

1 **DAVID P. BONACCORSI, ESQ. (SB# 129042)**
2 **BERNARD, BALGLEY & BONACCORSI, LLP**
3 **3900 NewPark Mall Road, Third Floor**
4 **Newark, CA 94560-5242**
5 **Telephone: (510) 791-1888**
6 **Facsimile: (510) 791-8008**

7 Attorney for Defendant
8 Ruby Hill Owners' Association

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ALAMEDA

11 ANIL REDDY and DIVYA REDDY,
12 individuals,

13 Plaintiffs,

14 vs.

15 RUBY HILL OWNERS' ASSOCIATION, a
16 California Corporation; and DOES 1-25,
inclusive,

17 Defendants.

Case No. HG13671895
Complaint filed: March 18, 2013
Assigned to Hon. Lawrence John Appel

**DECLARATION OF JAMES W.
MCKEEHAN IN SUPPORT OF
DEFENDANT RUBY HILL
OWNERS' ASSOCIATION'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

Date: May 23, 2013
Time: 9:00 a.m.
Dept.: 16
Reservation No.: 1383869

18
19
20 I, JAMES W. MCKEEHAN, declare as follows:

21 1. I am an attorney licensed to practice in the State of California since 1972. I have
22 personal knowledge of the matters in this declaration, except as to those matters stated upon
23 information and belief, and as to those matters I am informed and believe them to be true, and would
24 competently testify thereto if called as a witness.

25 2. In the early 1990's, I was the Executive Vice-President and former General Counsel
26 the managing member of Ruby Hill Development Joint Venture, L.P., a California limited

1 partnership, the developer of the Ruby Hill 850-unit residential golf course community and planned
2 development. This community is approximately 900 acres, with a Jack Nicklaus-designed
3 championship golf course.

4 3. Ruby Hill was originally situated in unincorporated Alameda County. In my
5 capacity as Executive Vice-President and General Counsel for the managing member of the Ruby
6 Hill Development Joint Venture, I was directly involved and responsible for obtaining all
7 governmental approvals and entitlements for this project, and responsible for processing the project
8 through the County of Alameda approvals, including approval of the Environmental Impact Report
9 (“EIR”), and addressing and responding to challenges to the approved EIR.

10 4. While we retained outside counsel to draft the Covenants, Conditions and
11 Restrictions (CC&Rs) for Ruby Hill, I oversaw the formulation of the CC&Rs. Under the CC&Rs,
12 Ruby Hill Joint Venture was the Declarant. The Declaration of CC&Rs was recorded on March 3,
13 1994.

14 5. Section 11.4.2 of the CC&Rs establishes an Architectural Design Committee (ADC)
15 to maintain architectural control over this planned development. I was involved in overseeing the
16 formulation of Architectural Design Guidelines.

17 6. Ruby Hill Joint Venture as the Declarant, by and through the ADC, was initially
18 responsible for ensuring compliance with the Design Guidelines and CC&Rs, a function that later
19 was assumed by the Ruby Hill Owners’ Association (RHOA) as the Declarant’s successor, by
20 through its appointments to the ADC.

21 7. The community was eventually annexed to the City of Pleasanton, and the terms of
22 that incorporation were negotiated and memorialized in a Pre-Annexation Agreement. I was
23 involved in obtaining the necessary approvals from the City of Pleasanton, and in the negotiation of
24 the Pre-Annexation Agreement.

25 8. I participated in the negotiation and drafting of the Pre-Annexation Agreement and
26 Amended Pre-Annexation Agreement with the City of Pleasanton which was executed on November

1 17, 1992. Attached as Exhibit "A" is the first page, page 8 and the signature page for the Amended
2 Pre-Annexation Agreement. I signed on behalf of the managing member for the Ruby Hill
3 Development, Joint Venture, LP and I recognize the signature of the then City Clerk Peggy Ezidro,
4 and the then City Manager Deborah Acosta who signed on behalf of the City of Pleasanton. The
5 document is recorded in the Alameda County Recorder's office and is a public document.

