

RESOLUTION NUMBER R-294080

ADOPTED ON OCTOBER 30, 2000

WHEREAS, Steve and Karen McKinley, Applicant, and Snipes Dye and Associates, Engineer, filed an application with the City of San Diego for a two parcel Tentative Parcel Map, located westerly of Madra Avenue on the northside of Rockhurst Drive, and described as Lot 353 of Del Cerro Unit No. 5, Map 3538, in the Navajo Community Plan area, in the R-1-5000 Zone; and

WHEREAS, on June 3, 1999, the Planning Commission of the City of San Diego denied Tentative Parcel Map No. 98-1183. This denial was appealed to the Council of the City of San Diego. The City Council heard and denied the appeal on July 20, 1999. Applicant thereafter filed with the San Diego Superior Court a petition for writ of mandate, challenging the denial (*McKinley v. City of San Diego*, San Diego Superior Court Case No. 737246); and

WHEREAS, on August 24, 2000, the Court issued a peremptory writ of mandate directing the City Council to set aside its denial and rehear Tentative Parcel Map No. 98-1183 in light of the Court's ruling; and

WHEREAS, on October 24, 2000, the City Council set aside its prior denial and reheard and considered Tentative Parcel Map No. 98-1183, pursuant to the Court's ruling in San Diego Superior Court Case No. 737246, *McKinley v. City of San Diego*, and Section 102.0307 of the

Municipal Code of the City of San Diego, and received for its consideration written and oral presentations, and heard from all interested parties present at the public hearing; and

WHEREAS, on October 30, 2000, after trailing the matter from October 24, 2000, the City Council voted on Tentative Parcel Map No. 98-1183; NOW, THEREFORE,

BE IT RESOLVED, that the Council of the City of San Diego, that this Council adopts the following findings with respect to Tentative Parcel Map No. 98-1183:

1. The map proposes the subdivision of a 0.52-acre site into two parcels for residential development. This type of development is consistent with the General Plan and the Navajo Community Plan, which designate the area for residential use. The proposed map will retain the community's character by encouraging orderly, sequential development compatible in its intensity with surrounding existing and future land development.
2. The design and proposed improvements for the map are consistent with the zoning/development regulations of the R-1-5000 Zone in that:
 - a. All lots have minimum frontage on a dedicated street which is open to and usable by vehicular traffic.
 - b. All lots meet the minimum dimension requirements of the Zone.
 - c. All lots are designed so that required improvements do not result in nonconforming lots in respect to building area, setbacks, side yard and rear yard regulations.
3. The design and proposed improvements for the subdivision are consistent with State Map Act Section 66473.1 regarding the design of the subdivision for future passive or natural heating or cooling opportunities.
4. The site is physically suitable for residential development. The harmony in scale, height, bulk, density, and coverage of development creates a compatible physical relationship to surrounding properties for which this area has been planned. The applicant's recorded Declaration of Restriction, dated November 8, 2000, (attached as Attachment A) further supports compatibility with the neighborhood based on the lots being able to accommodate wider one-story homes, similar to those in the neighborhood.
5. The site is physically suitable for the proposed density of development. This is consistent with the community plan, which provides for residential uses.

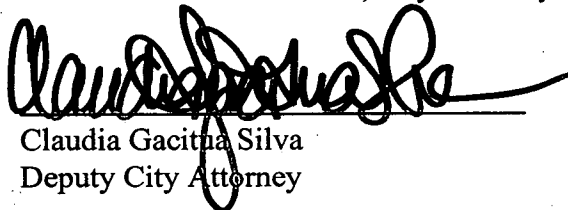
6. The design of the subdivision or the proposed improvements will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat, based upon the findings of Exemption, per CEQA Section 15303, which is included herein by this reference (Land Development Review No. 98-1183).
7. The design of the subdivision and the type of improvements will not likely cause serious public health problems, in as much as needed public services and facilities are available/or required by condition of this map to provide for water and sewage facilities, as well as other related public services.
8. The design of the subdivision and the type of improvements are such that they will not conflict with any easements, acquired by the public at large, for access through or use of property within the proposed subdivision, as demonstrated by the City Engineer's request for public dedications and adequate improvement on the proposed subdivision map.
9. The City Council has reviewed the adopted Housing Element, the Progress Guide, and the General Plan of the City of San Diego, and hereby finds, pursuant to Section 66412.3 of the Government Code, that the housing needs of the region are being met since residential development has been planned for the area and public services programmed for installation, as determined by the City Engineer, in accordance with financing and environmental policies of the City Council.

