

RESOLUTION NUMBER R- 306077

DATE OF FINAL PASSAGE JUL 27 2010

A RESOLUTION DENYING THE APPEAL OF MR. DAVID WATERS AND APPROVING TENTATIVE MAP NO. 209827 - 1707 ESSEX TENTATIVE MAP, PROJECT NO. 69202.

WHEREAS, Park Fifth Avenue Venture, LP, Applicant/Subdivider, and Terra Surveying Consultants, Engineer, submitted an application to the City of San Diego for a tentative map (Tentative Map No. 209827) for the condominium conversion of 52 existing residential units and to waive the requirement to underground existing overhead utilities; and

WHEREAS, the project site is located between Essex Street and Robinson Avenue at 1707 Essex Street, and is legally described as Lots 7 through 12, Block 2, Essex Place, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 1097 on file in the Office of the County Recorder of Said County, along with portion of Pueblo Lot 1125, in the MR-1000B and CN-2A Zones of the Mid-City Communities Planned District, within the Transit Area Overlay Zone and the Uptown Community Plan area; and

WHEREAS, the Map proposes the subdivision of a 1.3-acre site into one lot for a 52 unit residential condominium conversion; 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 52; and

WHEREAS, a preliminary soils and geological reconnaissance report are waived by the City Engineering pursuant to Section 144.0220 of the Municipal Code of the City of San Diego; and

WHEREAS, the requested undergrounding waiver of existing overhead facilities qualifies under the guidelines of Council Policy 600-25-Underground Conversion of Utility

Lines at Developer's Expense in that:

- a. The conversion involves a short span of overhead facility (less than a full block length) and it has been determined that such conversion is not part of a continuing effort to accomplish a total undergrounding within a specific street or area;
- b. The conversion would represent an isolated undergrounding with a minimum probability of extension in the future.

WHEREAS, on May 13, 2010, the Planning Commission of the City of San Diego approved Tentative Map No. 209827, including the waiver of the requirement to underground existing overhead utilities; and

WHEREAS, on May 26, 2010, Mr. David Waters appealed the Planning Commission decision approving Tentative Map No. 209827, including the waiver of the requirement to underground existing overhead utilities, 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; conduct a public hearing required by law implicating due process rights of individuals affected by the decision; and consider evidence at the hearing and make legal findings based on the evidence presented as required by law; and

WHEREAS, on JUL 27 2010, the City Council of the City of San Diego considered the appeal of Tentative Map No. 209827, including the waiver of the requirement to underground existing overhead utilities, and pursuant to Sections 125.0440 (tentative maps), 125.0444 (condominium conversions), and 144.0240 (undergrounding of utilities) of the Municipal Code of the City of San Diego and Subdivision Map Act Section 66428, received for its consideration written and oral presentations, evidence having been submitted, heard 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. 209827:

1. The proposed subdivision and its design or improvement are consistent with the policies, goals, and objectives of the applicable land use plan (San Diego Municipal Code section 125.0440(a) and Subdivision Map Action sections 66473.5, 66474(a), and 66474(b)). The proposed project is a subdivision of an existing 52 unit apartment complex to condominium ownership interests. There is no new construction proposed with this project and the 52 unit apartment building was consistent with the Uptown Community Plan at the time of construction. No deviations or variances are being requested with this application. Therefore, the proposed subdivision and its design or improvement are consistent with the policies, goals, and objectives of the applicable land use plan (San Diego Municipal Code section 125.0440(a) and Subdivision Map Action sections 66473.5, 66474(a) and 66474(b)).

2. The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code [LDC] (LDC section 125.0440(b)). The proposed project is a subdivision of an existing 52 unit apartment complex to condominium ownership interests. The existing development was previously approved and permitted pursuant to the zoning and development regulations at the time of construction. No deviation or variance would be requested with this application, and no construction is approved or requested with this application. Therefore, the proposed subdivision complies with the applicable zoning and development regulations of the LDC (Land Development Code section 125.0440.b).

3. The site is physically suitable for the type and density of development (San Diego Municipal Code section 125.0440(c) and Subdivision Map Act sections 66474(c) and 66474(d)). The proposed project is a subdivision of an existing 52 unit apartment complex to condominium ownership interests. There is no new construction proposed with this project and the 52 unit apartment building was consistent with the Uptown Community Plan at the time of construction. No deviations or variances are being requested with this application. Therefore, the site is physically suitable for the type and density of development (San Diego Municipal Code section 125.0440(c) and Subdivision Map Act sections 66474(c) and 66474(d)).