6 9. The Pre-Annexation Agreement established a unique relationship between the Ruby
7 Hill Community and the City of Pleasanton. The process for building a home in Ruby Hill is
8 relatively straightforward. In a General Law city, a homebuilder must submit his plan to the
9 Planning Department for processing and approval. There may be Planning Commission review and
10 if the plans are denied, appeal to a City Council. In Ruby Hill, a different process has been
11 established as a result of annexation of Ruby Hill into the City of Pleasanton after the project was
12 approved by Alameda County.

13 10. In Ruby Hill, a lot owner who is building a new home is provided with the Design
14 Guidelines that govern and set standards for construction. Section 11.6 of the ADC limits the right
15 of approval of the ADC only if it makes certain findings including whether the plans and
16 specifications conform to the Design Guidelines. The ADC must conduct general architectural
17 review, site review, landscape review and address drainage as well. (CC&Rs Sections 11.6.1
18 through 11.6.5.) Under CC&R Section 11.7 all approvals from the ADC must be in writing. In
19 Sections 11.10 and 11.11 of the CC&Rs when a home or other work of improvement has been
20 completed, the Owner is to notify the ADC of completion and the ADC in turn, within 60 days of
21 the notice, the ADC is to conduct an inspection to ensure that the as-built home complied with the
22 approved plans.

23 11. But there was an important limitation placed by the City on Ruby Hill concerning its
24 Design Guidelines (referred to in the Pre-Annexation Agreement as the "design review guidelines").
25 Ruby Hill was not able to alter its Design Guidelines without the approval of the City of Pleasanton,
26 by and through its Design Review Board. Attached as Exhibit A is a true and correct copy of the

1 relevant provision of the Pre-Annexation Agreement on page 8, paragraph 10 that states that “The
2 design review guidelines shall be subject to change by Developer only with the approval of the
3 City’s Design Review Board.”

4 12. The practice that has been established for the first 833 homes that have been built and
5 approved by the ADC in the last 18 year in Ruby Hill is that the City of Pleasanton will not issue a
6 certificate of occupancy until Ruby Hill issues a letter confirming that the home was built in
7 accordance with the Design Guidelines.

8 13. I was retained to serve as the attorney for RHOA during the appeal of the Reddys to
9 the RHOA Board.

10 14. In connection with the scheduled appeal hearing on September 24, 2012, I provided
11 notice to the Reddys and their attorney at the time Jeffrey. Attached as Exhibit B is a true and
12 correct copy of an email I sent to Mr. Reddy on September 11, 2012 notifying him of the date and
13 time of the hearing.

14 15. Attached as Exhibit C is a true and correct copy of a follow-up courtesy email I sent
15 to the Reddys to Mr. Jeffrey Widman, a person I came to learn was representing the Reddys. As the
16 email reflects, I had spoken to Mr. Widman on September 17, 2012 to advise him of the hearing
17 date.

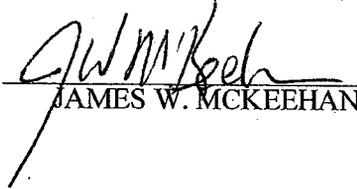
18 16. I attended the hearing of the appeal on September 24, 2012 at 5:30 p.m. Neither the
19 Reddys, nor Mr. Widman, nor any other attorney, or agent of the Reddys appeared at the appeal
20 hearing.

21 17. I also represented RHOA at the voluntary mediation that was conducted before Judge
22 Marlo, a JAMS Neutral, who I am informed and believe, and based on that information and belief
23 allege, is a retired Judge of the Santa Cruz Superior Court. The mediation took place on November
24 20, 2012 at the JAMS office in San Jose, California. Mr. Widman represented the Reddys at the
25 mediation.

26 18. The Reddys’ current attorney Harold P. Smith of Dhillon & Smith was not present

1 nor anyone else from the Dhillon & Smith firm as I understood Mr. Widman to have his own
2 practice.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing
4 is true and correct. Executed on May 7, 2013, at Pleasanton, California.

