

RESOLUTION NUMBER R-304684

DATE OF FINAL PASSAGE FEBRUARY 24, 2009

RESOLUTION DENYING THE APPEAL AND APPROVING
TENTATIVE MAP NO. 426356 – 7836 EL PASEO GRANDE
TENTATIVE MAP, PROJECT NO. 124540.

WHEREAS, Desautels Company, Applicant/Subdivider, and Charles S. Thomas, Engineer, submitted an application to the City of San Diego for a tentative map (Tentative Map No. 426356) to convert eight existing residential units to condominiums for the 7836 El Paseo Grande Tentative Map project [Project], located at 7836 El Paseo Grande between Lowery Terrace and Calle De La Plata, and legally described as lots 5 and 6 of Spindrift, according to Map 3096 filed June 3, 1954, in the La Jolla Community Plan area within the MF 2 zone of the La Jolla Community Plan; and

WHEREAS, the applicant seeks to waive the requirement to underground existing overhead utilities, pursuant to Council Policy 600-25; and

WHEREAS, the Map proposes the subdivision of a 0.35-acre site into one lot for an 8- unit residential condominium conversion; and

WHEREAS, the Project is exempt from environmental review pursuant to Article 19, section 15301(k) of the California Environmental Quality Act [CEQA] Guidelines on the basis that the facilities are existing; and

WHEREAS, the subdivision is a condominium project as defined in Section 1350 et seq. of the Civil Code of the State of California and filed pursuant to the Subdivision Map Act. The total number of condominium units is eight; and

WHEREAS, on November 6, 2008, the Planning Commission of the City of San Diego considered Tentative Map No. 426356; and pursuant to Resolution No. 4480-PC voted to approve Tentative Map; and

WHEREAS, the Affordable Housing Coalition of San Diego and Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation appealed the Planning Commission decision to the Council of the City of San Diego; and

WHEREAS, under Charter section 280(a)(2) this resolution ordinance 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;

WHEREAS, the matter was set for public hearing on February 24, 2009, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Tentative Map No. 426356:

1. **The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code [LDC] (LDC section 125.0440(b)).** The proposed subdivision of an existing 8 unit apartment complex to condominium ownership interests would comply with the development regulations of the underlying MF-2 zone and all of the applicable development regulations of the LDC. No deviation or variance is requested with this application. No construction is approved or requested with this application.

2. **The decision maker has considered the effects of the proposed subdivision on the housing needs of the region and that those needs are balanced against the needs for public services and the available fiscal and environmental resources (LDC section 125.0440(h) and Subdivision Map Act section 66412.3).** The proposed project is a subdivision of an existing 8 unit apartment complex to condominium ownership interests. The project is located within the La Jolla Community Plan which designates the site for multi-family

development. The proposed subdivision complies with the policies, goals, and objectives of the applicable land use plan. The existing development was previously approved and permitted pursuant to the zoning and development regulations at the time of construction. There is no net change in density or intensity with the conversion of apartment units to condominium ownership and therefore the project does not increase impacts to public services or fiscal or environmental resources.

3. **Each of the tenants of the proposed condominium, project has received, pursuant to Subdivision Map Action section 66452.9, written notification of intention to convert at least sixty days prior to the filing of a tentative map (LDC section 125.0444 and Subdivision Map Act section 66427.1(a)).** A signed affidavit has been provided to the Development Services Department identifying each of the tenants of the proposed project and stating each tenant received, pursuant to Subdivision Map Action Section 66452.9, written notification of intention to convert. This notice was sent at least sixty days prior to filing for the map on April 10, 2006.

4. **The project has been conditioned that the Subdivider will give each tenant, and each person applying for the rental of a unit in such residential real property, all applicable notices and rights now or hereafter required by the Subdivision Map Act (LDC section 125.0444 and Subdivision Map Act section 66427.1(a)).** Condition No. 9 of this Resolution requires that the Subdivider give each tenant, and each person applying for the rental of a unit in such residential real property, all applicable notices and rights now or hereafter required by the Subdivision Map Act.

5. **The project has been conditioned that the Subdivider will give each tenant ten days written notification that an application for a public report will be, or has been, submitted to the Department of Real Estate, and that such report will be available on request (LDC section 125.0444 and Subdivision Map Act section 66427.1(a)).** Condition No. 10 of this Resolution requires that the Subdivider give each tenant ten days written notification that an application for a public report will be, or has been, submitted to the Department of Real Estate, and that such report will be available on request.

