



*The following information comprises the minutes for a special and regular meeting of the City Council, a joint meeting of the Banning City Council and Banning Utility Authority and a joint meeting of the Banning City Council and the Banning City Council sitting in its capacity as the Successor Agency Board.*

**MINUTES  
CITY COUNCIL**

**03/09/2021  
REGULAR MEETING**

**COUNCIL MEMBERS PRESENT:** Mayor Colleen Wallace  
Mayor Pro Tem David Happe via Zoom  
Council Member Mary Hamlin  
Council Member Alberto Sanchez via Zoom  
At (5:09 PM)

**COUNCIL MEMBERS ABSENT:** Council Member Pingree

**OTHER PRESENT** Douglas Schulze, City Manager  
Kevin G. Ennis, City Attorney  
Marie Calderon, City Clerk  
Tom Miller, Electric Utility Director  
Art Vela, Public Works Director/City Engineer  
Adam Rush, Community Development Director  
Ralph Wright, Parks & Recreation Director  
Matthew Hamner, Chief of Police  
Jeff Horn, Police Captain  
Jennifer Christensen, Administrative Services Director  
Suzanne Cook, Deputy Finance Director  
Alejandro Geronimo, City Treasurer  
Laurie Sampson, Executive Assistant

**1. CALL TO ORDER REGULAR MEETING**

The Mayor called to order the regular meeting of the Banning City Council at 5:05 PM

**ITEM.1.1. Invocation**

Mike Moyer, Mountain Avenue Baptist Church offered the invocation.

**ITEM.1.2. Pledge of Allegiance**

Mayor Wallace led the Pledge of Allegiance.

**ITEM.1.3. Roll Call**

COUNCIL	PRESENT	ABSENT
Hamlin, Mary	X	
Happe, David	X	
Pingree, Kyle		X
Sanchez, Alberto		X
Wallace, Colleen	X	

**2. AGENDA APPROVAL**

**ITEM.2.1. Approve Agenda**

**VOTING**

Motion by: Council Member Happe  
Second by: Council Member Hamlin

COUNCIL	YES	NO	ABSTAIN	RECUSE	ABSENT
Hamlin, Mary	X				
Happe, David					X
Pingree, Kyle	X				
Sanchez, Alberto					X
Wallace, Colleen	X				

**Motion Approved 3-0-2**

**3. PRESENTATIONS**

**ITEM.3.1. Mayor's Special Recognitions:**

City of Banning Employee Lorenzo Amis

**ITEM.3.2 Women's History Month Proclamation (Attachment 1)**

**4. REPORT OF CLOSED SESSION**

Move to Item 12

**5. PUBLIC COMMENTS, CORRESPONDENCE, AND APPOINTMENTS, CITY COUNCIL COMMITTEE, CITY MANAGER, AND CITY ATTORNEY REPORTS**

## PUBLIC COMMENT

Inge Schuler, she is glad to see the Council's return to running a meeting to handle the City business. She is opposed to the lengthy recognitions.

Frank Burgess spoke against the recognition ceremonies that run so long.

Seeing no other, the Mayor closed Public Comments.

## CORRESPONDENCE

None

## APPOINTMENTS

None

## CITY MANAGER REPORT

No report was given.

## CITY ATTORNEY REPORT

Kevin G. Ennis, City Attorney provided a written memo in response to Mr. Burgess's questions regarding the Tri-Pointe Homes IE-SD, Inc. Settlement Agreement with the City of Banning (Attachment 2)

### **Public Comment:**

Frank Burgess, requested a copy of the memo provided by Mr. Ennis, states three of the five council members told him they had not seen the 2012 Development Agreement with Pardee. Questioned the timing of the notification that Pardee Homes had changed to Tri-Pointe Homes IE-SD, Inc.

## CITY COUNCIL COMMITTEE REPORTS

Council Member Happe had no report.

Council Member Sanchez had no report. Mr. Sanchez reported he entered the meeting at 5:09 PM.

Council Member Hamlin reported on the Downtown ad-hoc Committee meeting, reviving the Ring of Honor, planting trees, community gardens. Hoping to beautify the area.

Mayor Wallace reported on the Riverside County program to provide rental assistance. She attended the SCAG meeting. The discussion was funding for small cities and small businesses. Attended California Cities Riverside County Region General Meeting, discussed

SB9, Housing Proposals that would remove most if not all autonomy from local governments in respect. SB10, removed the CEQA requirements for low-income housing.

## **6. CONSENT ITEMS**

**Recommendation:** Approve Consent Items 6.1 – 6.2

**ITEM.6.1.** Minutes of the February 23, 2021 City Council Meetings

**ITEM.6.2** Resolution 2021-11, a Resolution of the City Council of the City of Banning, Establishing the Formation of, Soliciting Applications for, a General Plan Advisory Committee (GPAC) to Facilitate the Update of the 2021 Focused General Plan Update

Council Member Happe requested Item 6.2 be pulled for discussion.

### **Public Comment for Item 6.1**

No Public Comment

### **Approve Consent Item 6.1**

#### **VOTING**

Motion by: Council Member Happe

Second by: Council Member Hamlin

COUNCIL	YES	NO	ABSTAIN	RECUSE	ABSENT
Hamlin, Mary	X				
Happe, David	X				
Pingree, Kyle					X
Sanchez, Alberto	X				
Wallace, Colleen	X				

**Motion Approved 4-0-1**

### **Item 6.2**

Adam Rush provided the staff report for Item 6.2.

Council Member Happe asked several questions, these were responded to by Mr. Rush.

### **Public Comment for Item 6.2**

Inge Shuler she is opposed to developers and building representatives having a spot on the Committee.

John Hagen requested clarification on the application process.

Frank Burgess wanted clarification on the number of committee members and how many would be residents. Feels the residents of Banning should plan the City not outside interests.

GPAC Committee would be comprised of:

- (2) City Council Members
- (2) Planning Commissioners
- (2) Banning Chamber of Commerce
- (1) BIA (Building Industry Association)
- (1) Riverside County NAOIP
- (2) Long Term Residents of Banning

City Manager Schulze also stated the meetings would be open to the public and all residents can participate.

There was follow up conversation among the Council Members.

	<b>Approve Consent Item 6.2</b>
--	---------------------------------

**VOTING**

Motion by: Council Member Happe

Second by: Council Member Hamlin

COUNCIL	YES	NO	ABSTAIN	RECUSE	ABSENT
Hamlin, Mary	X				
Happe, David	X				
Pingree, Kyle					X
Sanchez, Alberto	X				
Wallace, Colleen	X				

**Motion Approved 4-0-1**

**7. PUBLIC HEARINGS**

None

**8. REPORTS OF OFFICERS**

**Item 8.1** Resolution 2021-10, Amendment No. 2 to the Employment Agreement with Douglas Schulze

Staff Report was provided by Kevin G. Ennis, City Attorney

## Public Comment

Tom Hagen spoke against some provisions of the amendment.

Inge Schuler spoke against the amendment.

Juanita Diaz spoke against some provisions of the amendment.

Laura Leindecker spoke in favor of Mr. Schulze's performance as a City Manager.

The City Clerk, Marie Calderon, read into the record letters submitted on this subject by Jack Gunderson, Frank Burgess, and Inge Schuler. (Attachment 3).

Mr. Ennis responded to some of the questions raised.

City Manager Schulze also responded to some of the concerns that started.

The Council had some questions that were answered by Mr. Ennis.

Mayor Wallace read the following prior to motion to approve:

"Consistent with Section 54953(c)(3) of the Government Code, I am required to orally report a summary of a recommendation for a final action on the compensation paid in the form of fringe benefits of a local agency executive, as defined in Section 3511.1(d) of the Government Code, during the open regular meeting in which the final action is to be taken and prior to the motion to approve the item. The City Manager is a local agency executive as defined in Section 3511.1(d) of the Government Code. Amendment No. 2 will change the Employment Agreement of the City Manager to increase his annual vacation accrual rate from 160 hours to 180 hours in two steps on October 1, 2021 and October 1, 2022, provide for City-paid laptop computer, smart phone and hot spot device, and allow him to continue to receive a \$150 per month City utility credit for water service to his residence."