5
6 
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

JAMES W. MCKEEHAN

EXHIBIT A

93210619

EXHIBIT B

AMENDED
PRE-ANNEXATION AGREEMENT

This Amended Pre-Annexation Agreement (the "Agreement") is entered into this 17th day of November, 1992, by and between the CITY OF PLEASANTON, (the "City"), a California municipal corporation, and RUBY HILL DEVELOPMENT JOINT VENTURE ("Developer"), a California general partnership between Signature Properties I, a California Limited Partnership and Nicklaus/Sierra Development Corporation of Northern California, a California corporation.

RECITALS

A. Whereas, Developer is the owner of or has the contractual right to acquire or control certain parcels of real property (collectively the "Property") located in the County of Alameda and more particularly as described on Exhibit "A" hereto.

B. Whereas, Developer proposes to develop on the Property a master planned rural development for residential, recreational and agricultural purposes ("Ruby Hill Project") and has applied to the County of Alameda (the "County") for certain legislative and land use approvals that are within the County's jurisdiction to issue.

C. Whereas, Ruby Hill Project land use approvals requested from the County include an amendment to the County's general plan, and zoning amendment and certification of an environmental impact report (the "EIR") for development of the Ruby Hill Project. The EIR was certified by the County Board of Supervisors on March 26, 1991 and June 6, 1991.

D. Whereas, on June 6, 1991, the Board of Supervisors by Ordinance No. 0-91-18 approved a rezoning of a portion of the Property from agricultural to Planned Development, 1837th Planning Unit for development of the Ruby Hill Project (the "Rezoning"). Various exhibits to that ordinance reflect the uses permitted on such portion of the Property, the density and intensity of use, maximum height and sizes of buildings, other developmental standards therefor, and the various conditions of approval incorporated into the ordinance. Subsequent to the approvals on June 6, 1991, the County at various times has granted additional approvals to and revisions of the Ruby Hill Project. All action by the County in furtherance of the Ruby Hill Project occurring before the date of this Agreement shall be referred to herein as the "Zoning Conditions."

E. Whereas, on July 15, 1991, the City of Livermore filed a Petition for Writ of Mandate, Alameda County Superior Court Action No. 683426-1, challenging on numerous grounds the actions taken by the Alameda County Board of Supervisors as herein described. Thereafter, pursuant to California law, representatives of the City of Livermore, County of Alameda and Developer met in order to resolve the pending litigation.

93210619

dedicated in Section 8A, then the Developer shall satisfy the requirements of the City's Parkland Dedication Ordinance by paying the then applicable fees for the additional housing units pursuant to the Ordinance. Developer may apply for credit for private open space within the Project as provided in the City's Parkland Dedication Ordinance.

9. **Emergency Access.** Developer shall prepare a plan for emergency vehicle access and emergency communication for the golf course, subject to approval by the City. The emergency vehicle access will include access through the golf course to and from those cut-decks designated by the City as needing alternative emergency access.

10. **Design Review Guidelines.** Developer shall provide for the City's review a complete set of design review guidelines for the improvements to be constructed on the Portion. The guidelines shall be subject to approval by the City's Design Review Board. Developer shall require all project improvements to be constructed in accordance with the design review guidelines, subject to City staff review. For purposes of this section, 'City staff review' shall mean that the planning department staff shall review preliminary building plans and preliminary landscaping plans for consistency with the guidelines prior to the final plans being submitted to the building department. The design review guidelines shall be subject to change by Developer only with the approval of the City's Design Review Board.

11. **Private Roadways.** All private roadways will be designed to City standards and approved by the City's Public Works Director.

12. **Golf Course Design.** The design of the golf course on the Ruby Hill Project shall be subject to an arborist's survey of heritage trees. Any proposed loss of trees shall be subject to approval by the City.