6. **The project has been conditioned that the Subdivider will give each tenant of the proposed condominium project written notification within ten days of approval of a final map for the proposed conversion (LDC section 125.0444 and Subdivision Map Act section 66427.1(b)).** If the subdivider chooses to provide affordable housing units, the subdivider shall enter into an affordable housing agreement with the Housing Commission, prior to recordation of the Final Map. Condition No. 13 of this Resolution requires that the Subdivider must provide the tenants of the proposed condominiums with written notification within ten days of approval of a Final Map for the proposed conversion, in conformance with section 66427.1(b) of the Subdivision Map Act. Further, if the subdivider chooses to provide affordable housing units, Condition 14 requires that the Subdivider enter into an affordable housing agreement with the Housing Commission, prior to recordation of the Final Map.

7. **The project has been conditioned that the Subdivider will give each of the tenants of the proposed condominium project 180 days written notice of intention to**

convert prior to termination of tenancy due to the conversion or proposed conversion (LDC section 125.0444 and Subdivision Map Act section 66427.1(c)). Condition No. 11 of this Resolution requires that the Subdivider give each of the tenants of the proposed condominium project 180 days written notice of intention to convert prior to termination of tenancy due to the conversion or proposed conversion.

8. **The project has been conditioned that the Subdivider will give each of the tenants of the proposed condominium project notice of an exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to the tenant, which notice shall be provided within five working days of the issuance of the Subdivision Public Report. The right shall run for a period of not less than ninety days from the date of issuance of the subdivision public report pursuant to section 11018.2 of the Business and Professions Code, unless the tenant gives prior written notice of his or her intention not to exercise the right (LDC section 125.0444 and Subdivision Map Act section 66427.1(d)).** Condition number 12 requires the Subdivider give each of the tenants notification of the proposed condominium project notice of an exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to the tenant, which notice shall be provided within five working days of the issuance of the Subdivision Public Report. The right shall run for a period of not less than ninety days from the date of issuance of the subdivision public report pursuant to section 11018.2 of the Business and Professions Code, unless the tenant gives prior written notice of his or her intention not to exercise the right (LDC section 125.0444 and Subdivision Map Act section 66427.1(d)).

9. **The project was not financed by funds obtained from a governmental agency to provide for elderly, disabled, or low income housing (LDC section 125.0444(b)).** This project is privately financed and no funds were obtained from a governmental agency to provide for elderly, disabled, or low income housing.

10. **For any project that was developed to provide housing for the elderly, disabled or to provide low income housing, provisions have been made to perpetuate the use for which the project was developed (LDC section 125.0444(c)).** This project was not developed to provide housing for the elderly, disabled or to provide low income housing.

11. **Each of the tenants of the proposed condominium project has received written notification of the project application for the condominium conversion within ten days after the application was deemed complete (LDC section 125.0431(a)(3)).** Condition No. 8(a) of this Resolution requires that each of the tenants of the proposed project has received written notification of the project application for the condominium conversion within ten days after the application was deemed complete. A Notice of Application which identifies the project location and describes the proposed conversion was mailed to each tenant on April 19, 2008.

12. **The project has been conditioned that the subdivider will give each person applying for the rental of a unit in such residential real property written notification that the project application for the condominium conversion was deemed complete**

(LDC section 125.0431(a)(3)). Condition 8(b) of this resolution requires that the subdivider will give each person applying for the rental of a unit in such residential real property written notification that the project application for the condominium conversion was deemed complete

13. **The project has been conditioned that the subdivider will give each tenant a notice of termination of tenancy sixty days prior to being required to vacate the property. (LDC section 125.0431(a)(4)).** Condition 17 of this resolution requires that the subdivider give each tenant a notice of termination of tenancy sixty days prior to being required to vacate the property.

14. **A Building Conditions Report has been prepared in accordance with the Land Development Manual by a registered architect or engineer licensed by the State of California (LDC section 144.0504(a)).** A Building Conditions Report has been prepared for this project by Greg L. Gavasse, P.E., of Land America in accordance with the Land Development Manual and reviewed for compliance with the Condominium Conversion Regulations.