	<b>Approve Item 8.1</b>
--	-------------------------

## VOTING

Motion by: Happe

Second by: Hamlin

COUNCIL	YES	NO	ABSTAIN	RECUSE	ABSENT
Hamlin, Mary	X				
Happe, David	X				
Pingree, Kyle					X
Sanchez, Alberto	X				
Wallace, Colleen	X				

**Motion Approved 4-0-1**

## 9. DISCUSSION ITEMS

**Item 9.2** Art in Public Places  
Staff Report provided by Doug Schulze, City Manager.

### Public Comment:

Unidentified Man feels the cost of development in Banning is outrageous. The city should look at alternative funding for these projects.

Bill Blankenship, NAIOP, spoke against funding the projects with Developer funds.

Beverly Rashidd: speaking for the Cultural Alliance, spoke in favor of the project and would like to be a part of the discussion.

Juanita Diaz spoke in favor of an Arts in Public Places program.

Council Member Happe made a motion to create an ad hoc committee, to work with staff, to develop an Art in Public Places.

After discussion, Mr. Happe revised his motion to create an Advisory Committee, not ad hoc Committee. And would like to serve on the committee.

This motion was seconded by Mayor Wallace. Motion passed 4-0-1 by roll call vote.

## 10. ITEMS FOR FUTURE AGENDAS

Drag Racing  
Animal Shelter  
Animal Control Services  
Update on Ramsey Street Village

**Meeting convened to Closed Session at 7:16 PM**

## 11. CLOSED SESSION

<b>Item 11.1</b>	<b>CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION</b> Significant exposure to litigation pursuant to paragraph (2) subdivision (d) Of Government Code Section 54956.9: Two potential cases
<b>Item 11.2</b>	<b>CONFERENCE WITH REAL PROPERTY NEGOTIATORS</b> Pursuant to Government Code Section 54956.8 Property: 447 E. Ramsey Street City Negotiator: Douglas Schulze, City Manager Negotiating Parties: Milestone Development LLC Under Negotiation: Price and terms for potential sale of property

**City Council reconvened to the Regular Meeting at 7:47 PM**

**12. REPORT ON CLOSED SESSION**

Report provided by City Attorney Kevin G. Ennis, both items on the closed session agenda, there are not final or reportable actions.

**13. ADJOURNMENT**

**The Mayor adjourned the regular meeting at 7:48 PM**

***Next Meeting: Regular Meeting, Tuesday, March 23, 2021, 5:00 P.M.***

Minutes Prepared by:



Laurie Sampson, Acting Deputy City Clerk

***The entire discussion of this meeting may be viewed here:***

**<https://banninglive.viebit.com/player.php?hash=iJsKFe2TQsl4>**

***or by purchasing a CD or DVD in the amount of \$7.00 each  
at Banning City Hall located at 99 E. Ramsey Street.***

***All related documents maybe viewed here:***

**<http://www.ci.banning.ca.us/ArchiveCenter/ViewFile/Item/2435>**



# **ATTACHMENT 1**

## **Women's History Month Proclamation**

**CITY OF BANNING  
OFFICE OF THE  
MAYOR**



# **P**roclamation

***WHEREAS,** American women of every race, class, and ethnic background have made historic contributions to the growth and strength of our Nation in countless recorded and unrecorded ways; and*

***WHEREAS,** American women have played and continue to play critical economic, cultural, and social roles in every sphere of the life of the Nation by constituting a significant portion of the labor force working inside and outside of the home; and*

***WHEREAS,** American Women have played a unique role throughout the history of the nation by providing the majority of the volunteer labor force of the Nation; and*

***WHEREAS,** America women were particularly important in the establishment of early charitable, philanthropic, and cultural institutions in our Nation; and*

***WHEREAS,** American women of every race, class, and ethnic background served as early leaders in the forefront of every major progressive social change movement; and*

***WHEREAS,** American women have served our country courageously in the military; and*

***WHEREAS,** American women have been leaders, not only in securing their own rights of suffrage and equal opportunity, but also in the abolitionist movement, the emancipation movement, the industrial labor movement, the civil rights movement, and other movements, especially the peace movement, which create a more fair and just society for all; and*

***WHEREAS,** despite these contributions, the role of American women in history has been consistently overlooked and undervalued, in the literature, teaching and study of American history.*

***NOW THEREFORE, BE IT RESOLVED,** by the City of Banning City Council, that March is designated as "Women's History Month".*

*Dated this 9<sup>th</sup> day of March, 2021*

**ATTEST:**

*Laurie Sampson*  
Laurie Sampson, Acting Deputy City Clerk

*Colleen Wallace*  
Colleen Wallace, Mayor



# **ATTACHMENT 2**

Kevin G. Ennis, City Attorney  
Memo Regarding Tri-Pointe  
Homes Settlement  
Agreement



CITY OF BANNING  
OFFICE OF THE CITY ATTORNEY  
99 East Ramsey Street, Banning, California 92220  
Telephone 213.626.8484 Facsimile 213.626.0078

## MEMORANDUM

TO: Mayor Wallace and Members of the City Council

CC: Doug Schulze, City Manager  
Laurie Sampson, Acting Deputy City Clerk

FROM: Kevin G. Ennis, City Attorney *KE*  
Saskia T. Asamura, City Attorney's Office

DATE: March 9, 2021

SUBJECT: Responses to Questions and Assertions from Mr. Frank Burgess Regarding City's  
Approval of Pre-Litigation Settlement Agreement with Tri Pointe Homes IE-SD, Inc.

---

### ***Introduction and Summary.***

At the February 23, 2021, Regular Banning City Council Meeting, during the public comments, City resident Frank J. Burgess requested that the Council pull Consent Calendar Item 6.1 (Minutes of the February 9, 2021 City Council Meeting) for discussion. Mr. Burgess was then called to make his comments prior to consideration of the Consent Calendar and he then addressed Item 8.1 in those February 9, 2021 Minutes. Item 8.1 was summarized in the February 9, 2021 Minutes as follows:

Resolution 2021-4, Consideration and Approval of a Pre-Litigation Settlement Agreement with Tri Pointe Homes IE-SD, Inc. to Resolve Certain Disputes and Issues Regarding the Implementation of the Development Agreement for the Atwell Project.

(Staff Report: Douglas Schulze, City Manager)

**Recommendation:** Council adopt Resolution 2021-4, A Resolution of the City Council of the City of Banning Approving a Pre-Litigation Settlement Agreement with Tri Pointe Homes IE-SD, Inc. to Resolve Certain Disputes and Issues Regarding the Implementation of the Development Agreement for the Atwell Project.

A Staff Report and Power Point Presentation was provided by Douglas Schulze. The Council commented on the report and presentation being very thorough and providing enough information to make an educated decision.

Item 8.1 was unanimously approved by all five members of the Council.

During Mr. Burgess's comments on February 23, 2021, Mr. Burgess provided written comments addressing his concerns (see Attachment 1). He asserted that the presentation on Item 8.1 was not "very thorough and providing enough information to make and (sic) educated decision" because the Council was not given a copy of the "original agreement" dated March 27, 2012. We understand Mr. Burgess is referring here to the Development Agreement between the City of Banning and Pardee Homes, entered into on March 27, 2012 (hereafter, the "Development Agreement.") The written comments submitted by Mr. Burgess then set forth five points that he argues constitute "errors" made during the February 9, 2021, Council meeting discussion of Item 8.1.

This memorandum sets forth the legal analysis and response to Mr. Burgess' five points.

***Response to Claims of Error regarding Item 8.1 of the 2/9/2021 Council Agenda***

- #1 *Failing to give facts by not giving Council full report on the Pardee Agreement dated March 27, 2021 (sic). No Council member new (sic) of the Agreement or what was or was not in it. Errors.*

**City's Response:** The contention of error at #1 is unfounded for these reasons.

The Development Agreement is a public document, approved by the City Council at a public meeting on March 27, 2012, concurrently with approval of a General Plan Amendment, Zone Change, Specific Plan, Final Environmental Impact Report, and adoption of Conditions of Approval, and various ordinance and resolutions relating to and approving the grant of these land use entitlements to Pardee Homes for development of the Atwell Project (formerly known as the Butterfield Project). The final Development Agreement was thereafter recorded in the official records of the County of Riverside on July 17, 2012, as Document No. 2012-033288. The agenda for the March 27, 2012 Council Meeting is readily available on the City's website. The Development Agreement is contained in the agenda item for the Pardee Homes Project, at Item V. (See link at Attachment 3.)

