

RESOLUTION NUMBER R-304769

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. 242521- 4711 BIONA DRIVE TENTATIVE MAP PROJECT, PROJECT NO. 78145.

WHEREAS, the M. S. Browar Family Trust, Applicant/Subdivider, submitted an application to the City of San Diego for a tentative map, (Tentative Map No. 242521) for the conversion of six existing residential units to condominiums, for the 4711 Biona Drive Tentative Map project [Project], located on the east side of Biona Drive between Adams Avenue and Alder Drive at 4711-4721 Biona Drive, and legally described as Lots 1 and 2, Block B, Kensington Park Annex, Map No. 1780, in the RS-1-7 zone, within the Kensington-Talmadge neighborhood of the Mid-City Communities 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 0.25-acre site into one lot for a 6-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] on the basis that the facilities are existing; and

WHEREAS, a preliminary solids 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 six; and

WHEREAS, on October 9, 2008, the Planning Commission of the City of San Diego considered Tentative Map No. 242521, and pursuant to Resolution No. 4465-PC voted to approve the map; and

WHEREAS, Briggs Law Corporation, on behalf of the Affordable Housing Coalition of San Diego County and the 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; and

WHEREAS, the appeal was set for a public hearing to be conducted by the Council of the City of San Diego on January 13, 2009; and

WHEREAS, the City Council voted to continue the matter to March 24, 2009, where 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. 242521:

**1. The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code [LDC] (LDC section 125.0440(b)).** The existing development was legally constructed in 1950 and complies with the development regulations that were in effect at the time of construction. No variances or deviations have been

requested and the project maintains previously conforming rights for density and development standards, as outlined in Chapter 12, Article 7, Division 1 of the Land Development Code. No increase in residential units or expansion of existing units is proposed with this subdivision.

**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 decision maker has reviewed the administrative record including the project plans, technical studies, environmental documentation and public testimony to determine 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 and found that the conversion of six residential units would comply with the Mid-City Communities Plan. The requested subdivision would not result in an increase in units or expansion of existing units and primarily represents a change in the ownership structure of the site.

**3. Each of the tenants of the proposed condominium project has received, pursuant to Subdivision Map Act 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 to the Development Services Department and has certified that a copy has been provided to all subsequent tenants, pursuant to Subdivision Map Act, section 66452.9.

**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. 6 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 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)).** Condition No. 7 of this Resolution requires that the Subdivider 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

**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)).** Condition No. 10 of this Resolution requires that the Subdivider must 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.

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. 8 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. (LDC section 125.0444 and Subdivision Map Act section 66427.1(d)).** Condition No. 9 of this Resolution requires that the Subdivider give each of the tenants exclusive right to contract for the purchase of his or her respective unit upon the same terms.

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 obtained from a governmental agency to provide for elderly, disabled, or low-income housing would be used in this development.

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 10 days after the application was deemed complete (LDC section 125.0431(a)(3)).** Condition No. 5(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 10 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 August 23, 2005.

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 5(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 60 days prior to being required to vacate the property. (LDC section 125.0431(a)(4)).** Condition 11 of this resolution requires that the Subdivider give each tenant a notice of termination of tenancy 60 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(b)).** A Building Conditions Report has been prepared for this project by Land America Property Inspection 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 12 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 14 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 LDC section 144.0507, to the satisfaction of the City Engineer prior to final map approval.** Condition No. 19 requires that the Subdivider demonstrate conformance with these provisions and completion of the required improvements prior to final map approval.

18. **The project has been conditioned for the subdivider to satisfy the inclusionary housing requirements in accordance with Land Development Code section 142.1306. (LDC section 144.0508).** Condition 13 includes the Affordable Housing conditions that would be required of this development to comply with the City of San Diego Inclusionary Housing Ordinance.


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 the conversion involves a short span of overhead facility (less than 600 feet in length), it has been determined that such conversion is not a part of a continuing effort to accomplish a total undergrounding within a specific street or area, the conversion would represent an isolated undergrounding with a minimum probability of extension in the future, and 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 the Citizens for Responsible Equitable

Environmental Development, is denied, the decision of the Planning Commission is sustained, and Tentative Map No. 242521 is granted to M. S. Browar Family Trust, Applicant/Subdivider, and Sterling Land Services, Surveyor, 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  
04/07/2009  
Or.Dept:City Clerk  
R-2009-1028  
MMS#6904

CONDITIONS FOR TENTATIVE MAP NO. 242521

4711 BIONA DRIVE TENTATIVE MAP - PROJECT 78145

ADOPTED BY RESOLUTION NO. R-304769 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 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
4. The applicant 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
5. 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.
6. 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.
7. 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, pursuant to Section 66427.1(a) of the Subdivision Map Act.
8. 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.
9. 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.
10. 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.
11. 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 section 125.0431(a)(4)).
12. The Subdivider will provide to a prospective purchaser a copy of the Building Conditions Report prior to the opening of an escrow account. (Land Development Code section 144.0504(c)).

#### **AFFORDABLE HOUSING**

13. 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 \$4,500 (\$1.25 x 3,600 square feet), satisfactory to the Housing Commission.



14. 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.

**ENGINEERING:**

15. 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.
16. The Subdivider shall comply with all current street lighting standards according to the City of San Diego Street Design Manual (Document No. 297376, filed November 25, 2002) and the amendment to Council Policy 200-18 approved by City Council on February 26, 2002 (Resolution R-296141) satisfactory to the City Engineer. This may require (but not be limited to) installation of new street light(s), upgrading light from low pressure to high pressure sodium vapor and/or upgrading wattage.
17. The Subdivider shall underground any new service run to any new or proposed structures within the subdivision.
18. 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.
19. 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.
20. 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).
21. 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:**

22. "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].
23. "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."
24. 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:**

25. 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.

**LANDSCAPE:**

26. Prior to recordation of the Final Map, complete landscape and irrigation construction documents consistent with the Landscape Standards shall be

submitted to the Development Services Department for approval. The construction documents shall be in substantial conformance with the Exhibit "A," Landscape Development Plan.

27. Prior to recordation of the Final Map, and after Landscape and Irrigation Construction Documents have been approved by Development Services, the Subdivider shall install all required landscaping consistent with the approved plans and the Land Development Manual, Landscape Standards.
28. Prior to recordation of the Final Map, it shall be the responsibility of the Permittee/Owner to install all required landscape and obtain all required landscape inspections. A "No Fee" Street Tree Permit shall be obtained for the installation, establishment, and on-going maintenance of all street trees.
29. The Landscape Construction Plan shall take into account a 40 sq-ft area around each tree which is unencumbered by hardscape and utilities as set forth under LDC section 142.0403(b)5.
30. All required landscape shall be maintained in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees is not permitted. The trees shall be maintained in a safe manner to allow each tree to grow to its mature height and spread.
31. The Permittee or subsequent owner shall be responsible for the maintenance of all landscape improvements in the right-of-way consistent with the Land Development Manual Landscape Standards unless long-term maintenance of said landscaping will be the responsibility of a Landscape Maintenance District or other approved entity. In this case, a Landscape Maintenance Agreement shall be submitted for review by a Landscape Planner.
32. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or prior to a Certificate of Occupancy or a Final Landscape Inspection.

**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.