15. **The project has been conditioned that the subdivider will provide to a prospective purchaser a copy of the Building Conditions Report prior to the opening of an escrow account. (LDC section 144.0504(c)).** Condition 18 of this resolution requires that the subdivider provide to a prospective purchaser a copy of the Building Conditions Report prior to the opening of an escrow account.

16. **The project has been conditioned that the subdivider will provide a relocation assistance payment to all tenants of the project whose tenancy has terminated due to the condominium conversion. (LDC section 144.0505).** Condition 16 of this resolution requires that the subdivider provide a relocation assistance payment to all tenants of the project whose tenancy has terminated due to the condominium conversion.

17. **The project has been conditioned for the subdivider to complete the physical improvements as outlined in Land Development Code section 144.0507, to the satisfaction of the City Engineer prior to final map approval.** Condition Numbers 19-28 outline the required physical improvements required prior to the approval of the Final Map. The improvements include the following:

An Encroachment Maintenance Removal Agreement, from the City Engineer, for the private improvements in the five foot City of San Diego Sewer Easement along the north property line.

The Subdivider shall underground any new service run to any new or proposed structures within the subdivision.

The subdivider shall ensure that all existing onsite utilities serving the subdivision shall be undergrounded with the appropriate permits. The subdivider shall provide written confirmation from applicable utilities that the conversion has taken place, or provide other means to assure the undergrounding, satisfactory to the City Engineer.

Prior to the issuance of the Final Map the subdivider shall reconstruct the driveway on Lowry Terrace to current City standards.

Prior to the issuance of the Final Map the subdivider shall construct a curb ramp at the northeast corner of Lowry Terrace and El Paseo.

Prior to the issuance of the Final Map the subdivider shall repair the damage areas of the curb and gutter adjacent to the site on El Paseo Grande and Lowry Terrace.

Prior to the issuance of the Final Map the subdivider shall replace the cracked/uplifted sidewalk, to include the on site private walkways leading to the public sidewalk. The subdivider shall preserve any contractor's stamp, all adjacent to the site on El Paseo Grande and Lowry Terrace.

Prior to the issuance of the Final Map the subdivider shall obtain an Encroachment Maintenance Removal Agreement for the private walkways, landscape and appurtenances within El Paseo Grande and Lowry Terrace rights-of-way and shall trim the hedges so they do not encroach into the sidewalk area.

The subdivider shall obtain an Encroachment Maintenance Removal Agreement for the retaining wall in the Lowry Terrace right-of-way and for the retaining wall within the four foot easement along the easterly property line.

Prior to the recordation of the Final Map, the subdivider shall demonstrate conformance with the Municipal Code provisions for building and landscape improvements (LDC section 144.0507), to the satisfaction of the City Engineer.

18. **The project has been conditioned for the subdivider to satisfy the inclusionary housing requirements in accordance with LDC section 142.1306. (LDC section 144.0508).** Condition Number 14 includes the Affordable Housing conditions that would be required of this development to comply with the City of San Diego Inclusionary Housing Ordinance (Chapter 14, Article 2, Division 13 of the LDC) by paying an in-lieu fee of \$33,573.18 (9173 square feet at 3.66) or by entering into an Agreement with the San Diego Housing Commission, to ensure payment of the in-lieu fee

19. **The proposed subdivision complies with the parking regulations of the Land Development Code (LDC section 142.0505).** The proposed development requires eight off-street parking spaces based on the number and size of the residential units for a condominium conversion. The development provides eight off-street parking spaces and therefore complies with the parking regulations of the LDC.

20. **The requested underground waiver of the existing overhead facilities, qualifies under the guidelines of Council Policy No. 600-25 *Underground Conversion of Utility Lines at Developers Expense* in that:**


- a. The conversion involves a short span of overhead facility (less than 600 feet in length).
- b. The conversion is a requirement of a condominium conversion of an existing development and the conversion would not represent a logical extension to an underground facility.

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

BE IT FURTHER RESOLVED, that the appeal of the Affordable Housing Coalition of San Diego County and Citizens for Responsible Equitable Housing Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation is denied, the decision of the Planning Commission is sustained, and Tentative Map No. 426356 is granted to Desautels Company, Applicant/Subdivider, and Charles S. Thomas, Engineer, subject to the conditions attached hereto and made a part hereof.

