

## City pays off Bert Harris claim

BY GREG GILES  
NEWS EDITOR

Despite a recommendation to the contrary from the city attorney, Venice City Council voted this week to accept an offer to settle a legal challenge before it turns into another lawsuit.

Last year, owners of a planned retirement community dubbed Discovery Village filed the first-ever notice of a Bert Harris Act action against the city. The notice gives the company a year to file an actual lawsuit.

The act was created so residents who suffer property loss at the hands of government can seek compensation. The

claim against the city was for \$7.9 million.

It settled Tuesday for \$152,000.

In 2007, council OK'd the original rezone petition for Discovery Village on first reading, but reduced the density on second reading from 9.6 units per acre to 7 before it approved the rezone.

Discovery Village challenged the decision and a special magistrate concluded that the decision to reduce the number of allowable dwelling units from 144 to 105 wasn't based on any substantial evidence in the record.

Following a January 2008 mediation session, the parties

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agreed to rezone the property as a planned unit development and set the density at 7.9 units per acre. Discovery Village also wanted \$152,000 in architect, engineer and attorney fees it had expended in the two years it took to get the project revised and approved per council's direction.

### Skittish

City Attorney Bob Anderson recommended rejection of the settlement demand because the mediation law that the settlement was crafted under doesn't provide an attorney fee cost provision.



McKeon

Council members balked.

"We're in a 'damned if we do, damned if we don't' position," said Kit McKeon.

"We have a long history of looking like the road ahead is clear to us, and then incurring tremendous legal fees," said John Simmonds. "I am uncomfortable with denying this claim. I don't want to go into court again. Not on this issue or any other."

"I appreciate your legal opinion,"

Vicki Noren Taylor said to Anderson, "but I remember them coming before us and they had considerable costs to redesign the project ... so I am going to vote yes that we pay for the attorney fees."

Discovery Village attorney Keith Bricklemeyer called the attorney fees issue a red herring.



Anderson

"My client is not a litigious person, but he is going to defend his property right," he said. "I am firmly convinced a judge will reach the same conclusion the (special magistrate) reached: that (the council decision) was arbitrary, capricious and illegal, and my client is entitled to damages. These are architect's fees, engineering fees and legal fees. It's those costs, not even his carrying costs for the two years (he is seeking).

"You killed his project. He had to redesign it, and all he is asking (is for reimbursement) of costs incurred to get to that point. I think it's eminently more than fair to both sides than going to litigation.

"The risk of loss to the city is very real. I think we win. And we win significant damages."

"I feel like your client is putting a gun to the city's head," responded Council Member Sue Lang.

"It puts the city in a posi-

tion of picking the lesser of two evils. And I almost feel on principle that the city should not establish that type of a precedent. That every time a developer comes in and doesn't get what they want, they are going to threaten to file a Bert Harris Act. But I am a practical person also, especially in this day and age. But I really have to tell you that I find it to be disconcerting and upsetting that your client would make this type of claim against the city. I think it was more than reasonable when you were asking for 9.6 (units per acre) and you ended up with 7.9 on a property that was (previously) zoned 1 unit per five acres.

### Unanimous

On Tuesday council bit the bullet and agreed to the settlement unanimously.

"I see this as another instance as cleaning up after another action by a prior council," said Ernie

Zavodnyik.

His comment seemed to surprise most council members, who thought it was a decision they had made. In fact, it was made less than a month before the 2007 election in which three new members were elected.

Lang said she supported their decision at that time.

"I think it was the right decision to make," she said. "I think in the end it's worth it because the cost of the additional units would be far greater to this community than the \$152,000 and we need to keep that in sight."

Discovery Village is planning a high-end retirement community located on the north side of Hatchett Creek Boulevard just east of Pinebrook Road adjacent to another project by the developer, Aston Gardens. The property was annexed into the city in 2006.