any Specific Plan
- Adopted Procedures
  - Process
  - Costs

DA Procedures, cont.

- Period review (yearly)
  - Subject to referendum (Legislative Act)
  - 30 days from Ordinance being "attested"
- 90 day statute of limitations
- Recorded within 10 days
- Binding on successors
Enforcement

• DA’s are enforced as contracts
  – No money damages
  – Only specific performance
• Good faith and fair dealing
• Default and cure provisions

Enforcement, cont.

• Termination
• Amendments
  – Amended same ways as adoption
  – Operating Memorandum for minor amendments
• Cancellation
• Assignment
DA as a Contract

- Parties
- General provisions
- “Benefits” to local agencies
- No nexus for dedications and/or exactions
- Bargained for/negotiated
- *Examples*

Vesting Tentative Maps

- DA vs VTM
- Subdivision Map Act provides for Vesting Tentative Maps
- Additional way to obtain vested rights
- Processed same as Tentative/Parcel Map
- Freezes ordinances, policies and standards in effect at time map deemed complete
Vesting Tentative Maps, cont.

- Vested rights expire when map expires or when Final Vesting Map issued
- DA vested rights are usually 10-20 years

DA Negotiations

- City Manager, Senior Planning Staff and Developer
- City Attorney and Developer’s attorney involved in drafting
- Set expectations early on with negotiations
- Set priorities
- Public benefits
- *Examples*
THANK YOU !