APPROVED: JAN I. GOLDSMITH, City Attorney

By


Keith Bauerle
Deputy City Attorney

KB:hm
02/26/09
Or.Dept:DSD
R-2009-916
MMS#7521

CONDITIONS FOR TENTATIVE MAP NO. 426356

7836 EL PASEO GRANDE TM PROJECT

ADOPTED BY RESOLUTION NO. R-304684 ON FEBRUARY 24, 2009

GENERAL:

1. This Tentative Map will expire February 24, 2012.
2. Compliance with all of the following conditions shall be assured, to the satisfaction of the City Engineer, prior to the recordation of the Final Map, unless otherwise noted.
3. Prior to the Tentative Map expiration date, a Final Map to consolidate the existing lots into one lot shall be recorded in the Office of the County Recorder.
4. Prior to the issuance of the Final Map taxes must be paid on this property pursuant to section 66492 of the Subdivision Map Act. A tax certificate, recorded in the office of the County Recorder, must be provided to satisfy this condition
5. The Final Map shall conform to the provisions of Coastal Development Permit No. 426369.
6. The subdivider shall ensure that all onsite utilities serving the subdivision shall be undergrounded with the appropriate permits. The subdivider shall provide written confirmation from applicable utilities that the conversion has taken place, or provide other means to assure the undergrounding, satisfactory to the City Engineer.
7. The Subdivider shall defend, indemnify, and hold the City (including its agents, officers, and employees [together, "Indemnified Parties"]) harmless from any claim, action, or proceeding, against any Indemnified Party to attack, set aside, void, or annul City's approval of this project, which action is brought within the time period provided for in Government Code section 66499.37. City shall promptly notify Subdivider of any claim, action, or proceeding and shall cooperate fully in the defense. If City fails to cooperate fully in the defense, Subdivider shall not thereafter be responsible to defend, indemnify, or hold City harmless. City may participate in the defense of any claim, action, or proceeding if City both bears its own attorney's fees and costs, and defends the action in good faith. Subdivider shall not be required to pay or perform any settlement unless such settlement is approved by the Subdivider.

8. The subdivider shall provide a Notice of Tenants Rights and Notices for Condominium Conversion, consistent with the Land Development Manual to be provided as follows:
 - a. For existing tenants, within ten days of the project application for the *condominium conversion* being deemed complete; or
 - b. For prospective tenants, upon application for the rental of a unit in the proposed *condominium conversion*.
9. The Subdivider shall provide each tenant, and each person applying for the rental of a unit in such residential real property, all applicable notices and rights now or hereafter required by the Subdivision Map Act.
10. The Subdivider shall provide the tenants a Notice of Application for a Public Report at least ten days prior to the submittal to the Department of Real Estate [DRE], pursuant to section 66427.1(a) of the Subdivision Map Act.
11. The Subdivider shall provide each of the tenants of the proposed condominiums written notice of intention to convert at least 180 days prior to termination of tenancy due to the conversion or proposed conversion in conformance with Section 66427.1(c) of the Subdivision Map Act. The provisions of this subdivision shall not alter nor abridge the rights or obligations of the parties in performance of their covenants, including, but not limited to, the provision of services, payment of rent, or the obligations imposed by sections 1941, 1941.1 and 1941.2 of the Civil Code.
12. The Subdivider shall provide each of the tenants of the proposed condominiums notification of their exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to the tenant, in conformance with Section 66427.1(d) of the Subdivision Map Act. The right shall run for a period of not less than ninety days from the date of issuance of the subdivision public report, pursuant to section 11018.2 of the Business and Professions Code, unless the tenant gives prior written notice of his or her intention not to exercise the right.
13. The Subdivider shall provide the tenants of the proposed condominiums with written notification within ten days of approval of a Final Map for the proposed conversion, in conformance with Section 66427.1(b) of the Subdivision Map Act.

AFFORDABLE HOUSING:

14. Prior to recordation of the Final Map, the Subdivider shall comply with the affordable housing requirements of the City's Inclusionary Housing Ordinance (Chapter 14, Article 2, Division 13 of the Land Development Code) by paying an

in-lieu fee of \$33,573.18 (9173 square feet @3.66) OR by entering into an Agreement with the San Diego Housing Commission, to ensure payment of the in-lieu fee

15. Prior to the recordation of the Final Map, the subdivider shall demonstrate conformance with the Municipal Code provisions for Coastal Overlay Zone Affordable Housing Replacement Regulations (Chapter 14, Article 3, Division 8), to the satisfaction of the Development Services Department and the Housing Commission.
16. Prior to the recordation of the Final Map, the subdivider shall demonstrate conformance with the Municipal Code provisions for Tenant Relocation Benefits (Chapter 14, Article 4, Division 5), to the satisfaction of the Development Services Department and the Housing Commission.
17. The subdivider will give each tenant a notice of termination of tenancy sixty days prior to being required to vacate the property. (LDC section 125.0431(a)(4)).
18. The subdivider will provide to a prospective purchaser a copy of the Building Conditions Report prior to the opening of an escrow account. (LDC section 144.0504(c)).

