

RESOLUTION NUMBER R-305371

DATE OF FINAL PASSAGE OCTOBER 27, 2009

A RESOLUTION DENYING THE APPEAL AND APPROVING
TENTATIVE MAP NO. 457406, RIVIERA TENTATIVE MAP -
PROJECT NO. 132231.

WHEREAS, Jerome D. Ryan, Anne Everson Ryan, David Claude Ryan, Michael Franklin Ryan, Tomas Fredrick Ryan and Amy Anne Ryan, Applicants/Subdividers, and Ronald Bateman, Surveyor, submitted an application to the City of San Diego for a tentative map (Tentative Map No. 457406) to convert twenty-four residential units to condominiums. The project site is located at 3790 Riviera Drive in the RM-2-5 zone within the Pacific Beach Community Plan Area, State Coastal, Coastal Height Limit, Parking Impact and Residential Tandem Parking Overlay Zones. The property is legally described as Lot 62 through 64, Southern Title Guaranty Company's subdivision of pueblo lot 1801, according to Map thereof No. 1864, filed in the Office of the County Recorder of San Diego County, October 20, 1925; and

WHEREAS, the Map proposes the Subdivision of a 0.386-acre-site into one lot for the purpose of condominium conversion; and

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

WHEREAS, the project complies with the requirements of a preliminary soils and/or geological reconnaissance report pursuant to the Subdivision Map Act and Section 144.0220 of the San Diego Municipal Code [SDMC] of the City of San Diego; and

WHEREAS, the subdivision is a condominium project as defined in Section 1351 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 twenty-four; and

WHEREAS, on July 23, 2009, the Planning Commission of the City of San Diego considered Tentative Map No. 457406, and pursuant to Resolution No. 4531-PC, the Planning Commission voted to approve the map; and

WHEREAS, the Affordable Housing Coalition of San Diego County and Citizens for Responsible Equitable Environmental Development, c/o Cory Briggs and Mekaela Gladden, 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 is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body, a public hearing is required by law implicating due process rights of individuals affected by the decision, and the Council is required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, on October 27, 2009, the City Council of the City of San Diego considered the appeal of Tentative Map No. 457406, and pursuant to sections 125.0440, 125.0444, and 144.0240 of the SDMC and Subdivision Map Act Section 66428, received for its consideration written and oral presentations, evidence, and testimony from all interested parties at the public hearing, and the City Council having fully considered the matter and being fully advised concerning the same; NOW THEREFORE,

BE IT RESOLVED by the City Council of the City of San Diego, that it adopts the following findings with respect to Tentative Map No. 457406:

1. The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code (SDMC section 125.0440(b)).

The proposed division of the existing multi-family residential apartment complex with twenty-four 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 1973. 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 (SDMC section 125.0440(h) and Subdivision Map Act Section 66412.3).

The proposed project includes the conversion of twenty-four apartment units into condominiums. There would be a loss of twenty-four rental units and a gain of twenty-four 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 percent of the area median income or less. The proposed subdivision is the conversion of an existing apartment complex to condominiums, thus there we 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 Act Section 66452.9, written notification of intention to convert at least sixty days prior to the filing of a tentative map (SDMC section 125.0444 and Subdivision Map Act Section 66427.1(a)).

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.

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 (SDMC 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 (SDMC 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 (SDMC 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 (SDMC 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 five 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 (SDMC 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 (SDMC section 125.0444(b)).

The condominium conversion project is privately owned and privately funded on behalf of Ryan Riviera Properties, with Mr. Jerome Ryan 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 (SDMC section 125.0444(c)).

Currently the project is an existing market rate twenty-four 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 ten days after the application was deemed complete (SDMC 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 (SDMC 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 sixty days prior to being required to vacate the property. (SDMC 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 (SDMC section 144.0504(b)).

Building Conditions Report for this Azure Shore Apartments was prepared by Land America Assessment Corporation of Alameda, California, dated March 15, 2007. 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. (SDMC 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. (SDMC 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.27.

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. SDMC 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 proposed subdivision complies with the parking regulations of the Land Development Code (SDMC section 142.0505).

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 Environmental Development, c/o Cory Briggs and Mekaela Gladden, Briggs Law Corporation is denied; the decision of the

Planning Commission is sustained; and Tentative Map No. 457406 is granted to Jerome D.

Ryan, Anne Everson Ryan, David Claude Ryan, Michael Franklin Ryan, Tomas Fredrick Ryan and Amy Anne Ryan, Applicants/Subdividers, subject to the attached conditions which are made a part of this resolution by this reference.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



Nina M. Fain
Deputy City Attorney

NMF:js:pev
11/03/09
Or.Dept:DSD
R-2009-273
MMS #10522

CITY COUNCIL
CONDITIONS FOR TENTATIVE MAP NO. 457406

RIVIERA TENTATIVE MAP PROJECT NO. 132231

ADOPTED BY RESOLUTION NO. R- 305371 ON OCT 27 2009

GENERAL

1. This Tentative Map will expire July 23, 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 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.
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 State 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 State 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 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. (Land Development Code Section 144.0504(c)).

ENGINEERING

16. The Subdivider shall underground any new service run to any new or proposed structures within the subdivision.
17. The following will be conditions of the tentative map resolution that the subdivider will need to satisfy/assure before the final map is recorded. Please revise the TM accordingly.
18. The subdivider shall repair/re-construct the curb treatment to provide positive gutter flow and eliminate standing water. This may include, but not limited to curb replacement, street asphalt grinding and street structural section replacement.
19. The subdivider shall replace the existing driveway to current City Standards, adjacent to the site on Riviera Drive.
20. The subdivider shall construct a curb ramp adjacent to the site, across from one of the curb ramps on the east side of Riviera Street.
21. The subdivider shall remove the wooden ramp and planter box, located south of the driveway, from the Riviera Drive right-of-way.
22. The subdivider shall replace the damaged areas of the sidewalk, maintaining the existing sidewalk scoring pattern and preserving any contractor's stamp, adjacent to the site on Riviera Drive.
23. The subdivider shall obtain an Encroachment Maintenance Removal Agreement for the landscape and appurtenances within the Riviera Drive right-of-way.
24. 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.

25. Pursuant to City Council Policy 600-20, the subdivider shall provide evidence to ensure that an affirmative marketing program is established.
26. 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.
27. 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.
28. 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

29. 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).
30. 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.
31. 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

32. 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

33. 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, on file in the Office of the Development Services Department.
34. 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.
35. 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.
36. 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 142.0403(b)5.
37. 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.

38. 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.
39. 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 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.

INFORMATION:

- The approval of this Tentative Map by the 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 ninety 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.