

RESOLUTION NUMBER R-304767

DATE OF FINAL PASSAGE MARCH 24, 2009

A RESOLUTION DENYING THE APPEAL OF CORY J. BRIGGS, BRIGGS LAW CORPORATION ON BEHALF OF THE AFFORDABLE HOUSING COALITION OF SAN DIEGO AND CITIZENS FOR RESPONSIBLE EQUITABLE ENVIRONMENTAL DEVELOPMENT AND GRANTING TENTATIVE MAP NO. 70179 – EMERALD STREET TENTATIVE MAP PROJECT, PROJECT NO. 25879.

WHEREAS, the Emerald Manor Apartment House, LLC, a California Partnership, Applicant/Subdivider, submitted an application to the City of San Diego for a tentative map. (Tentative Map No. 70179) for the conversion of an existing, three-story, forty-eight residential dwelling unit apartment complex into condominiums, for the Emerald Street Tentative Map project [Project], located 4655 Lamont Street, 1918 and 1930 Emerald Street, on the northeast corner of Emerald Street and Lamont Street, and legally described as Lots 30 through 40, Block 167, Pacific Beach, Map No. 854, in the RM-2-5 zone, Coastal Height Limit Overlay Zone and within the Pacific Beach Community Plan Area; 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 0.789-acre site into one lot for a forty-eight unit residential condominium conversion; and

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

WHEREAS, a preliminary soils and geological reconnaissance report are waived by the City Engineer pursuant to the Subdivision Map Act and San Diego Municipal Code section 144.0220; 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 forty-eight; and

WHEREAS, on December 11, 2008, the Planning Commission of the City of San Diego considered Tentative Map No. 70179, and pursuant to Resolution No. 4483-PC voted to approve the map; and

WHEREAS, Briggs Law Corporation, on behalf of the Affordable Housing Coalition of San Diego and Citizens For Responsible Equitable Environmental Development, appealed the Planning Commission decision to the Council of the City of San Diego; 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;

WHEREAS, the appeal was set for a public hearing to be conducted by the Council of the City of San Diego on March 24, 2009; and

WHEREAS, 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. 70179:

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 division of the existing multi-family residential apartment complex with forty-eight dwelling units into condominium units is located within the RM-2-5 zone. The project design was determined to be in compliance with all of the applicable development regulations for a condominium conversion, including compliance with Affordable Housing requirements and conforming to the regulations regarding Inclusionary Housing and Tenant Relocation Benefits adopted by the City Council on March 15, 2004. Conditions of the draft Tentative Map Resolution require compliance with this ordinance. Review and approval of a Building Conditions Report and Landscape Concept Plan, has been completed for conformance with the applicable regulations within the Land Development Code (Chapter 14, Article 4, Division 5). The project design was also determined to be in compliance with all of the applicable development regulations at the time it was constructed in 1959. The project has previously conforming rights to be maintained as outlined in Chapter 12, Article 7, Division 1 of the Land Development Code. Due to these factors the proposed condominium conversion was found to be in compliance with the Land Development Code and the policies, goals, and objectives of the adopted Pacific Beach Community Plan.

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 includes the conversion of forty-eight existing apartment units into condominiums. There would be a loss of forty-eight rental units and a gain of forty-eight for sale units. This Tentative Map project is required to comply with the inclusionary housing requirements and tenant relocation assistance program, which are conditions of the proposed Tentative Map. The project is required to set aside 10 percent of the units' for families earning 100% of the area median income or less. The proposed subdivision is the conversion of an existing apartment complex to condominiums, thus there would be no further negative impact on public services and the available fiscal and 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 60 days prior to the filing of a tentative map (LDC section 125.0444 and Subdivision Map Act section 66427.1(a)). The applicant has provided a copy of the 60-day notice along with a list of the tenants that received the Notice. These copies are located within Development Services Department's Project File.

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)). The Subdivider will provide a copy of this Notice along with a list of the tenants that received the Notice, prior to Final Map as required through Tentative Map, "General", Condition No. 6.