4. The design of the subdivision or the proposed improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat (San Diego Municipal Code section 125.0440(d) and Subdivision Map Act section 66474(e)). The proposed project is a subdivision of an existing 52 unit apartment complex to condominium ownership interests, was constructed in 1977 and no new construction is proposed. The project site is located in an urbanized area and is not located near environmentally sensitive lands or near fish and wildlife habitats. Therefore, the design of the subdivision or the proposed improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat (San Diego Municipal Code section 125.0440(d) and Subdivision Map Act section 66474(e)).

5. The design of the subdivision or the type of improvements will not be detrimental to the public health, safety, and welfare (San Diego Municipal Code section 125.0440(e) and Subdivision Map Act section 66474(f)). The proposed project is a subdivision of an existing 52 unit apartment complex to condominium ownership interests. The project has been conditioned to provide 2.5 feet of right-of-way adjacent to the project to provide for adequate public alley width, and to replace sidewalk on Robinson Avenue in an effort to improve public safety. Therefore, the design of the subdivision or the type of improvements will not be detrimental to the public health, safety, and welfare (San Diego Municipal Code section 125.0440(e) and Subdivision Map Act section 66474(f)).

6. The design of the subdivision or the type of improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision (San Diego Municipal Code section 125.0440(f) and Subdivision Map Act section 66474(g)). The proposed project is a subdivision of an existing 52 unit apartment complex to condominium ownership interests. There are no easements for public use associated with the project. Therefore, the design of the subdivision or the type of improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision (San Diego Municipal Code section 125.0440(f) and Subdivision Map Act section 66474(g)).

7. The design of the proposed subdivision provides, to the extent feasible, for future passive or natural heating and cooling opportunities (San Diego Municipal Code section 125.0440(g) and Subdivision Map Act section 66473(1)). The proposed project is a subdivision of an existing 52 unit apartment complex to condominium ownership interests. While the property has an address facing north, most of the project building have an east/west orientation and, therefore, lend themselves to maximum solar exposure. The project provides open courtyards and thereby opportunity for passive cooling and heating. Therefore, the design of the proposed subdivision provides, to the extent feasible, for future passive or natural heating and cooling opportunities (San Diego Municipal Code section 125.0440(g) and Subdivision Map Act section 66473.1).

8. 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 (Land Development Code section 125.0440(h) and State Map Act section 66412(3)). The proposed project is a subdivision of an existing 52 unit apartment complex to condominium ownership interests. The Uptown Community Plan designates the site for multifamily development. The proposed subdivision complies with the policies, goals, and objectives of the applicable land use plan. The existing development was previously approved and permitted pursuant to the zoning and development regulations at the time of construction. There is no net change in density or intensity with the conversion of apartment units to condominium ownership and therefore the project does not increase impacts to public services or fiscal or environmental resources. Therefore, 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 (Land Development Code section 125.0440(h) and State Map Act section 66412(3)).

9. **The notices required by the San Diego Municipal Code section 125.0431 have been given in the manner required (San Diego Municipal Code section 125.0444(a) and Subdivision Map Act sections 66452.17; 66427(1)).** The proposed project is a subdivision of an existing 52 unit apartment complex to condominium ownership interests. 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 all required written notifications. Therefore, the notices required by the San Diego Municipal Code section 125.0431 have been given in the manner required. (San Diego Municipal Code section 125.0444(a) and Subdivision Map Act Sections 66452.17; 66427.1).

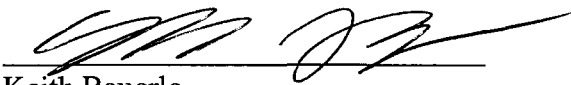
10. **The project was not financed by funds obtained from a governmental agency to provide for elderly, disabled, or low income housing (Land Development Code section 125.0444(b)).** The proposed project is a subdivision of an existing 52 unit apartment complex to condominium ownership interests. This project is privately financed and no funds were obtained from a governmental agency to provide for elderly, disabled, or low income housing. Therefore, the project was not financed by funds obtained from a governmental agency to provide for elderly, disabled, or low income housing (Land Development Code section 125.0444(b)).

11. **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 (Land Development Code section 125.0444(c)).** The proposed project is a subdivision of an existing 52 unit apartment complex to condominium ownership interests. This project was not developed to provide housing for the elderly, disabled or to provide low income housing. Therefore, 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 (Land Development Code section 125.0444(c)).