By adopting Resolution 2021-4, the City Council approved the Pre-Litigation Settlement Agreement between the City and Tri Pointe Homes IE-SD, Inc. to Resolve Certain Disputes and Issues Regarding the Implementation of the Development Agreement for the Atwell Project (hereafter, the "Settlement Agreement"). The Settlement Agreement and its Exhibits is 30 pages long, and is attached to this memorandum as a link (Attachment 2). The Settlement Agreement addressed and resolved several specific disputed issues involving interpretation, application and/or implementation of certain provisions of the Development Agreement that had arisen between the parties. The Development Agreement was therefore the key document that is the subject of, and discussed and often quoted in, the Settlement Agreement, and the disputed issues resolved thereby are exhaustively described, analyzed, and resolved.



First, detailed Recitals are set forth in the first 13 pages of the Settlement Agreement. Recitals A through D describe the Atwell Project and the Property that is the subject of the Development Agreement, the third party lawsuits that followed the City's approval of the Project and the resultant almost three-year delay in the effective date of the Development Agreement, and the course of development and construction that followed. These Recitals provide the relevant framework for the disputes resolved by the Settlement Agreement.

Second, Recitals E through J, and their many sub-parts, set forth an exhaustive analysis of the three key disputed issues arising out of the Development Agreement. These are short-named the DIF Dispute, the Commercial Site Dispute, and the CBC Dispute. (See, Recital E). Recitals G, H, and I describe each of these disputes, providing detailed analysis of pertinent provisions of the Development Agreement, citation references to such provisions, and in many cases, detailed quotations of those relevant provisions. Then follows detailed discussion of the competing positions of the parties on the three disputes, including legal analysis of specific Development Agreement provisions as well as California statutory law, state codes, and City codes, among other authorities.

Third, in the "Agreement" portion of the Settlement Agreement, which incorporates the Recitals, resolution of the disputed issues is set forth in detail.

Interpretation and application of the relevant provisions of the Development Agreement is the entire focus of the Settlement Agreement. The asserted error that the Council members had no knowledge of the Development Agreement or what it contained is belied by the plain language of the Settlement Agreement and the accompanying Staff Report.

#2 *Unknown of (sic) the correct corporation it is to be in (sic). Per the Resolution No 2021-4. It shows it to be Tri Pionte (sic) Homes IE-SD, Inc. Nothing in the report explains as to when the City Council authorized the change per section 14.1.1 when this took place. Errors*

**City's Response:** The contention of error at #2 is unfounded for these reasons.

The Developer, Pardee Homes, is a California Corporation, first registered with the Secretary of State on January 2, 1968, under Corporation No. C 0538474. On January 4, 2021, Pardee Homes filed a Certificate of Amendment of Articles of Incorporation of Pardee Homes (see Attachment 4). The Certificate reflects that the Board of Directors of Pardee Homes, #0538474, approved a name change, from Pardee Homes to "Tri Pointe Homes IE-SD, Inc." and the amendment would become effective on January 11, 2021.

The foregoing name change, and the corporate history for Pardee Homes, may be readily confirmed by searching the publicly-accessible records of the California Secretary of State at <https://businesssearch.sos.ca.gov/>. The search yields the following:

C0538474 TRI POINTE HOMES IE-SD, INC.  
Registration Date: 01/03/1968  
Jurisdiction: CALIFORNIA  
Entity Type: DOMESTIC STOCK  
Status: ACTIVE  
Entity Address: 177 E. COLORADO BOULEVARD, SUITE 500  
PASADENA CA 91105  
Entity Mailing Address: 19540 JAMBOREE ROAD, SUITE 300  
IRVINE CA 92673

Document Type	File Date	PDF
AMENDMENT	01/04/2021	<a href="#">View PDF for document number A0851046 (opens in new tab)</a>
SI-COMPLETE	12/28/2020	<a href="#">View PDF for document number GN10382 (opens in new tab)</a>
SI-COMPLETE	01/02/2020	<a href="#">View PDF for document number GB83534 (opens in new tab)</a>
AGENT RESIGNED	04/10/2007	<a href="#">View PDF for document number R0040801 (opens in new tab)</a>
AMENDMENT	02/28/2002	<a href="#">View PDF for document number A0577358 (opens in new tab)</a>
MERGER	12/31/1969	Image unavailable. Please request paper copy.
MERGER	12/31/1969	Image unavailable. Please request paper copy.
MERGER	12/31/1969	Image unavailable. Please request paper copy.
REGISTRATION	01/03/1968	Image unavailable. Please request paper copy.

Resolution No. 2021-4, and the Settlement Agreement approved thereby, reflects the correct new legal name of Pardee Homes, which is now Tri Pointe Homes IE-SD, Inc. The Staff Report for 8.1, to consider and adopt Resolution No. 2021-4, likewise refers to the Developer by its correct new legal name, Tri Pointe Homes IE-SD, Inc. To make sure the name-change was clear from the outset, the Staff Report expressly states on page 1: "This agenda item is to allow the City Council to resolve by agreement a series of issues and disputes that have arisen over the last year with Tri Pointe Homes IE-SD, Inc., **(formerly known as Pardee Homes)** related to the development of the Atwell Project." (Bold added.)

Point #2 ascribes error to the fact that the Staff Report does not explain "when the City Council authorized the change per section 14.1.1 when this took place." There was no error.

Section 14.1. of the Development Agreement, is titled Assignment. Section 14.1.1 addresses the right to assign, specifies the circumstances in which consent to assignment or transfer is required, and the many instances in which City approval of a transfer or assignment is

not required. A corporate name change, however, is neither an assignment nor a transfer. It is just a name change.

The Developer of the Atwell Project, Pardee Homes, was incorporated in 1968, over five decades ago. It has been an active California corporation, registered as C0538474, for the entire 53-years of its existence. Thus, Section 14.1.1 was not triggered by the name change for which it filed the Certificate of Amendment of Articles of Incorporation of Pardee Homes. Because the 2021 name change was not an assignment or a transfer that would trigger Section 14.1.1, there was no "change" requiring City Council authorization, and the Staff Report had no reason to explain any authorization as none was or is required. There was no error.

For further discussion of the applicability of Section 14.1.1 when Pardee Homes was acquired by Tri Pointe Homes in 2014 following Tri Pointe Homes' merger with Pardee's parent company, Weyerhaeuser Real Estate Company, see the response to Mr. Burgess's Point #5 below.

#3 *Pre-Litigation Settlement Agreement it (sic) has the name of Tri Pointe Homes IE-DS, Inc. it also has Tri-Pointe (sic) Homes and when you go to the first Item A It (sic) states Pardee is the owner. Errors.*

**City's Response:** The contention of error at #3 is unfounded for these reasons.

This point is related to #2, and the City's Response to #2 is incorporated. The Pre-Litigation Settlement Agreement, which was presented for consideration and approval on February 9, 2021, accurately sets forth the legal names of the two parties because the name change from Pardee Homes to Tri Pointe Homes IE-SD, Inc. had gone into effect the month before.

Because the Development Agreement was entered into in 2012, the Developer was known by its former name, Pardee Homes (or Pardee for short), including during the lengthy negotiation of the Settlement Agreement up until a month before it was presented to the Council for approval. For convenience, just as in page 1 of the Staff Report, the first page of the Settlement Agreement stated as follows:

This Pre-Litigation Settlement Agreement between Tri Pointe Homes IE-SD, Inc., and the City of Banning related to the Atwell Project (hereinafter referred to as the "AGREEMENT") is made and entered into by and between the CITY OF BANNING, a California municipal corporation ("City"), and TRI POINTE HOMES IE-SD, INC., a California corporation ("Tri Pointe Homes"). Prior to January 15, 2021, and at all material times herein, **Tri Pointe Homes was previously known as PARDEE HOMES, a California corporation ("Pardee"), and is referred to in this AGREEMENT by its former name to avoid confusion.** Pardee and the City are collectively referred to herein as the "Parties" and individually as a "Party." (Bold added.)



