

CLARK COUNTY BOARD OF COMMISSIONERS

ZONING / SUBDIVISIONS / LAND USE

AGENDA ITEM

Petitioner: Clark County District Attorney's Office

Recommendation: ORD-21-900651: Introduce an ordinance to consider the cancellation of the Mountain's Edge Development Agreement between Clark County and Mountain's Edge, LLC pursuant to NRS 278.0205(1). JJ/sr (For possible action)

FISCAL IMPACT:

None by this action.

BACKGROUND:

BACKGROUND:

The Third Amendment to the Mountain's Edge Development Agreement required the developer to construct a 10-acre park within the Mountain's Edge master-planned community once the Residential Tax Fund ("RCT Fund") reached the threshold amount of \$1.6 million dollars. The RCT Fund is derived from residential construction taxes collected when building permits are issued for residential construction within the Mountain's Edge community. After consulting with County staff and the developer, it has become apparent that the \$1.6 million dollar threshold to trigger the construction of park under the Development Agreement will never be reached due to the limited number of homes remaining to be built within Mountain's Edge. The Mountain's Edge Master Association ("MEMA") approached Clark County with a proposal that will enable MEMA to utilize the funds deposited into the RCT Fund to construct the park in lieu of the developer thereby satisfying the purposes of the Third Amended Development Agreement. Cancellation of the Development Agreement will give the County the ability to enter into an agreement with MEMA to complete construction of the park. Additionally, most of the road improvements have been completed by the developer. The road improvements that have not been completed are secured by separate agreements and bonds. Cancellation of the Development Agreement will not affect the separate bonds and agreements relating to any uncompleted road improvement.

The Board of County Commissioners may amend or cancel a development agreement pursuant to NRS 278.0205(1) without the consent of the other parties to an agreement when "[a]ny event has occurred which demonstrates that a party to the agreement or a successor in interest is unable to perform his or her duties set forth in the agreement." Approval of the cancellation of the Development Agreement is appropriate under NRS 278.0205(1) since the developer will never be obligated to construct the park because the threshold amount to trigger the developer's obligation under the terms of the Third Amended Development Agreement will never be achieved and since any uncompleted road improvements are secured by separate bonds and agreements. Although the developer has indicated that it agrees to the proposed cancellation, the developer has not yet signed a written stipulation to cancel the Development Agreement but may do so prior to the public hearing.

For the reasons stated above, cancellation of the Development Agreement is appropriate under NRS 278.0205(1). Accordingly, the District Attorney's Office recommends that the Board introduce the ordinance and set a public hearing.

Cleared For Agenda
11/03/21

BILL NO. _____

SUMMARY - An ordinance to adopt the cancellation of the Mountain's Edge Development Agreement with Mountain's Edge LLC pursuant to NRS 278.0205(1) for the planned community (Mountain's Edge) on approximately 2,600 acres, generally located south of Blue Diamond Road and east of Rainbow Boulevard within Enterprise.

ORDINANCE NO. _____
(of Clark County, Nevada)

AN ORDINANCE TO ADOPT THE CANCELLATION OF THE MOUNTAIN'S EDGE DEVELOPMENT AGREEMENT WITH MOUNTAIN'S EDGE LLC PURSUANT TO NRS 278.0205(1) FOR THE PLANNED COMMUNITY (MOUNTAIN'S EDGE) ON APPROXIMATELY 2,600 ACRES GENERALLY LOCATED SOUTH OF BLUE DIAMOND ROAD AND EAST OF RAINBOW BOULEVARD WITHIN ENTERPRISE AND PROVIDING FOR OTHER MATTERS PROPERLY RELATED THERETO.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CLARK, STATE OF NEVADA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. In accordance with the provisions of Sections 278.0203 and 278.0205(1) of the Nevada Revised Statutes and Chapter 30.20 of the Clark County Code, the cancellation of the Mountain's Edge Development Agreement with Mountain's Edge LLC for the planned community (Mountain's Edge) on approximately 2,600 acres, generally located south of Blue Diamond Road and east of Rainbow Boulevard within Enterprise, is hereby adopted.

SECTION 2. If any section of this ordinance or portion thereof is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not invalidate the remaining parts of this ordinance.