13. **Limitations on Construction/Growth Management Approval.** City has granted Developer growth management approval for the Project and Developer is limited to development of the Project in accordance with the City's Growth Management Ordinance, Chapter 17.35 of the Pleasanton Municipal Code. City has granted growth management approval as follows:

No. of Units	Year
25	1993
150 per year	1994-1998, inclusive
75	1999

Annually, City and Developer shall review the number of residential units which has been allocated in this section and also in the Developer's Growth Management Agreement with City. City and Developer shall determine if the number of units so allocated for any given year may be reallocated to other years without impairing the timely build out of the Project.

93210619

B. Parties in Interest. This Agreement is entered only for the benefit of the parties executing this Agreement and not for the benefit of any other individual, entity or person.

C. Amendment of Agreement. This Agreement may be amended in writing by the original parties or their successors in interest.

D. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

E. Enforceability. Unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by either party hereto notwithstanding any change hereinafter enacted or adopted in any applicable General Plan, Specific or Precise Plan, zoning ordinance, subdivision ordinance or any other land use or building ordinance. The parties acknowledge that the sequence of land use approvals, infrastructure improvement agreements and related events all comprise a single enterprise necessary to the mutual purposes of this Agreement, and that performance or partial performance of the obligations set forth herein will induce reliance by the other party on the completion of the remaining obligations set forth herein as a necessary remedy to effectuate the parties' respective purposes, except as otherwise provided herein.

F. Entire Agreement. This Agreement, and the exhibits attached hereto, constitutes the entire understanding and agreement of the parties, and supersedes all negotiations or previous agreement between the parties with respect to all or any part of the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers on the date(s) set forth below.

ATTEST:

"CITY"

Dated: 2-19-93

CITY OF PLEASANTON,
a California municipal corporation

By: *Pragya Sridhar*
City Clerk

By: *Deborah A. ...*

Its: City Manager

APPROVED AS TO FORM:

Dated: 2-12-93

Dated: 1/14/93
By: *Michael H. ...*
City Attorney

93210619

"DEVELOPER"

RUBY HILL DEVELOPMENT JOINT
VENTURE L.P.,
a California limited partnership

By: Signature Properties I,
a California Limited Partnership

By: [Signature]

Its: VP

Dated: 1/12/93

By: Nicklaus/Sierra Development Corp. of
Northern California, a California
Corporation

By: [Signature]

Its: VP

Dated: 1/12/93

1-4-93

13



EXHIBIT B

Katherine Fonte

From: James McKeehan <jwmckeehan@aol.com>
Sent: Tuesday, September 11, 2012 4:37 PM
To: redhya@gmail.com
CC: Diana Nathan; neal.sornsen@ey.com; kailesh.karavadra@ey.com; George Belhumeur; Marty Birk; Bob Jones; Katherine Fonte
Subject: Appeal

Dear Mr. Reddy:

The Board has set the hearing on your appeal for September 24th at 5:30 pm. At that time you will have the opportunity to present any facts, arguments or other evidence you might want the Board to consider. The Board may or may not ask you questions. At the conclusion of your presentation the Board will take the matter under consideration and provide you their decision in writing. If you have any questions about the process please send them to me in writing and I will respond on behalf of the Board.

Sincerely,

James W. McKeehan
Attorney-at-law

Sent from my iPad

EXHIBIT C

Katherine Fonte

From: Jim McKeehan <jmckeehan@sighomes.com>
Sent: Monday, September 17, 2012 9:23 AM
To: jpwidman@comcast.net
Subject: Reddy/Ruby Hill Owners Association

Dear Mr. Widman: Per our phone conversation this morning, I represent the Ruby Hill Owners Association. Mr. Reddy has appealed the decision of the ADC to the Board of the Ruby Hill Owners Association. That appeal is scheduled to be heard on September 24th at 5:30. Until the Board decides the appeal it would seem that an ADR procedure is premature. Please advise if you are going to represent Mr. Reddy at the Appeal before the Board. If we can provide you with any information, let me know. My cell number is 925-580-7231. Jim McKeehan