5. The project has been conditioned that the Subdivider will give each tenant 10 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)). The Subdivider will provide a copy of this Notice along with a list of the tenants that received the Notice, prior to Final Map as required through Tentative Map, "General", Condition No. 8.

6. The project has been conditioned that the Subdivider will give each tenant of the proposed condominium project written notification within 10 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. The Subdivider will provide a copy of this Notice along with a list of the tenants that received the Notice prior to Final Map as required through Tentative Map, "General", Condition No.11.

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)). The Subdivider will provide a copy of this Notice along with a list of the tenants that received the Notice prior to Final Map as required through Tentative Map, "General", Condition No. 9.

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 5 working days of the issuance of the Subdivision Public Report.. The right shall run for a period of not less than 90 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)). The Subdivider will provide a copy of this Notice along with a list of the tenants that received the Notice prior to Final Map as required through Tentative Map, "General", Condition No.10.

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)). The condominium conversion project is privately owned and privately funded on behalf of Emerald Manor Apartment House, LLC, with Mr. John W. Reed as managing partner. No governmental funding has been involved with this project.

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)). Currently the project is an existing market rate 48-dwelling unit apartment complex. There is no existing housing for the elderly, disabled or low income housing currently within this apartment complex. However, the

condominium conversion includes conditions to require conformance with the City's Inclusionary Housing requirements.

11. Each of the tenants of the proposed condominium project has received written notification of the project application for the condominium conversion within 10 days after the application was deemed complete (LDC section 125.0431(a)(3)). The Subdivider has provided a copy of this Notice along with a list of the tenants that received the Notice. These copies are located within Development Services Department's Project File.

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)). The Subdivider will provide a copy of this notification along with a list of the tenants that received the notification prior to Final Map as required through Tentative Map, "General", Condition No. 6.

13. The project has been conditioned that the subdivider will give each tenant a notice of termination of tenancy 60-days prior to being required to vacate the property. (LDC section 125.0431(a)(4)). The Subdivider will provide a copy of this Notice along with a list of the tenants that received the Notice prior to Final Map as required through Tentative Map, "Affordable Housing", Condition No. 14.

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(b)). Building Conditions Report for this Emerald Manor Apartments was prepared by JCEP/Huang Consulting Engineers, Inc., of Newbury Park, California, dated April 24, 2006 and revised on May 20, 2008. The report has been reviewed for conformance with the applicable regulations within the Land Development Code (Chapter 14, Article 4, Division 5) and has been accepted by staff as conforming to the 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)). The Subdivider will provide a copy of this list of the prospective purchasers that received the Building Conditions Report, if applicable, prior to Final Map as required through Tentative Map, "Affordable Housing", Condition No.15.

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). The Subdivider will provide a copy of payment records along with a list of the tenants that received the assistance prior to Final Map as required through Tentative Map, "Affordable Housing", Condition No.13.

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. The Subdivider will provide a copy of the report verify completion of the required improvements prior to Final Map as required through Tentative Map, "Engineering", Condition No.24.

18. The project has been conditioned for the subdivider to satisfy the inclusionary housing requirements on-site in accordance with Land Development Code section 142.1306. (LDC section 144.0508). The Subdivider will provide a copy of correspondence from the Housing Commission satisfying this requirement prior to Final Map as required through Tentative Map, "Affordable Housing", Condition No.12.