Having thus defined or “short-named” the Developer as “Pardee” for purposes of the Settlement Agreement, Recital A - and all subsequent references to the Developer in the balance of the Settlement Agreement - use the name “Pardee,” with the exception of the Developer signature block on page 22. The Settlement Agreement could as easily have short-named developer as the “Developer,” as was the case in the Development Agreement. Short-naming of parties as well as frequently-used terms (such as the long title of the Pre-Litigation Settlement Agreement being defined and short-named simply as “Settlement Agreement”), is a standard practice in drafting contracts, agreements, and other legal documents, primarily to make it easier to read and understand. Courts do the same thing in drafting opinions and court orders, and Legislatures do the same thing in drafting legislation. There was no error.

#4 *The request that the money be put in the General fund is in violation of Prot (sic) 26 as well as 218. Whereas true accounting must be kept as to what accounts the \$3,000,000.00 must go into. Crying that the much needed the (sic) funds are needed in the General Fund as you as City Council to violation (sic) the law. This is wrong and is an Error asking you to do so illegal.*

**City’s Response:** The contention of error at #4 is unfounded for these reasons.

Money paid to a city or other public entity as consideration to settle a civil dispute brought, or threatened to be brought, by a third party, confirmed by a written settlement agreement entered into voluntarily, knowingly, and consensually in an arms-length transaction, is not a tax, fee, levy, exaction, assessment, or other charge that falls within the scope or meaning of Proposition 218 or Proposition 26, nor does it require voter approval. It requires Council approval, as occurred here. Such settlement funds are properly deposited into the City’s general fund, for the general benefit of the community and the City’s taxpayers.

Proposition 218 and 26 are irrelevant here for the following reasons.

Proposition 218 was the 1996 voter initiative that added Article XIIC to the California Constitution to establish voter approval requirements for general taxes (taxes for any governmental purpose) and special taxes (taxes limited to specific purposes). Under Section 2(b), a local government may not “impose, extend, or increase” any general tax without a majority vote. Proposition 218 also added Article XIID to limit local governments’ authority to impose fees for property related services, such as water, sewer and refuse collection, and special benefited assessments.

In 2010, California voters approved Proposition 26 to amend Proposition 218 by adding a definition for the term “tax,” which the Constitution previously did not define. Specifically, Proposition 26 amended Article XIIC of the California Constitution to define a “tax” as a levy, charge, or exaction imposed by a local government, except for those falling within one of seven enumerated exceptions set forth in Article XIIC. Those exceptions are:

(1) Fees imposed for a specific benefit or privilege conferred on the payor that is not provided to those not charged and do not exceed the reasonable costs to government of conferring the benefit or privilege;

(2) Fees imposed for a specific governmental service or product that is not provided to those not charged and do not exceed the reasonable costs to government of providing the service or product;

(3) Fees for reasonable regulatory costs for issuing licenses and permits, performing investigations, inspections and audits, and administrative enforcement;

(4) Fees for entrance to or rental, lease, or use of, public property;

(5) Fines and penalties;

(6) Development conditions; and

(7) Assessments and property related fees subject to Proposition 218.

Under exception (6), above, development impact fees are exempt from Proposition 218 and Proposition 26 pursuant to Cal Const. Article XIII C, §1(e)(6) and XIID, §1(b).

In contrast, the Settlement Agreement was an arms-length transaction entered into voluntarily, knowingly, and consensually, after extended negotiation, to resolve complex disputes between the parties over specific issues relating to the interpretation, application and/or implementation of certain provisions of the Development Agreement. As set forth in Recital J, Pardee (aka Developer aka Tri Pointe Homes IE-SD, Inc.) threatened litigation against the City regarding the Dispute (as defined at Recital E). The parties met and conferred for an extended period regarding the Dispute, and these negotiations culminated in a resolution of the Dispute, memorialized in the Settlement Agreement, without the need to go to court or to incur the substantial expense, risk, and delays of litigation. Resolution of the Dispute and avoiding a lawsuit is also consistent with provisions in the Development Agreement emphasizing cooperation between the parties in implementing its terms.

Section 6 of the Settlement Agreement, titled **Settlement Payment by Pardee to City**, provides: "In consideration for the foregoing and the mutual releases and other provisions set forth in this AGREEMENT, Pardee shall pay to the City the sum of three million dollars (\$3,000,000.00), payable to City in ten (10) equal monthly installments of three hundred thousand dollars (\$300,000.00)." This is an installment payment of money, with no contractual or other constraint on placement of those funds in the City's general fund, which benefits the City's residents and taxpayers.

Payments made in consideration by one party to settlement agreement to settle a dispute in advance of litigation does not involve the imposition of a fee, assessment or tax. The payments by Pardee/Tri Pointe to the City under the Settlement Agreement are settlement payments paid by Tri Point and are not fees, assessments or taxes paid by anyone, including Pardee/Tri Pointe, and thus Propositions 218 and 26 do not apply to these payments.

As the above brief summary demonstrates, money agreed to be paid to the City to resolve actual or potential litigation does not fall within the scope of Proposition 218 or 26. The Staff Report made clear to the Council, the public, and Pardee/Tri Pointe - who will be paying the funds - that those funds would be placed in the City's general fund as unrestricted settlement funds. The settlement funds will be paid by Pardee/Tri Pointe, and nobody else. Their representatives were present at the Council meeting, made no objection, and executed the Settlement Agreement.

There is no basis for a Proposition 218 or 26 challenge.

- #5 *Per the City Attorney's office on this matter I have received two differ (sic) E-Mail on this. With the Attorneys (sic) Permission, I want to put them in the records. The dates are the same 2/22/2021 The times are differ (sic). One at 1:37 PM and the other is 4:26 PM. Errors [¶] See the two E-Mail attached to this request.*

*The two words in the two E-mails are very important to the City of Banning and its Citizens. As you read them I want to point out the two words and they are (IF) that is right, the word (IF) tells you one thing and that is the City has had no knowledge of any of the name changes. Again this is a total violation of Pardee and the City March 27, 2012 agreement. In all parts of Section 14.1.1. [¶] Would a Bank allow this to happen without their approval? Why is this just now come about (sic), if this was simple a (sic) name change? Some (sic) as for (sic) back as 7 years ago. Who has been watch (sic) the City.*

**City's Response:** The contention of error at #5 is unfounded for these reasons.

This point is related to #2 and #3, and the City's Responses to #2 and #3 are incorporated. Prior to the February 23, 2021, City Council meeting, Mr. Burgess sent an email dated February 17, 2021, at 1.27 p.m., requesting information and voicing opinions regarding Item 8.1 of the February 9, 2021 Council agenda, discussed above. The City Attorney reviewed this email, and in an effort to provide prompt responsive and helpful information, in advance of the February 23, 2021, Council meeting, the City Attorney provided a total of three responsive emails. Only the second and third supplemental emails are attached to Mr. Burgess' Comments submittal.

The first email sent by the City attorney was on the same day as Mr. Burgess' email to the City, February 17, 2021, at 5.34 p.m. (see Attachment 5). That email provided the information that is set forth above, in response to #2, and attached the Certificate of Amendment of Articles of Incorporation of Pardee Homes (Attachment 4). This was responsive to Mr. Burgess' concerns about the current name of the Developer for the Atwell Project.

As a further courtesy, the City Attorney provided two additional emails in advance of the February 23, 2021 Council meeting, to address the concerns expressed on those issues. These two emails are a part of the Comments attached hereto as Attachment 1. The first City Attorney

email dated 2/22/2021 at 1.37 p.m. forwarded an email directly from Tri Pointe Vice President, Jeff Chambers, regarding the recent corporate decision to change the name of the corporation from Pardee Homes to Tri Pointe Homes IE-SD, Inc. The second email dated 2/22/2021 at 4.26 p.m. provided further clarification regarding Section 14.1.1 of the Development Agreement. It also responded to a challenge about why the Acting Deputy City Clerk signed the Settlement Agreement, rather than the City Clerk.