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 decision of the Planning Commission is affirmed and Tentative Map No. 209827 is granted to Park Fifth Avenue Venture, Applicant/Subdivider, subject to the attached conditions which are made a part of this resolution by this reference.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Keith Bauerle
Deputy City Attorney

KB:hm
07/09/10
Or.Dept:DSD
R-2011-49

CONDITIONS FOR TENTATIVE MAP NO. 209827
ESSEX TENTATIVE MAP - PROJECT NO. 69202

ADOPTED BY RESOLUTION NO. R- 306077 ON JUL 27 2010

GENERAL

1. This Tentative Map will expire May 13, 2013.
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 recordation of the Final Map, taxes must be paid on this property pursuant to Subdivision Map Act section 66492. To satisfy this condition, a tax certificate stating that there are no unpaid lien conditions against the subdivision must be recorded in the Office of the San Diego County Recorder.
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 the City and/or any Indemnified Parties 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 promptly notify Subdivider of any claim, action, or proceeding, or if City fails to cooperate fully in the defense, Subdivider shall not thereafter be responsible to defend, indemnify, or hold City and/or any Indemnified Parties harmless. City may participate in the defense of any claim, action, or proceeding if City both bears its own attorney's fees and costs, City defends the action in good faith, and Subdivider is not required to pay or perform any settlement unless such settlement is approved by the Subdivider.

CONDOMINIUM CONVERSION

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 Subdivision Map Act Section 66427.1(a).
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 Subdivision Map Act Section 66427.1(a)(2)(E). 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 California Civil Code sections 1941, 1941.1 and 1941.2.
10. The Subdivider shall provide the tenants of the proposed condominiums with written notification within ten days or approval of a Final Map for the proposed conversion in conformance with Subdivision Map Act section 66427.1(a)(2)(D).
11. The Subdivider shall give each tenant a notice of termination of tenancy sixty days prior to being required to vacate the property. (San Diego Municipal Code section 125.0431(a)(4)).
12. The Subdivider shall provide each of the tenants of the proposed condominiums notification of their exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to the tenant, in conformance with Subdivision Map Act section 66427.1(a)(2)(F) and San Diego Municipal Code section 125.0431(a)(5). The right shall commence on the date the subdivision public report is issued, as provided in section 11018.2 of the Business and Professions Code, and shall run for a period of not less than 90 days, unless the tenant gives prior written notice of his or her intention not to exercise the right. (San Diego Municipal Code § 125.0431(a)(5)).
13. The Subdivider shall provide a copy of the Building Conditions Report to a prospective purchaser prior to the opening of an escrow account. (San Diego Municipal Code section 144.0504)).
14. Prior to the recordation of the Final Map, the Subdivider shall demonstrate conformance with the San Diego Municipal Code provisions for building and landscape improvements (San Diego Municipal Code § 144.0507), to the satisfaction of the City Engineer. The parking requirements in San Diego Municipal Code sections 144.0507 and 142.0525(a) do not apply, since this project was deemed complete prior to the effective date of ordinance O-19505 (July 27, 2006).

AFFORDABLE HOUSING

15. Prior to the recordation of the Final Map, the Subdivider shall enter into an affordable housing agreement with the San Diego Housing Commission to provide five affordable housing units in compliance with the City's Inclusionary Affordable Housing Regulations (San Diego Municipal Code §§ 143.0301 et seq.).
16. Prior to the recordation of the Final Map, the Subdivider shall demonstrate conformance with the Municipal Code provisions for Tenant Relocation Benefits (Chapter 14, Article 4, Division 5), to the satisfaction of the Development Services Department and the Housing Commission.
17. Pursuant to City Council Policy 600-20, the Subdivider shall provide evidence to ensure that an affirmative marketing program is established.

ENGINEERING

18. Prior to recordation of the Final Map, the Subdivider shall dedicate 2.5 feet of right-of-way for the adjacent alley, satisfactory to the City Engineer.
19. The Subdivider shall underground any new services run to any new or proposed structures within the subdivision.
20. The Subdivider shall ensure that all onsite utilities serving the subdivision shall be undergrounded with the appropriate permits. The Subdivider shall provide written confirmation from applicable utilities that the undergrounding has taken place, or provide other means to assure the undergrounding, satisfactory to the City Engineer.
21. Whenever street rights-of-way are required to be dedicated, it is the responsibility of the Subdivider to provide the right-of-way free and clear of all encumbrances and prior easements. The Subdivider must secure "subordination agreements" for minor distribution facilities and/or "joint-use agreements" for major transmission facilities.
22. The Subdivider shall replace a portion of the sidewalk on Robinson Avenue, maintaining the existing sidewalk scoring pattern and preserving the any contractor's stamp, replace the alley apron at Robinson Avenue, reconstructing one alley curb ramp and installing the other alley curb ramp and replace the existing curb with curb and gutter on Robinson Avenue.
23. 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.
24. 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.

MAPPING

25. "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).
26. "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."
27. 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.

LANDSCAPING

28. 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.

29. 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.
30. 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.
31. 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.
32. 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.
33. 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.
34. 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 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 66021.
- 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.



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