19. 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 Briggs Law Corporation, on behalf of the Affordable Housing Coalition of San Diego and Citizens for Responsible Equitable Environmental Development, is denied, the decision of the Planning Commission is sustained, and Tentative Map No. 70179 is granted to Emerald Manor Apartment House, LLC, a California Partnership, Applicant/Subdivider, 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
04/07/09
Or.Dept:City Clerk
R-2009-1020
MMS#7317

CONDITIONS FOR TENTATIVE MAP NO. 70179

EMERALD STREET TENTATIVE MAP - PROJECT 25879

ADOPTED BY RESOLUTION NO. R-304767 ON MARCH 24, 2009

GENERAL:

1. This Tentative Map will expire March 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 Subdivider shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify applicant of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, applicant shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and applicant regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the applicant shall not be required to pay or perform any settlement unless such settlement is approved by applicant
6. 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 10 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.
7. 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.
 8. The Subdivider shall provide the tenants a Notice of Application for a Public Report at least 10 days prior to the submittal to the Department of Real Estate [DRB], pursuant to Section 66427.1(a) of the Subdivision Map Act.
 9. 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.
 10. 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 90 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.
 11. The Subdivider shall provide the tenants of the proposed condominiums with written notification within 10 days or approval of a Final Map for the proposed conversion, in conformance with Section 66427.1(b) of the Subdivision Map Act.

AFFORDABLE HOUSING:

12. Prior to filing a final subdivision map, the applicant 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). Prior to receiving a final map, the applicant must enter into an agreement with the San Diego Housing Commission to assure the set aside of at least 10 percent of the units for households with an income at or below 100 percent AMI.

13. Prior to filing a final map, the applicant shall either show evidence that relocation assistance has been paid to eligible tenants or enter into an agreement with the San Diego Housing Commission to demonstrate conformance with the Municipal Code provisions for Tenant Relocation Benefits (Chapter 14, Article 4, Division 5, §144.0505). In addition, applicant must pay the appropriate fees incurred by the Housing Commission for compliance monitoring (Chapter 14, Article 4, Division 5, §144.0503).
14. The subdivider will give each tenant a notice of termination of tenancy 60 days prior to being required to vacate the property. (Land Development Code [LDC] section 125.0431(a)(4)).
15. 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:

16. Prior to recordation of the Final Map, the subdivider shall, as part of the installation of a new pedestrian ramp at the northeast corner of the intersection of Lamont Street and Emerald Street, preserve the contractor stamp that reads " R.W. Brown, 8-28" per Standard Drawing SDG-115 in a manner satisfactory to the City Engineer.
17. Prior to recordation of the Final Map, the subdivider shall assure installation of new pedestrian ramps at the northeast corner of the intersection of Lamont Street and Emerald Street and at the intersection of Lamont Street and the alley. These new pedestrian ramps shall be ADA compliant and installed with the truncated dome panels in the approaches (per City of San Diego Standard Drawings SDG-130, SDG-132, SDG-133, SDG-134, SDG-136 and SDG-137 respectively.)
18. Prior to recordation of the Final Map, the subdivider shall assure the removal of the raised planter (located east of parking space number 21, that takes access from Emerald Street), satisfactory to the City Engineer. Note the raised planter is obstructing southbound site drainage between the existing structure's east wall and the east property line.
19. Prior to recordation of the Final Map, the subdivider shall remove and replace 15 feet of sidewalk and the corresponding portion of the driveway on Emerald Street immediately west of the easterly property line satisfactory to the City Engineer.
20. Prior to recordation of the Final Map, the subdivider shall obtain an Encroachment Maintenance Removal Agreement from the City for 4 free standing (approximately 4 foot high) block walls in the Lamont Street right-of-way satisfactory to the City Engineer.

21. A Final Map to consolidate the existing lots into one lot shall be recorded in the Office of the County Recorder, prior to the Tentative Map expiration date.
22. The Subdivider shall underground any new service run to any new or proposed structures within the subdivision.
23. The subdivider shall ensure that all existing on-site 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.
24. 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. The parking requirements in Land Development Code sections 144.0507 and 142.0525(a) do not apply, since this project was deemed complete prior to the effective date of this ordinance (July 27, 2006).
25. 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.
26. 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:

27. "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].
28. "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."
29. The Final Map shall:
 - a. Use the California Coordinate System for its "Basis of Bearings" and express all measured and calculated bearing values in terms of said system. The angle of grid divergence from a true median (θ) 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:

30. 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&R's 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.