The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that, based on the Findings herein adopted by the City Council, Tentative Parcel Map No. 98-1183 is granted to Steve and Karen McKinley, subject to the conditions attached hereto and made a part hereof.

APPROVED: CASEY GWINN, City Attorney

By


Claudia Gacitua Silva
Deputy City Attorney

CGS:jab
12/20/00
Or.Dept:Clerk
R-2001-955
Form=tmr.frm

RECORDING REQUESTED BY:)
)
ASARO, KEAGY, FREELAND & MCKINLEY)
By: STEVEN A. MCKINLEY, ESQ.)
Fourth Floor, 3170 Fourth Avenue)
San Diego, CA 92103)
(619) 297-3170)

AND WHEN RECORDED MAIL TO:)
)
ASARO, KEAGY, FREELAND & MCKINLEY)
By: STEVEN A. MCKINLEY, ESQ.)
Fourth Floor, 3170 Fourth Avenue)
San Diego, CA 92103)
(619) 297-3170)

This Space for Recorder's Use Only

DECLARATION OF RESTRICTIONS ON REAL PROPERTY

ARTICLE 2

DEVELOPMENT OF PROPERTY

(a) Any home built on Parcel 1 shown on the attached Tentative Parcel Map shall be set back from the street a minimum of 137 feet. The area to which the setback applies shall not be considered in the determination of the permitted height of any structure built on the lot nor shall this setback be applied or operate in any way to deny development of the lot with a single story house on raised foundation with roof pitch similar to that which is characteristic of the neighborhood.

(b) No structure built on the Property shall have more than one story between the finished floor and the roof and shall not exceed 20 feet from the finished floor to the top of the roof.

ARTICLE 3

GENERAL PROVISIONS

(a) **Enforcement by the City of San Diego.** This Declaration is made for the benefit of the subject property and for the benefit of the public generally. Any provisions hereof affecting the public interest, health, safety or welfare, may at the discretion of the City of San Diego be enforced as if the City were a party hereto.

(b) **Binding on Successors.** The provisions of this Declaration shall bind and run with the property and shall inure to the benefit of, and be binding upon, the heirs, legatees, devisees, executors, administrators, guardians, conservators, successors, successors in interest, purchasers, lessees, encumbrancers, donees, grantees, mortgagees, lienors, and assigns of and from each Owner, and each person having or acquiring any right, title or interest in the Project or any portion thereof.

(c) **Duration of Restrictions.** This Declaration shall terminate and its provisions shall be of no further effect upon the expiration of sixty (60) years from the date of the recordation of this Declaration, after which time it shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then owners of the Property, has been recorded, within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions in whole or in part, or to terminate the same.

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ARTICLE 4

RIGHTS OF LENDERS

The Property and any subdivision thereof may be encumbered by deed of trust or mortgage. A breach of any of the provisions of this Declaration shall not affect or impair the lien or charge of any bona fide deed of trust or mortgage made in good faith and for value encumbering the Property or any subdivision thereof. It is intended that any loan to facilitate the resale of the Property or any subdivision thereof after foreclosure is a loan made in good faith and for value and entitled to all of the rights and protection afforded to other Lenders. No amendment to this Declaration shall affect any Lender to the extent it defeats the Lender's then priority position with respect to its lien or which would convert the Lender's loan to an illegal status under such governmental regulations then applicable to the Lender involved, unless the approval in writing of any such Lender is obtained.

"Declarant"

DATED:

11/8/00



Steven A. McKinley

DATED:

11/08/2000



Karen G. McKinley

EXIST. 4' GENERAL UTILITY EASEMENT PER SUBDIVISION MAP

SETBACK LINES (TYP.)

SETBACK LINES (TYP.)

PARCEL 1
16,116 S.F. GROSS/NET

PROPOSED CONC. BROW DITCH

PARCEL 2
6,350 S.F. GROSS/NET

354

35

47.0 TW
39.0 BW

35.7 TW
35.0 BW

43.0 TW
38.3 BW

31.7 TW
29.0 BW

40.3 TW
34.3 BW

31.0 TW
26.3 BW

35.0 TW
33.7 BW

27.0 TW
25.7 BW

39.8 FF
39.3 PAD

36.2 FF
35.7 PAD

34.7 PAD
35.2 GF
16.00'

31.1 PAD
31.6 GF
16.00'

PROPOSED CURB OUTLET

PROPOSED CURB OUTLET

EXIST. 8" VC SEWER

EXIST. AP. W/ ANCHOR

ROCKHURST

(CONSTRUCTED PER IMPROVEMENT PLANS 12764-L)

