

9/22/09

RESOLUTION NUMBER R-305271

DATE OF FINAL PASSAGE SEPTEMBER 22, 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. 245790 – 4105 54TH PLACE TENTATIVE MAP PROJECT, PROJECT NO. 78952

WHEREAS, the Park View Terrace Apts. Venture, LP, Applicant/Subdivider, submitted an application to the City of San Diego for a tentative map (Tentative Map No. 245790), for the conversion of 100 for rent apartment units into condominiums, for the 4105 54th Place Tentative Map project [Project], located at 4105 54th Place, and legally described as Parcel 3 of Parcel Tentative Map No. 14983, in the RM-1-1 zone of Central Urbanized Planned District, within the Eastern Area Neighborhood of Mid-City Communities Plan area; and

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

WHEREAS, the Map proposes the subdivision of a 3.4-acre site into one lot for a 100-unit residential condominium conversion; 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 dwelling units is 100; and

WHEREAS, on June 11, 2009, the Planning Commission of the City of San Diego considered Tentative Map No. 245790, and pursuant to Resolution No. 4523-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 September 22, 2009; 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. 245790:

1. The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code [LDC] (LDC section 125.0440(b)). The project proposes the conversion of 100 for rent residential units into 100 condominiums with a request to waive the requirement to underground existing overhead utilities. The existing development was legally constructed in 1990 when the site was zoned MR-1000. The proposed subdivision complies with the development regulations that were in effect at the time of construction and the project maintains previously conforming rights for density, as outlined in Chapter 12, Article 7, Division 1 of the Land Development Code. No additional construction or expansion 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 five residential units would assist the housing needs of the Mid-City Communities Plan.

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)). 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 at least 60 days on October 10, 2005.

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)). 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. 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.

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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.** 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 never developed to provide housing for the elderly, disabled or provide low income housing. Therefore, there are not existing provisions to perpetuate those uses.

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 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 in September 2005. Due to the processing duration of the project, another notice was provided to existing tenants on February 2, 2009.

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 13 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 JCEP/Huang Consulting Engineers, Inc 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 14 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 12 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. 24 includes the engineering conditions specifically required for this development prior to final map approval.

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). Condition No. 11 includes the Affordable Housing condition 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) and that 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 record for this project, including all review documentation, maps, exhibits, minutes, and Exhibit "A" dated June 11, 2009.

BE IT FURTHER RESOLVED, that the appeal of the 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. 245790 is granted to Park View Terrace Apts. Venture, LP., Application/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
09/24/09
Or.Dept:City Clerk
R-2010-209
MMS#9315

CONDITIONS FOR TENTATIVE MAP NO. 245790

4105 54th PLACE TENTATIVE MAP - PROJECT NO. 78952

ADOPTED BY RESOLUTION NO. R-305271 ON SEPTEMBER 22, 2009

GENERAL

1. This Tentative Map will expire June 11, 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 recordation 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 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.
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(a)(2)(e) 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.
9. 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(a)(2)(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 record, 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.

AFFORDABLE HOUSING

11. Prior to the recordation of the Final Map, the subdivider shall enter into an affordable housing agreement with the Housing Commission to provide affordable housing units (10 percent required) in compliance with the Affordable Housing Requirements of the City's Inclusionary Housing Ordinance (Chapter 14, Article 2, Division 13 of the Land Development Code).
12. 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.
13. 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)).
14. 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)).

ENGINEERING

15. The subdivider shall reconstruct the two existing driveways, to provide for a sidewalk transition, with City Standard G-14A Concrete Driveway, adjacent to the site on 54th Street and 54th Place.

16. The subdivider shall replace the existing damaged curb and gutter, with City Standard curb and gutter, adjacent to the site on the curb return of 54th Place.
17. The subdivider shall replace the damaged sidewalk, adjacent to the site on 54th Place.
18. This project 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.
19. Pursuant to City Council Policy 600-20, the subdivider shall provide evidence to ensure that an affirmative marketing program is established.
20. 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.
21. 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.
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 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.
24. Prior to the recordation of the Final Map, the subdivider shall demonstrate conformance with the Municipal Code provisions for building and landscape improvements (Land Development Code Sections 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.

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

26. "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).
27. "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."
28. 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.

INFORMATION:

- The approval of this Tentative Map by the Planning Commission 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.