SECTION 3. All ordinances, parts of ordinances, chapters, sections, subsections, clauses, phrases or sentences contained in the Clark County Code in conflict herewith are hereby repealed.

SECTION 4. This ordinance shall take effect and be in force from and after its passage and the publication thereof by title only, together with names of the County Commissioners voting for or against its passage, in a newspaper published in and having a general circulation in Clark County, Nevada, at least once a week for a period of two (2) weeks and shall be effective on and from the fifteenth day after passage.

PROPOSED on the _____ day of _____, 2021

INTRODUCED by: _____

PASSED on the _____ day of _____, 2021

VOTE:

AYES: _____

NAYS: _____

ABSTAINING:

ABSENT:

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY, NEVADA

By: _____
Marilyn K. Kirkpatrick, Chair

ATTEST:

Lynn Marie Goya, County Clerk

This ordinance shall be in force and effect from and after the _____ day
of _____ 2021.

**CANCELLATION OF THE DEVELOPMENT AGREEMENT
BETWEEN THE COUNTY OF CLARK AND MOUNTAINS EDGE, LLC
FOR MOUNTAIN'S EDGE MASTER PLANNED COMMUNITY**

THIS CANCELLATION OF THE MOUNTAINS EDGE, LLC MASTER DEVELOPMENT AGREEMENT as amended ("Agreement") is effective on the 1st day of December, 2021. The County of Clark, State of Nevada (hereinafter referred to as the "County") has cancelled the Agreement pursuant to NRS 278.0205. Mountains Edge, LLC, a Nevada limited liability company (hereinafter referred to as the "Owner") is the master developer of Mountain's Edge Master Planned Community which includes the real property described in the original Development Agreement and the real property which has been added through Amended and supplemental development agreements approved by the County, executed by the Owner and recorded against such real property.

The original DEVELOPMENT AGREEMENT ("Original Agreement") was made and entered into on the 18th day of December, 2002 by and between the County and the Owner and was amended by the First Amendment recorded on the 19th day of August, 2004. A Second Amendment was made and entered into on the 20th day of December, 2006 and recorded on February 6, 2007. The Third Amendment was entered into on the 28th day September, 2010 and recorded thereafter. The Original Agreement, and the First, Second and Third Amendments previously made between the parties is cancelled except as expressly provided below.

SECTION 7

7.02 Duration of Agreement. The Agreement is cancelled upon the Effective Date except the following provisions survive the cancellation of the Agreement:

- (a) All separate contracts, agreements and bonds entered into by Owner or on behalf of the Owner relating to the Mountain's Edge Master Planned Community, including without limitation, obligations relating to off-site improvements, bonds, financing agreements, Special Improvement District 142, and the Stipulation and Order for Dismissal filed in the matter of Insurance Company of the West vs. John Ritter, et. al., Case A-11-645646-C on May 27, 2016, shall survive the cancellation of the Agreement. The cancellation of the Agreement shall not be considered a cancellation, rescission or amendment of any separate contract, agreement or bond executed by Owner or on behalf of Owner relating to the Mountain's Edge development.
- (b) Owner shall be and is hereby released from its obligation to construct, complete or maintain Helen Stewart Park (Park 228) by way of this cancellation. Any and all funds paid by Owner to County or collected by County for parks, facilities and amenities pursuant to Section 4.02 of the original Development Agreement or any amendment thereto may be used by County at its discretion for park construction or improvement within the Mountain's Edge Community; this includes, without limitation, the County's authority to enter into an agreement with the Mountain's Edge Master Association to allow the Mountain's Edge Master Association to utilize the funds for new park construction or improvements within the Mountain's Edge community, including construction of Helen Stewart Park. Additionally, Owner may no longer seek the use of residential construction tax funds collected by County after the Effective Date for construction of Parks, Paseos or for any other purpose.

IN WITNESS WHEREOF, this cancellation of the Mountains Edge LLC Master Development Agreement is executed by the County’s duly authorized representative on the day and the year indicated.

COUNTY:

**BOARD OF COUNTY COMMISSIONERS,
COUNTY OF CLARK, STATE OF NEVADA**

On this ____ day of _____, 2021

Attest:

By: _____
Marilyn Kirkpatrick, Chair

Lynn Marie Goya, County Clerk