EXA

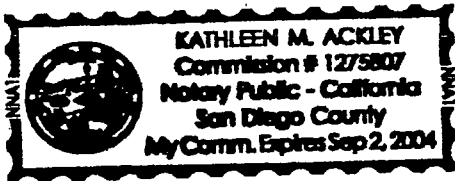
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State of CALIFORNIA
County of SAN DIEGO

On November 8, 2000 before me, KATHLEEN M. ACKLEY, NOTARY PUBLIC
(DATE) (NAME/TITLE OF OFFICER-i.e. "JANE DOE, NOTARY PUBLIC")
personally appeared KAREN G. MCKINLEY and
(NAME(S) OF SIGNER(S))
STEVEN A. MCKINLEY

personally known to me -OR-

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~ they executed the same in his/~~her~~ their authorized capacity(ies), and that by his/~~her~~ their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Witness my hand and official seal.

(SEAL)

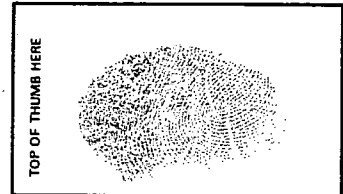
Kathleen M. Ackley
(SIGNATURE OF NOTARY)

ATTENTION NOTARY

The information requested below and in the column to the right is **OPTIONAL**. Recording of this document is not required by law and is also optional. It could, however, prevent fraudulent attachment of this certificate to any unauthorized document.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:
Title or Type of Document DECLARATION OF RESTRICTIONS ON REAL PROPERTY
Number of Pages 6 Date of Document NOVEMBER 8, 2000
INCLUDING THIS PAGE
Signer(s) Other Than Named Above N/A

RIGHT THUMBPRINT (Optional)



CAPACITY CLAIMED BY SIGNER(S)
 INDIVIDUAL(S)
 CORPORATE _____

OFFICER(S) _____ (TITLES)
 PARTNER(S) LIMITED GENERAL
 ATTORNEY IN FACT
 TRUSTEE(S)
 GUARDIAN/CONSERVATOR
 OTHER: KAREN G. MCKINLEY

SIGNER IS REPRESENTING:
(Name of Person(s) or Entity(ies))

RIGHT THUMBPRINT (Optional)



CAPACITY CLAIMED BY SIGNER(S)
 INDIVIDUAL(S)
 CORPORATE _____

OFFICER(S) _____ (TITLES)
 PARTNER(S) LIMITED GENERAL
 ATTORNEY IN FACT
 TRUSTEE(S)
 GUARDIAN/CONSERVATOR
 OTHER: STEVEN A. MCKINLEY

SIGNER IS REPRESENTING:
(Name of Person(s) or Entity(ies))

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CITY COUNCIL CONDITIONS TO TENTATIVE PARCEL MAP NO. 98-1183
ADOPTED BY RESOLUTION NO. R-294080 ON OCTOBER 30, 2000

1. This tentative parcel map will expire October 24, 2003.
2. The "General Conditions for Tentative Subdivision Maps," filed in the Office of the City Clerk under Document No. 767688 on May 7, 1980, shall be made a condition of map approval; provided that Section II(i) of the General Conditions are modified in this instance by making specific reference to the attached Exhibit A instead of tentative map. Only those exceptions to the General Conditions which are shown on the tentative map and Exhibit A (attached hereto), and covered in these special conditions will be authorized.

All public improvements and incidental facilities shall be designed in accordance with criteria established in the Street Design Manual, filed with the City Clerk as Document No. 769830.

3. "Basis of Bearings" means the source of uniform orientation of all measured bearings shown on the map. Unless otherwise approved, this source will be the California Coordinate System, Zone 6, North American Datum of 1983 (NAD 83).
4. "California Coordinate System" means the coordinate system as defined in Section 8801 through 8819 of the California Public Resources Code. The specified zone for San Diego County is "Zone 6," and the official datum is the "North American Datum of 1983."
5. The parcel map shall:
 - a. Use the California Coordinate System for its "Basis of Bearing" and express all measured and calculated bearing values in terms of said system. The angle of grid divergence from a true median (theta or mapping angle) and the north point of said map shall appear on each sheet thereof. Establishment of said Basis of Bearings may be by use of existing Horizontal Control stations or astronomic observations.
 - b. Show two tresured ties from the boundary of the map to existing Horizontal Control stations having California Coordinate values of Third Order accuracy or better. These tie lines to the existing control shall be shown in relation to the California Coordinate System (i.e., grid bearings and grid distances). All other distances shown on the map are to be shown as ground distances. A combined factor for conversion of grid-to-ground distances shall be shown on the map.

