

RESOLUTION NUMBER R-304107

DATE OF FINAL PASSAGE SEPTEMBER 9, 2008

5104 CAPE MAY TENTATIVE MAP, PROJECT NO. 126046 - ENVIRONMENTAL APPEAL BY CORY J. BRIGGS, BRIGGS LAW CORPORATION, ON BEHALF OF CITIZENS FOR RESPONSIBLE EQUITABLE ENVIRONMENTAL DEVELOPMENT.

WHEREAS, on February 4, 2008, Stephanie Young, submitted an application to the City of San Diego for approval of a tentative map and a waiver from the requirements to underground existing overhead utilities to convert five existing residential units to condominiums on a 0.19-acre site located at 2060 Abbott Street (hereinafter referred to as the 5104 Cape May Tentative Map Project); and

WHEREAS, said 5104 Cape May Tentative Map Project was assigned Project No. 126046 by the City of San Diego Development Services Department; and

WHEREAS, on February 4, 2008, the City of San Diego, through the Development Services Department, determined that the application for Project No. 126046 was complete, and therefore, was deemed complete on said date; and

WHEREAS on February 14, 2008, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the 5104 Cape May Tentative Map Project is a Class I, Existing Facilities Project, Categorically exempt from the California Environmental Quality Act [CEQA] (Public Resources Code section 21000 et seq.) under CEQA Guidelines section 15301(k) (California Code of Regulations sections 15000, 15301(k)); and

WHEREAS, in accordance with CEQA (Public Resources Code section 21151(c)), and Section 112.0520 of the San Diego Municipal Code, Cory J. Briggs, Law Corporation, on behalf of Citizens for Responsible Equitable Environmental Development [hereinafter, Appellant] appealed the Environmental Determination for the 5106 Cape May Tentative Map Project to the Council of the City of San Diego [hereinafter, City Council]; and

WHEREAS, the appeal was set for a public hearing to be conducted by the City Council on September 9, 2008; and

WHEREAS, the issues on appeal were heard, and evidence in the form of testimony and other evidence were accepted into the record, by the City Council on September 9, 2008; and

WHEREAS, the City Council considered, in light of the whole record, the Environmental Determination to Categorically Exempt the 5106 Cape May Tentative Map Project, the potential environmental impacts associated with the 5106 Cape May Tentative Map Project, the issues raised on appeal, and the issues brought up at the hearing through testimony and public participation; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; NOW, THEREFORE,

BE IT RESOLVED, by the City Council, upon consideration of the whole record before it, that it is determined that the Environmental Determination has been completed in compliance with CEQA and the CEQA Guidelines, that the declaration reflects the independent judgment of

the City of San Diego as Lead Agency, and that the information contained in the Development Services Department staff report and testimony and comments received during the public testimony process have been reviewed and considered by this City Council in connection with the appeal of the Environmental Determination.

BE IT FURTHER RESOLVED, that the City Council finds, based upon the representations of City staff, public testimony and the whole record before it, the following:

1. There is substantial evidence, in light of the whole record, supporting the Environmental Determinations to Categorically Exempt the 5106 Cape May Tentative Map Project under the provisions of CEQA Guidelines section 15301(k);
2. A fair argument, based upon evidence found in the whole record, has not been established demonstrating the exceptions to the Categorical Exemption, within the meaning of CEQA and CEQA Guidelines (California Code of Regulations sections 15300.2), exist with respect to the 5106 Cape May Tentative Map Project; and
3. Based upon substantial evidence in light of the whole record, the 5106 Cape May Tentative Map Project would not result in any significant or potentially significant impacts or effects on the environment.
4. The information provided by the Appellant and his experts are to be excluded from the record.

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BE IT FURTHER RESOLVED, that the Environmental Determination of the Development Services Department is sustained, and the appeal of Cory J. Briggs, Briggs Law Corporation, on behalf of Citizens for Responsible Equitable Environmental Development, is denied.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Marianne Greene
Marianne Greene
Deputy City Attorney

MG:pev
11/10/08
Or.Dept:Clerk
R-2009-407
MMS #5960