Point #5 confuses two separate things:

(1) In January 2021, a name change was made from Pardee Homes to Tri Pointe Homes IE-SD, Inc.;

(2) In July 2014, Pardee Homes was acquired by Tri Pointe Homes following its well-publicized \$2.8 billion merger with Weyerhaeuser Real Estate Company, which owned Pardee Homes. This was not a “name change,” rather, it was an acquisition.

Neither of these events triggered the “assignment” or “transfer” provisions of Section 14.1.1 of the Development Agreement as a matter of law. This has been addressed fully as to (1), the January 2021 name change in response to #2 above.

As to (2), the 2014 acquisition of Pardee Homes by Tri Pointe Homes following its merger with Weyerhaeuser falls squarely within the exceptions in Section 14.1.1, for the many circumstances in which no City authorization or approval was required. First, Pardee Homes was and remained the Developer at all times, and did not transfer or assign the Development Agreement to any other person or entity. That remains the case today, as explained in response to #2 above.

Second, corporate ownership or acquisition by a merger of its parent company with another entity is one of the many excluded events for which City approval or authorization is not required. In particular, under subsection C of Section 14.1.1, at page 40 of the Development Agreement, no City approval is required for:

“A sale or transfer resulting from, or in connection with, a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.”  
(Emphasis added.)

The relevant provision of the Internal Revenue Code of 1986 is codified at 26 U.S. Code § 368, subsection (a) (Reorganization), which defines multiple circumstances constituting a corporate reorganization. This includes the definition at subsection B, which provides: “the

acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition).

The ascription of error appears to be based on a limited review of the language of Section 14.1.1 of the Development Agreement. A careful review demonstrates that the phrase “Notwithstanding anything in this Agreement to the contrary,” City approval of a Transfer or Assignment “shall not be required” under any of the specific circumstances set forth in subsections A through G. These include subsection C, discussed above. These exceptions control over the general language in other portions of Section 14.1.1. Put another way, subsection C of Section 14.1.1 overrides the second paragraph of Section 14.1.1, such that “reorganizations” are exempt from an assignment that requires approval by the City Council.

Item #5 appears to assign significance to use of the word “if” in one of the City Attorney’s emails attached to the Comments. The explanation is simple. Mr. Ennis was not the City Attorney in 2014 when the Tri Pointe Homes - Weyerhaeuser merger took place and therefore he had no independent recollection of that event. In order to provide prompt and informative responses to Mr. Burgess prior to the February 23, 2021, Council meeting, the City Attorney simply passed on the information provided by Mr. Chambers. The City Attorney’s response to Mr. Burgess was qualified by “if” in two places because at the time, the City Attorney had not yet had the opportunity to verify all the information in Mr. Chambers’ email including the year when Tri Pointe Homes acquired Pardee Homes as a result of Tri Pointe Homes’ merger with Weyerhaeuser Real Estate Company. With further research, it is confirmed that the merger, and hence the “reorganization” of Pardee, did occur in 2014.

In sum, the contentions about violation of Section 14.1.1 of the Development Agreement and other contentions in point #5 lack foundation. Moreover, all of the responsive information is a matter of public record including but not limited to the California Secretary of State records, and numerous other resources. The information is not hidden from the public, the City, or its residents. Regarding the acquisition of Pardee Homes following the 2014 merger of its parent company, this is well disseminated public knowledge and there is even a Wikipedia page about it: [https://en.wikipedia.org/wiki/Pardee\\_Homes](https://en.wikipedia.org/wiki/Pardee_Homes).

There is no basis for the contentions asserted in point #5.

### **Conclusion**

This responds to each of the points in Mr. Burgess’ Comments at the February 23, 2021, Council meeting.

**Attachments/Links:**

1. Comments by Frank J. Burgess presented at 2/23/2021 Council Meeting
2. Staff Report on Item 8.1 and its two attachments, contained in the Agenda for the 2/9/2021 Council Meeting at pages 15-22: <http://banning.ca.us/ArchiveCenter/ViewFile/Item/2422>

**ATTACHMENTS:**

1. City Council Resolution 2021-4  
<https://banningca.gov/DocumentCenter/View/8371/Att-1-Resolution-2021-4>
2. Pre-Litigation Settlement Agreement with Tri Pointe Homes  
<https://banningca.gov/DocumentCenter/View/8372/Att-2-Pardee-v-Banning-Settlement-Agreement-FINAL>
3. Agenda Report for the 3/27/2012 Council Meeting, including Development Agreement and its Attachments at PDF page 271-346: <http://banning.ca.us/ArchiveCenter/ViewFile/Item/813>
4. Certificate of Amendment of Articles of Incorporation of Pardee Homes dated 1/4/2021
5. Email from City Attorney to Mr. Burgess dated 2/17/2021 at 5.34 p.m. with attachment.

## **ATTACHMENT 1**

Comments by Frank J. Burgess presented at 2/23/2021 Council Meeting

**Meeting of 2/23/2021**

**Mayor and City Council of the City of Banning**

**I ask that you pull Consent Item 6.1**

**I wish to discuss Item 8 which states none and from there it goes to 8.1 Resolution 2021-4. I am asking the Council to pull this from the agenda for further discussion. As statements have been made in this report that all information was given to the council at the time. All statement were not given of the project.**



The Statement in the report given at the time is as follows and I Quito A very thorough and providing enough information to make and educated decision. This is Simply not true. You as council were not given copies of the original agreement dated March 27, 2012 total of 53 pages plus Exhibit A through Exhibit H. You could not have known what has or has not taken place when you did not know of the agreement to make a decision on this matter.

Per the City Manager Statement, Pulling-meeting minutes are done to correct an error in the minute:

(Speaking of the Action that was taken at a previous meeting.)

Follow the errors that has been made during the discuss of Section 8.1 of the council meeting of Feb 9, 2021.

**#1 Failing to give facts by not giving Council full report on the Pardee Agreement dated March 27, 2021. No Council member new of the Agreement or what was or was not in it. Errors.**

**#2 Unknown of the correct corporation it is to be in. Per the Resolution No 2021-4. It shows it to be Tri Pionte Homes IE-SD, Inc. Nothing in the report explains as to when the City Council authorized the change per section 14.1.1 when this took place. Errors**

**#3 Pre-Litigation Settlement Agreement it has the name of Tri Pointe Homes IE-DS, Inc. it also has Tri-Pointe Homes and when you go to the first Item A It states Pardee is the owner. Errors.**

**#4 The request that the money be put in the General fund is in violation of Prot 26 as well as 218. Whereas true accounting must be kept as to what accounts the \$3,000,000,.00 must go into. Crying that the much needed the funds are needed in the General Fund as you as City Council to violation the law. This is wrong and is an Error asking you to do so illegal.**

**#5 Per the City Attorney's office on this matter I have received two differ E-Mail on this. With the Attorneys Permission, I want to put them in the records. The dates are the same 2/22/2021 The times are differ. One at 1:37 PM and the other is 4:26 PM. Errors**

**See the two E-Mail attached to this request.**

----- Original Message -----

Subject: RE: Pardee/Tri Pointe Homes IE-SD, Inc.  
From: "Kevin G. Ennis" <KENNIS@rwglaw.com>  
Date: Mon, February 22, 2021 1:37 pm  
To: "fburgess@burgessrelocation.com" <fburgess@burgessrelocation.com>  
Cc: Doug Schulze <dschulze@banningca.gov>, Laurie Sampson <lsampson@banningca.gov>

Mr. Burgess,

Here is some additional information in response to your questions about the Pre-Litigation Settlement Agreement.

First, here is a statement from Jeff Chambers of Tri Pointe Homes as to the name change from Pardee to Tri Pointe Homes. I have passed Mr. Chamber's email to the City below:

I've heard there is discussion about Pardee's name change to Tri Pointe Homes. This is a name change only. Tri Pointe bought Pardee from Weyerhaeuser about seven years ago, decided it was best to keep the name, and recently decided it was best to change the name to the parent company, Tri Pointe Homes. Holding company was actually Tri Pointe Group. Publicly traded company with ticker TPH.

