

Double the Money

University Villages deal may allow developers to keep biggest profits.

Aug 10, 2006
By Raul Vasquez



Piling Up: A development agreement may allow Marina Community Partners to take profits twice.— *Jane Morba*

Understanding that the University Villages developer could make windfall profits from the sale of homes and retail spaces, the city of Marina installed a financial safeguard into their agreement with the developer.

The safeguard is a profit-sharing deal under which the developer, Marina Community Partners (MCP), must split any profits it makes over 22 percent with the city of Marina and the Fort Ord Reuse Authority (FORA).

The profit-sharing agreement sounds good in theory. But it potentially locks Marina and FORA out of the biggest profits to be made in the whole deal: the sale of finished homes and commercial spaces.

This is the result of the two-tiered agreement created by the three construction companies that teamed up to form Marina Community Partners. These three companies now seem poised to receive a profit much greater than 22 percent without having to share a dime with Marina or FORA.

If that happens, then the city of Marina and FORA will have lost out on millions of dollars. That loss of money would come on top of about \$27 million that Marina's Redevelopment Agency is already subsidizing to construct affordable housing in University Villages and \$47 million that FORA is (under FORA rules) reimbursing the Marina Community Partners with to do demolition and environmental clean-up work for the project.

Neither Bob Schaffer, spokesman for MCP, or Doug Yount, who is overseeing Marina's developments on the former Fort Ord, responded to repeated attempts to answer questions by the Weekly's deadline. Schaffer cited being "too busy" after expressing displeasure with a previous Weekly story that investigated details of the University Villages project.

Instead, the Weekly received a two-paragraph faxed response from the city of Marina. The fax pointed

out some of the very real benefits that that University Villages will deliver to the city. It will create \$231 million for the Marina Redevelopment Agency through 2045 (about \$6 million per year) and also eventually generate around 4,700 permanent jobs with an estimated payroll of \$193 million—all of which are badly needed in Marina, which has long been considered a bedroom community with few jobs.

However, the fax did not answer a list of very specific written questions posed last week to Marina and MCP officials about the project's profit-sharing arrangements.

• • •

While the University Villages development agreement is necessarily filled with legal jargon, the way the profit-sharing clause is supposed to work is fairly simple.

First, Marina and FORA sell the 429 acres slated for University Villages—which they received for free from the Army—to Marina Community Partners. That first step was finalized last week when the Marina City Council voted to approve some final details of the sale of the land to MCP.

Next, MCP will take over the land, build things like water lines and roads, and subdivide the property into usable lots. After that work is done, MCP will sell the unfinished lots to construction companies, which will, in three phases, build the nearly 1,000 market-rate homes and dozens of commercial spaces planned for University Villages.

But there is a catch to this sale. The construction companies that will buy most of the lots from MCP will be Shea Homes, Centex Homes and Shea Properties—three of the nation's largest privately-owned home building companies. These are the same three companies that together form Marina Community Partners.

The three companies, in effect, function as the “horizontal” developers, who prepare ground for building, and also as “vertical” developers, who put up houses, stores and offices.

MCP will essentially be selling the developed lots to itself, for a profit it has estimated to be about 22 percent. If the sale price produces a bigger profit, that money will be split between MCP, Marina's redevelopment agency, and FORA.

At issue is the profit that the three companies stand to make when they sell the homes, stores and offices. That is where the real money is, and it is unclear whether the City and FORA have been cut out of that part of the deal.

Yount says Marina will have “full auditing capabilities” of MCP's financial records as spelled out in the development agreement. “We will have the ability to question every number,” he said in an earlier interview. “We can go through the whole thing.”

But according to the profit sharing section of the development agreement, Marina can audit MCP, but not the three construction companies that build the homes and commercial spaces.

Yount said he believes the builders have a separate profit-sharing agreement with MCP, but he was not able to provide any details about that agreement.

Typically, deals like this are considered proprietary and are therefore confidential. Monterey attorney

Michael Stamp, who has represented citizens groups in several land use and open government cases, says there are many problems with the profit-sharing provision of the University Villages agreement. He points to a table intended to calculate MCP's profits (or Internal Rate of Return, IRR, which is a more sophisticated way of calculating profit) that remains in draft form even in the final development agreement signed by Marina officials.

"Until you know the numbers, you don't know what the deal is," Stamp says. "[The table] has so many variables and assumptions built into it that it's impossible to assess at this stage."

Another expert, the director of a nonprofit affordable housing corporation in Northern California, says there are other irregularities with the University Villages deal, particularly the section in which Marina subsidizes about \$27 million to pay for the construction of affordable homes at University Villages.

"Typically, the developer takes the 'hit' on the affordable units," said the expert, who declined to be named. The director also questioned the arrangement in which MCP sells the developed lots to the builders. "Why would the developer turn over making the real money to the builder?"

Steven Frates, a redevelopment expert and a senior fellow at the Rose Institute of State and Local Government at Claremont McKenna College, says the kind of two-tier profit-sharing mechanism in the University Villages project isn't common practice and appears to give the developer the opportunity to double dip on profits at the expense of the City. Developers intentionally make these contracts complex, he says.

"They're done that way because it makes it more difficult for the public to ferret out what's going on," Frates says. "They have a very strong incentive to create rather complex situations and orchestrate them to their benefit. That's their business. That's the nature of the beast."

What's more, Frates says, local cities usually don't have the level of expertise or sophistication to fully grasp the contrived complexity and potential loopholes embedded by company lawyers in a redevelopment agreement. "As a result, cities not infrequently make deals that are perhaps suboptimal for the community."

• • •

Mettee-McCutchon last week said that her understanding of the profit-sharing agreement was that the 22 percent profit-sharing deal was "based on all profits" from the project, not just MCP's sale of land to the three construction companies.

Stamp said misunderstandings by municipal officials are common in these sorts of deals, but the responsibility lies squarely with a city council that signs off on the project.

As of the Weekly's deadline, neither Schaffer of MCP, nor Mettee-McCutchon nor Yount have been able to answer the simple question: Will the builders that comprise MCP be able make a hidden profit when they sell finished homes and commercial spaces to the public, without sharing that profit with either Marina or FORA?

THE **WEEKLY** TALLY

The top speed, in mph, reached by gravity car racers this year (by Daimler Chrysler) using only the earth's

61 pull and aerodynamics. The Extreme Gravity Series returns to Monterey's Jacks Peak Thursday, Aug. 17 for the second year in a row. *Source: Don MacAllister, president, Gravity Series, Inc.*

[Printer Friendly Version](#)

© 2004 Milestone Communications Inc. All rights reserved. [Terms of use](#)