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6. Undergrounding of proposed public utility systems and service facilities is required according to San Diego Municipal Code Section 102.0404, Subsection 2.
7. The drainage system proposed for this subdivision, as shown on the approved tentative parcel map, is not approved. The drainage from parcel 1 shall not cross the lot line and flow onto parcel 2.
8. The subdivider shall obtain a bonded grading permit from the City Engineer (referred to as an "engineering permit") for the grading proposed for this project. All grading shall conform to requirements in accordance with Sections 62.0401-62.0423 of the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.
9. The subdivider shall construct driveway(s) to be consistent with the City of San Diego Street Design Manual and satisfactory to the City Engineer and the Fire Marshal, as shown on the attached Exhibit A.
10. The subdivider shall remove the existing curb and replace it with curb and gutter, per City Standards.
11. The subdivider shall install two sidewalk underdrains on Rockhurst Drive.
12. The subdivider shall assure an area not less than forty square feet shall be indicated on the improvement plans for the planting of street trees. The location of the street trees shall be consistent with applicable sections of the Landscape Technical Manual. Other improvements such as driveways, utilities, drains, water and sewer laterals shall be designed so as not to prohibit the placement of street trees to the satisfaction of the City Manager.

FOR INFORMATION

- This development may be subject to payment of a park fee prior to the filing of the final subdivision map in accordance with San Diego Municipal Code Section 102.0406 et seq. This property is also subject to a building permit park fee in accordance with San Diego Municipal Code Section 96.0401 et seq.

- This development may be subject to impact fees, as established by the City Council, at the time of issuance of building permits.
- This tentative parcel map will be subject to fees and charges based on the rate and calculation method in effect at the *time* of payment.

100 UNIT

SETBACK LINES (TYP.)

EXIST. 4' GENERAL UTILITY EASEMENT PER SUBDIVISION MAP

EXIST. 6' GENERAL UTILITY EASEMENT PER SUBDIVISION MAP

SETBACK LINES (TYP.)

PARCEL 1
16,116 SF. GROSS/NET
560.5 PAD

PARCEL 2
6,350 SF. GROSS/NET
537.0 PAD

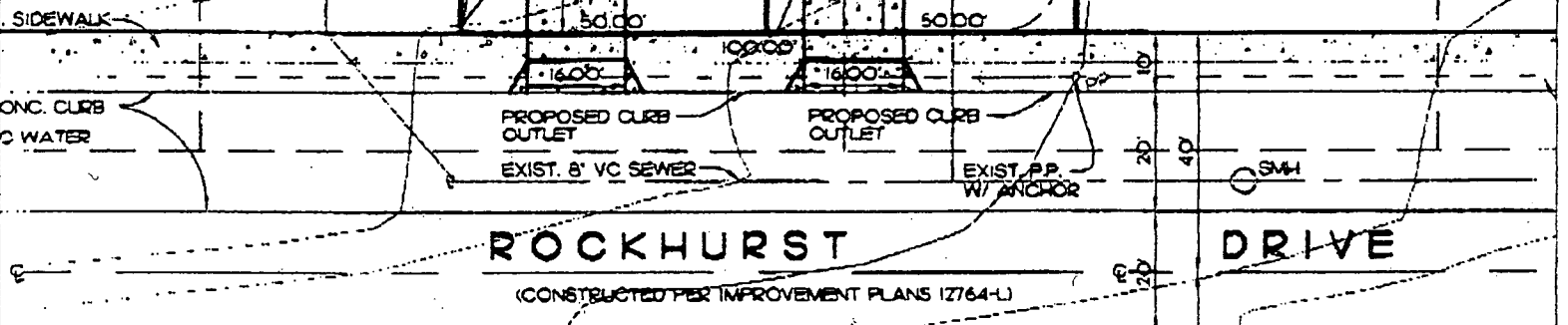
PROPOSED BUILDING ENVELOPE

354

352



SCALE 1" = 30'



ROCKHURST

DRIVE

(CONSTRUCTED PER IMPROVEMENT PLANS 12764-L)

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EXHIBIT A