Hope this answers any questions which might be in the public about this. I know Mike Taylor has discussed this with Doug previously.

Feel free to reach out to Mike or me about this.

Thanks,

tri pointe Jeff Chambers

VICE PRESIDENT OF FORWARD PLANNING, ENTITLEMENT, & GOVERNMENTAL AFFAIRS

✉ [Jeff.Chambers@TriPointeHomes.com](mailto:Jeff.Chambers@TriPointeHomes.com)

☎ 951.428.4413 📠 949.677.1080

🌐 [TriPointeHomes.com](http://TriPointeHomes.com)

2

Subject: RE: Pardee/Tri Pointe Homes IE-SD, Inc.  
From: "Kevin G. Ennis" <KENNIS@rwglaw.com>  
Date: Mon, Feb 22, 2021 4:26 pm  
To: "fburgess@burgessrelocation.com" <fburgess@burgessrelocation.com>, Marie <mac@ci.banning.ca.us>  
Cc: Doug Schulze <dschulze@banningca.gov>, Laurie Sampson <lsampson@banningca.gov>  
Attach: image004.png  
image005.png  
image006.png  
image007.png

1

Mr. Burgess,

As a further follow-up to your questions below, pursuant to Section 14.1.1 (C) of the Development Agreement, if the sale of Pardee from Weyerhaeuser to Tri Pointe Homes occurred seven years ago, as mandated by Tri Pointe, and if that sale was a "reorganization" within the scope of Section 363 of the Internal Revenue Code, then no "assignment" was required to be approved by the City Council at the time of the sale.

In terms of why the Acting Deputy City Clerk signed the Agreement rather than the City Clerk, it is because the Acting Deputy City Clerk is at City Hall every day and could attest to the fact that the May Agreement and therefore this step in the execution process could be achieved more promptly.

Kevin G. Ennis  
kennis@rwglaw.com



RICARDO WATSON GERSHON  
50 South Grand Avenue, 37<sup>th</sup> Floor  
Los Angeles, CA 90071  
: 213.626.8484  
: 213.253.0221  
: [kennis@rwglaw.com](mailto:kennis@rwglaw.com)  
: [rwglaw.com](http://rwglaw.com)

The two words in the two E-Mails are very important to the City of Banning and its Citizens. As you read them I want to point out the two words and they are (IF) that is right, the word (IF) tells you one thing and that is the City has had no knowledge of any of the name changes. Again this is a total violation of Pardee and the City March 27, 2012 agreement. In all parts of Section 14.1.1.

Would a Bank allow this to happen without their approval? Why is this just now come about, if this was simple a name change? Some as for back as 7 years ago. Who has been watch the City?

Before you can allow this Resolution 2021-4 be approve you must review the March 27, 2012 agreement.



I would like to make a suggestion at this time. That this City Council form a committee and or an ad hoc committee of which their duty would to be review the March 27, 2012 Agreement and its Exhibits. To come back to the Council in 60 days with a report where by the City and who ever name you wish to put it in and have all signatures in order. The report would also show you as Council what has been done and what needs to be done and what is financially is to be credit and or what should be paid by the Developer and move on from there.

The Committee would be made up of 5 or 6 people with the Chairman been your Economic Developer. Mr. James wurtz with two Councilmembers, One from the Planning Commission and one from Finance Dept. and two at large from the Citizens of Banning. While I would offer to serve on the committee I would also understand if you did not allow me to serve. Please pull this from the agenda tell you get a full report from the Committee that I hope you will sat up.

**I request this all pages be put in the records at this meeting of Feb. 23, 2012**

**Frank J. Burgess.**



## **ATTACHMENT 2**

Staff Report on Item 8.1 and its two attachments, contained in the Agenda for the 2/9/2021 Council Meeting at pages 15-22: <http://banning.ca.us/ArchiveCenter/ViewFile/Item/2422>

### **ATTACHMENTS:**

1. City Council Resolution 2021-4

<https://banningca.gov/DocumentCenter/View/8371/Att-1-Resolution-2021-4>

2. Pre-Litigation Settlement Agreement with Tri Pointe Homes

<https://banningca.gov/DocumentCenter/View/8372/Att-2-Pardee-v-Banning-Settlement-Agreement-FINAL>

### **ATTACHMENT 3**

Agenda Report for the 3/27/2012 Council Meeting, including Development Agreement and its Attachments at PDF page 271-346: <http://banning.ca.us/ArchiveCenter/ViewFile/Item/813>

#### **ATTACHMENT 4**

Certificate of Amendment of Articles of Incorporation of Pardee Homes dated 1/4/2021

**CERTIFICATE OF AMENDMENT  
OF  
ARTICLES OF INCORPORATION  
OF  
PARDEE HOMES**




The undersigned certifies that:

1. They are the President and the Secretary, respectively, of Pardee Homes, a California corporation.
2. ARTICLE 1 of the Articles of Incorporation of this corporation is amended to read as follows:

“The name of this corporation is and shall be: Tri Pointe Homes IE-SD, Inc.”
3. The foregoing amendment of Articles of Incorporation has been duly approved by the board of directors.
4. The foregoing amendment of Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Section 902, California Corporations Code. The total number of outstanding shares of the corporation is 30. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than 50%.
5. This amendment of the Articles of Incorporation shall be effective on January 11, 2021.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: January 4, 2021

  
\_\_\_\_\_  
Thomas J. Mitchell, President

  
\_\_\_\_\_  
David C. Lee, Secretary

**ATTACHMENT 5**

Email from City Attorney to Mr. Burgess dated 2/17/2021 at 5.34 p.m. with attachment.

---

**From:** Kevin G. Ennis  
**Sent:** Wednesday, February 17, 2021 5:34 PM  
**To:** 'fburgess@burgessrelocation.com'  
**Cc:** 'Doug Schulze'; 'Laurie Sampson'  
**Subject:** RE: Pardee/Tri Pointe Homes IE-SD, Inc.  
**Attachments:** Certificate of Amendment of Articles of Incorporation of Pardee Homes 1-4-2021.pdf

Mr. Burgess,

I received your email today (attached below.) Here is some information and initial responses to your questions. I will respond to the other questions and points in your email later. In the meantime, you have not already done so, you may also want to view the City Manager's PowerPoint presentation of the Item on the video tape of the February 9<sup>th</sup> meeting to get more information or review the staff report that accompanied the agenda item. In the meantime here is information about Tri Pointe Homes.

1. The first paragraph of the Pre-Litigation Settlement Agreement, addresses the name change:

**PRE-LITIGATION SETTLEMENT AGREEMENT BETWEEN  
TRI POINTE HOMES IE-SD, INC., AND THE CITY OF BANNING  
RELATED TO THE ATWELL PROJECT**

This Pre-Litigation Settlement Agreement between Tri Pointe Homes IE-SD, Inc., and the City of Banning related to the Atwell Project (hereinafter referred to as the "AGREEMENT") is made and entered into by and between the CITY OF BANNING, a California municipal corporation ("City"), and TRI POINTE HOMES IE-SD, INC., a California corporation ("Tri Pointe Homes"). Prior to January 15, 2021, and at all material times herein, Tri Pointe Homes was previously known as PARDEE HOMES, a California corporation ("Pardee"), and is referred to in this AGREEMENT by its former name to avoid confusion. Pardee and the City are collectively referred to herein as the "Parties" and individually as a "Party."

2. Below is the California Secretary of State record for Tri Pointe Homes IE-SD, Inc., and attached is the Certificate of Amendment of Articles of Incorporation of Pardee Homes filed on January 4, 2021, which clearly demonstrates this was not an assignment but simply a name change. We of course looked into this before making the change from Pardee to Tri Pointe. If you search the Secretary of State website under either Tri Pointe by name (no hyphen) or by its Corporation # C0538474, it shows the records going back to Pardee Homes' incorporation in 1968.