ENGINEERING:

19. Prior to the issuance of the Final Map, the applicant shall obtain an Encroachment Maintenance Removal Agreement, from the City Engineer, for the private improvements in the 5 foot City of San Diego Sewer Easement along the north property line.
20. The Subdivider shall underground any new service run to any new or proposed structures within the subdivision.
21. The subdivider shall ensure that all existing onsite utilities serving the subdivision shall be undergrounded with the appropriate permits. The subdivider shall provide written confirmation from applicable utilities that the conversion has taken place, or provide other means to assure the undergrounding, satisfactory to the City Engineer.
22. Prior to the issuance of the Final Map the subdivider shall reconstruct the driveway on Lowry Terrace to current City standards.
23. Prior to the issuance of the Final Map the subdivider shall construct a curb ramp at the northeast corner of Lowry Terrace and El Paseo.
24. Prior to the issuance of the Final Map the subdivider shall repair the damage areas of the curb and gutter adjacent to the site on El Paseo Grande and Lowry Terrace.

25. Prior to the issuance of the Final Map the subdivider shall replace the cracked/uplifted sidewalk, to include the on site private walkways leading to the public sidewalk. The subdivider shall preserve any contractor's stamp, all adjacent to the site on El Paseo Grande and Lowry Terrace.
26. Prior to the issuance of the Final Map the subdivider shall obtain an Encroachment Maintenance Removal Agreement for the private walkways, landscape and appurtenances within El Paseo Grande and Lowry Terrace rights-of-way and shall trim the hedges so they do not encroach into the sidewalk area.
27. The subdivider shall obtain an Encroachment Maintenance Removal Agreement for the retaining wall in the Lowery Terrace right-of-way and for the retaining wall within the four foot easement along the easterly property line.
28. Prior to the recordation of the Final Map, the subdivider shall demonstrate conformance with the Municipal Code provisions for building and landscape improvements (LDC sections 144.0507), to the satisfaction of the City Engineer.
29. Conformance with the "General Conditions for Tentative Subdivision Maps," filed in the Office of the City Clerk under Document No. 767688 on May 7, 1980, is required. Only those exceptions to the General Conditions which are shown on the tentative map 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. RR-297376.

MAPPING:

30. "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].
31. "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."
32. The Final 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 measured 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.

SEWER AND WATER:

33. Water and Sewer Requirements:

- a. The subdivider shall install appropriate private back flow prevention devices on all existing and proposed water services (domestic, irrigation, and fire) adjacent to the project site in a manner satisfactory to the Water Department Director.
- b. The subdivider shall provide a letter, agreeing to prepare CC&Rs for the operation and maintenance of all private water and sewer facilities that serve or traverse more than a single condominium unit or lot.

INFORMATION:

- The approval of this Tentative Map by the City Council of the City of San Diego does not authorize the subdivider to violate any Federal, State, or City laws, ordinances, regulations, or policies including but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 USC section 1531 et seq.).
- If the subdivider makes any request for new water and sewer facilities (including services, fire hydrants, and laterals), then the subdivider shall design and construct such facilities in accordance with established criteria in the most current editions of the City of San Diego water and sewer design guides and City regulations, standards and practices pertaining thereto. Off-site improvements may be required to provide adequate and acceptable levels of service and will be determined at final engineering.
- Subsequent applications related to this Tentative Map will be subject to fees and charges based on the rate and calculation method in effect at the time of payment.

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of the Tentative Map, may protest the imposition within 90 days of the approval of this Tentative Map by filing a written protest with the City Clerk pursuant to California Government Code section 66020.
- Where in the course of development of private property, public facilities are damaged or removed the property owner shall at no cost to the City obtain the required permits for work in the public right-of-way, and repair or replace the public facility to the satisfaction of the City Engineer. Municipal Code section 142.0607.