<https://businesssearch.sos.ca.gov/>

**C0538474 TRI POINTE HOMES IE-SD, INC.**

**Registration Date:**  
01/03/1968  
**Jurisdiction:**  
CALIFORNIA  
**Entity Type:**  
DOMESTIC STOCK

**Status:**

ACTIVE

**Agent for Service of Process:**

Top of Form

CORPORATION SERVICE COMPANY WHICH WILL DO BUSINESS IN CALIFORNIA AS CSC - LAWYERS  
INCORPORATING SERVICE (C1592199)

Bottom of Form

To find the most current California registered Corporate Agent for Service of Process address and authorized employee(s) information, click the link above and then select the most current 1505 Certificate.

**Entity Address:**

177 E. COLORADO BOULEVARD, SUITE 500  
PASADENA CA 91105

**Entity Mailing Address:**

19540 JAMBOREE ROAD, SUITE 300  
IRVINE CA 92673

Document Type	File Date	PDF
AMENDMENT	01/04/2021	View PDF for document number A0851046 (opens in new tab)
SI-COMPLETE	12/28/2020	View PDF for document number GN10382 (opens in new tab)
SI-COMPLETE	01/02/2020	View PDF for document number GB83534 (opens in new tab)
AGENT RESIGNED	04/10/2007	View PDF for document number R0040801 (opens in new tab)
AMENDMENT	02/28/2002	View PDF for document number A0577358 (opens in new tab)
MERGER	12/31/1969	Image unavailable. Please request paper copy.
MERGER	12/31/1969	Image unavailable. Please request paper copy.
MERGER	12/31/1969	Image unavailable. Please request paper copy.
REGISTRATION	01/03/1968	Image unavailable. Please request paper copy.

**Kevin G. Ennis***Shareholder***RICHARDS WATSON GERSHON**350 South Grand Avenue, 37<sup>th</sup> Floor

Los Angeles, CA 90071

T: 213.626.8484

D: 213.253.0221

E: [kennis@rwglaw.com](mailto:kennis@rwglaw.com)W: [rwglaw.com](http://rwglaw.com)

**From:** fburgess@burgessrelocation.com <fburgess@burgessrelocation.com>

**Sent:** Wednesday, February 17, 2021 12:30 PM

**To:** Kevin G. Ennis <KEnnis@rwglaw.com>

**Subject:** Pardee/Tri Pointe Homes IE-SD, Inc.

To: Banning City Attorney, Kevin G. Ennis  
To. Saskia T. Asamura, City Attorney's office

This E-M is reference to the Feb 9, 2021 Banning City Council meeting under Item 8 of the agenda know as the report of officers Item 8.

Item 8.1 Subject: Consideration and Approval of a Pre-Litigation Settlement Agreement with Tri Pointe Homes IE-SD, Inc. to Resolve Certain Disputes and Issues regarding the Implementation of the Development Agreement for Atwell Project. Dose not show the true amount of the dollars involved to the the public that is been forgiven. Total unfair to the Citizen of Banning as well what right does it have to go into the general fund. Give the citizen of Banning justification.

Per the agreement of March 27, 2012 with Pardee, I do not find anywhere in the agreement that Tri Pointe Homes IE-SD, Inc, name is in the agreement Therefore I am requesting Item 8.1 that was approve by the City Council which included both the Restitution 2021-4 and the Pre-Litigation Settlement Agreement between Tri Pointe Homes IE-SD, Inc. and the City of Banning Related to the Atwell Project be pull from the Minutes of Feb 9, 2021 and that further discussion takes place in behalf of the citizen of Banning.

As I stated I do not find Tri-Pointe Homes IE-SD, Inc. as a Corporation listed in the State of California nor do I find it listed in the State of Delaware. You asking the City Council to approve something that does not exist.

To go a step further under the March 27, 2012 agreement between the City of Banning and the Pardee Homes Section 14. of the agreement know as Assignment and under Assignment is section Mark as 14. 1 Right to Assign.

Under section 14.1.1 General. Neither Party shall assign (as hereinafter defined) or transfer (as hereinafter defined) its interests, rights or obligation under this Agreement without the prior written consent of the other.

It goes on down to the fourth paragraph where it states the Developer shall not Transfer this agreement without City approval.

I am sure you have a copy of the agreement in your file to be able to get the full reading of the 47 page agreement.



I must point out to you in the agreement where it states the word of SHELL. (SHELL IS A VERY BIG WORD IN ANY CONTRACT) I LEARN THAT FROM A JUDGE BY THE NAME OF DALLAS HOMES.

In researching by way of Public Records request I do not find where this agreement has every been approve of changing from Pardee to Tri Pointe IE-Sd, Inc. ship by the City Council. What was the Escrow number and was Riverside County Assessor's office notified. Changing of ownership would have increase the property tax in behalf of the tax payers of Riverside County as well as the other Tax District throughout.

Should have any question on this matter please feel free to let me know.

Have a great day and be safe and stay health.  
Please respond by the 22nd of Feb 2021 if you will.

Frank J. Burgess,  
Tax payer of the City of Banning

Click [here](#) to report this email as spam.

**CERTIFICATE OF AMENDMENT  
OF  
ARTICLES OF INCORPORATION  
OF  
PARDEE HOMES**



The undersigned certifies that:

1. They are the President and the Secretary, respectively, of Pardee Homes, a California corporation.
2. ARTICLE 1 of the Articles of Incorporation of this corporation is amended to read as follows:  
  
"The name of this corporation is and shall be: Tri Pointe Homes IE-SD, Inc."
3. The foregoing amendment of Articles of Incorporation has been duly approved by the board of directors.
4. The foregoing amendment of Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Section 902, California Corporations Code. The total number of outstanding shares of the corporation is 30. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than 50%.
5. This amendment of the Articles of Incorporation shall be effective on January 11, 2021.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: January 4, 2021

  
\_\_\_\_\_  
Thomas J. Mitchell, President

  
\_\_\_\_\_  
David C. Lee, Secretary

# **ATTACHMENT 3**

Correspondence Received in  
Regards Item 8.1



3:03pm  
via  
email

To City Clerk of Banning,

Please read this email at the City Council meeting of March 9, 2021 starting at 5:00 for the amendment No.2 to the City Manager Employment agreement with Douglas Schultz.

Under the proposed terms in amendment no. 2 to the city managers employment agreement paragraph 1 the term of agreement the word **indefinite** needs to be struck from the records and not included in this or any city contract in the future as it is far too vague leaving the city open for possibly very expensive litigation.

Under proposed item #4 Utility allowance it is my understanding the utility credit is for city employees living in the city limits for water and electric.

Mr. Schultz is no longer living in the city limits of Banning and therefore the allowance should not be granted to him or it could open the city to further litigation from other city employees not living in the city limits now and in the future.

I would like to remind the council that the city manager has a signed three year contract ending on September 30, 2021 which should be reviewed by the council in early September not at this time.

I urge the council to seriously understand the ramifications of this amendment and unanimously vote it down!

Thank you  
Jack Gunderson  
Resident of Banning

## Laurie Sampson

---

**From:** Doug Schulze  
**Sent:** Tuesday, March 9, 2021 4:04 PM  
**To:** Laurie Sampson  
**Subject:** RE: [FWD: Re: City Managers]

Please print 7 copies.

Douglas Schulze  
City Manager  
City of Banning  
Direct Line: 951-922-3104  
Direct Fax: 951-846-8611  
dschulze@banningca.gov  
P.O. Box 998  
99 E. Ramsey Street  
Banning, CA 92220  
www.banningca.gov

-----Original Message-----

From: Kevin G. Ennis <KEnnis@rwglaw.com>  
Sent: Tuesday, March 9, 2021 1:38 PM  
To: Doug Schulze <dschulze@banningca.gov>  
Subject: Fwd: [FWD: Re: City Managers]

Sent from my iPhone

Begin forwarded message:

From: Colleen Wallace <cwallace@banningca.gov>  
Date: March 9, 2021 at 12:10:20 PM PST  
To: "Kevin G. Ennis" <KEnnis@rwglaw.com>  
Subject: Fwd: [FWD: Re: City Managers]

Sent from my iPhone

Begin forwarded message:

From: fburgess@burgessrelocation.com  
Date: March 9, 2021 at 11:54:09 AM PST

To: Marie Calderon <mac@banningca.gov>, Alberto Sanchez <alexsg88@icloud.com>, Kyle <Kyle@precisionmaterialhandling.com>  
Cc: Mary Hamlin <mhamiaar@banningca.gov>, David Happe <dhappephp@gmail.com>, Colleen Wallace <cwallace@banningca.gov>  
Subject: [FWD: Re: City Managers]

To City Clerk of Banning.

I ask that you the City Clerk of Banning Please read this E-Mail at the City Council meeting of March 9, 2021 under item # 4 Report on Closed Session and again under Item 12 that has been moved to the City Council agenda. The City has a 3 year contract on file with the City Manger that ends Sept 30, 2021 therefore there is no reason to make adjustments to the present contract.

- Completing a new contract now provides assurance to the City Manager that the City Council desires to continue to employ the City Manager beyond the term of the current contract. It is not uncommon for the City to begin contract negotiations 6 months prior to termination of most other contracts.
- In addition, the current contract includes language that the Council will visit the issue of compensation and benefits following the annual performance evaluation of the City Manager. The evaluation occurred in November 2020 and negotiations on the employment contract began in January 2021.

I ask that you the City Clerk ask the present City Council if they have read the Contract dated Oct 1, 2018. I request each of them to State Yes Or No.

- The original contract and the 2020 amendment were provided to the City Council AND, the new contract is simply an amendment to the current contract.

If the Council insist on moving forward issue a new contract none of this should be effect until after Sept 30, 2021. Which is when the Contract ends.

Why would you cost the Citizens of Banning more when the Contract has 6 or more month to go? Ask yourself would you sign this contract when it is going to cost you move.. Per Contract the Anniversary is Oct 1, 2019, Oct 1, 2020 & Oct 1, 2021.

- The effective date of the new contract is the date that it is signed by all parties. The City Manager did not request a salary adjustment and his salary is well below City Manager salaries in comparably sized cities.

I request that under the Amendment No 2 To City Manager Employment Agreement "3.2 Term. the word indefinite term be remove.

- This was a negotiated amendment to the Contract.

Section 4. Be remove. 6.12 Utility Allowance The City Manage is not an City Employee per say. He is, as stated in his contract Exhibit A City Manager as well as Exhibit B (ICMA Code of Ethics).

1.6 Exemption from Personnel System. BMC 2.68.020 (E) 2.0 Compensation and Reimbursement. Utility Allowance is not, does not nor has it been authorized. If he has received any kind of Utility Credit he should immediately reimburse the City in full. Do we not have an Ordinance on File whereas we do not service utility outside of the city limits.

- The City Manager is an employee of the City. The City Manager is required to participate in CalPERS and is classified as an employee for IRS and CA Income Tax purposes.
- The ICMA Code of Ethics is silent on the issue of a City Manager being a City employee.

- The original employment agreement entered into in 2018 provided for the utility allowance because it is a benefit offered to all City employees. It is part of the employee benefits program authorized by the City Council many years ago.
- There is no ordinance prohibiting the City from providing utilities outside city limits. In fact, the City provides water utility services to the Mountain Air area of unincorporated Riverside County where the City Manager resides.

6.5 Automobile. Do we not furnish an automobile now. Then why would we pay out Auto expense?

- The City Manager uses his personal vehicle for city-related business because it was less expensive than leasing a vehicle through the Enterprise Lease Agreement. The auto allowance was part of the original employment agreement approved in 2018.

6.20 Education Pay. \$275.00 per month. as and education incentive for possessing a Master's degree. What kind of a Master's degree are we talking about? The Manager hold the degree that qualifies him to be a City Manager. The Master degree for this extra money is of what benefit to the City before any kind of payment be made.

- The City Manager holds a Master's degree in Urban and Regional Studies, which is comparable to a MPA.
- The City Council approved benefits provide education pay to all employees who have Bachelor or Masters degrees in a related field. This compensation was part of the 2018 employment agreement.

Thank very much City Clerk of Banning.

Frank J. Burgess

----- Original Message -----

I read over the proposed amendment:

"Amendment No. 2 will change the Employment Agreement of the City Manager to increase his annual vacation accrual rate from 160 hours to 180 hours in two steps on October 1, 2021 and October 1, 2022, provide for City-paid laptop computer, smart phone and hot spot device, and allow him to continue to receive a \$150 per month City utility credit for water service to his residence."

and it seems to me that the only credible concern we can raise is that the City "allow him to continue to receive a \$150 per month City utility credit for water service to his residence." Lynnea was right, he has been getting this credit after he moved out of Sun Lakes when it should have been discontinued once he moved out of the city limits. I think it's a legitimate concern that this might set a precedent and other department directors will want this perk as well. It's something that could get blown out of proportion.

Otherwise, I think it's too late for us to object to the very generous perks he already has, although I'm wondering if it's standard for city managers to receive 22.5 days a year (180 hours) of vacation time, but I think it would be petty for us to contest 20 additional hours over the next two years. The laptop and phone are a standard perk, but not so sure about the hotspot, his smartphone should be able to be used as a hotspot. Again, probably too petty to make a big deal about because he probably has no WiFi at his current residence.

Even the "indefinite" term to his contract makes sense to me in this context, so that it doesn't automatically expire at the end of three years. This might actually be in our favor, because if he was terminated during a 3 year contract, the city might have to pay him the remainder of his contracted time. With an indefinite contract, there is no guarantee of employe

Currently, City Manger has a 3 year contract, which he is attempting to change to indefinite.

Last year the Council approved an annual raise of 3%. Regardless of the CPI or COLA

160 hours of vacation and he can accrue up to 300 hours. Now he wants 180 hrs and 10 more hours per year.

48 hours of Executive Time, and he can accrue up to 200 hours.

96 hours of Sick Time and he can accrue up to 480 hours

12 paid holidays per year including day before or day after.

40 hours Bereavement

\$150.00 per month for utility allowance

6 months of pay as severance allowance and include medical for himself and his family

City Contributions to PERS and ICMA retirement funds

\$250. per month car allowance

\$20,000. per year for Medical Insurance

Professional Development: Professional Conferences, Professional Membership Fees, and magazines paid by the City

Interest Free Financing for computers, printers, etc and other professional tools.

\$275.00 per month for having a Masters Degree. Yet, that is part of the job requirement

\$250.00 every other year for eye glasses

City pays for \$150k of Life Insurance

City pays premiums for Disability Insurance

His current salary is in the neighborhood of : \$225,000.00 plus all of the above.

Keep in mind, \$225k divided by 2080 hours = \$108.00 per hour. That is what Doug makes. Should he accrue all of his vacation, sick time, executive time that comes up to: 980 hours of liability to the city. His payout would be: \$105,840.00 just for his benefits, not including his salary. This is ridiculous.



Click here<[https://www.mailcontrol.com/sr/8ao9ORMmZ\\_DGX2PQPOMvUml-xZX6lbqfUr7wwUzvWF8lyqKIXzVatOdnNmce2xfx5LA8yeWw36K0Rphlb7DTA==>](https://www.mailcontrol.com/sr/8ao9ORMmZ_DGX2PQPOMvUml-xZX6lbqfUr7wwUzvWF8lyqKIXzVatOdnNmce2xfx5LA8yeWw36K0Rphlb7DTA==>) to report this email as spam.

NOTICE: This communication may contain privileged or other confidential information. If you are not the intended recipient of this communication, or an employee or agent responsible for delivering this communication to the intended recipient, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

Inge Schuler  
Banning City Council meeting 9 March 2021



4:59pm

First, I am very concerned about the timing of voting on an amended contract for the City Manager, seven months before the existing three year contract expires on September 30<sup>th</sup>, 2021. Why? What is the emergency?

The major reason for the amendment seems to be that there is no longer an ending date for the new contract, but is designated as "indefinite." Why does the City Manager need an indefinite clause? This puts the city and her residents at a tremendous disadvantage, should the City Manager resign or be terminated at any time. The amount of the very generous benefits, especially the cashing out amount would generate a huge liability to the city. The manager's pay out might reach \$105,850.00 just for the benefit package due. That is in addition to his salary (annual \$225,000.00) which would continue for six months. Did the council do the math on this?

Second, what would the standard of time measurement be to determine the severance total package? Please, reconsider this before voting the city into a precarious financial obligation.

Regards,  
Inge Schuler