

RESOLUTION NUMBER R-306218

DATE OF FINAL PASSAGE OCTOBER 12, 2010

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO GRANTING THE APPEAL AND APPROVING VARIANCE NO. 758755, COSTA VERDE SOUTH FOR THE COSTA VERDE INCLUSIONARY HOUSING ORDINANCE VARIANCE, COSTA VERDE (NORTH AND SOUTH) PROJECT - PROJECT NO. 206871.

WHEREAS, Costa Verde Developers, LLC, A California limited liability company, Owner/Permittee, filed an application with the City of San Diego for Variance No. 758755 to allow payment of inclusionary in-lieu fees at first retail sale and at the rate in effect when the tentative subdivision map application was deemed complete (known as the Costa Verde Inclusionary Housing Ordinance Variance – Project No. 206871, located at 8510-8550 Costa Verde Boulevard in the RS-1-14 zone of the University Community Plan area within the Costa Verde Specific Plan area); and

WHEREAS, on August 12, 2010, the Planning Commission of the City of San Diego (Planning Commission) considered Variance No. 758755 and pursuant to Resolution No. 4620-PC-2 voted to deny the permit; and

WHEREAS, Paul E. Robinson, Hecht Solberg Robinson Goldberg & Bagley, LLP, Attorneys for the applicant, appealed the Planning Commission decision to the City 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 matter was set for public hearing on October 12, 2010, 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 Variance No. 758755:

1. Special circumstances, unique to that development justify the grant of the variance:

Special circumstances exist in that Applicants started the process of condo conversion at a time when the Inclusionary Ordinance was in transition. The projects are not subject to the current version of the Inclusionary Ordinance, which requires that projects containing more than twenty units provide affordable units on-site (See San Diego Municipal Code §142.1306(c)). This requirement was not in effect at the time the Costa Verde projects' applications were deemed complete (See Cal. Gov't Code § 66474.2(a)).

The extraordinary size of these projects and the fact that the units are considered luxury apartments further evidences the special circumstances applicable to the Costa Verde projects. The Costa Verde projects consist of two adjacent projects each containing over 600 units. Since May of 2002, approximately 660 projects containing over 18,300 units have been approved for conversion from apartments to condominiums in the City. The average size of condo conversion projects in the City over this time period is 27 units. Less than 3 percent of those condo conversion projects are larger than 200 units. In this time period, there have only been 4 condo conversion projects that are larger than 500 units, two of which are these Costa Verde projects. This equates to less than 0.5 percent of the total condo conversion projects processed by the City consisting of over 500 units. The sheer size of the Costa Verde projects creates special circumstances that are unique to these projects, justifying the variance. The likelihood of this type of variance being applied to other projects, in the future, is remote.

2. The development would not be feasible without the variance:

Based on the decline in condominium values and the substantial financial hardship provided by the applicant and discussed below, if the entire in-lieu fee of \$2,276,858.50 for both projects (\$1,104,937.75 for South) were paid at final map, the Costa Verde projects would be rendered infeasible by substantial hardship if the Variance were not granted.

3. A specific and substantial financial hardship would occur if the variance was not granted:

The Costa Verde Projects would suffer a specific and substantial financial hardship if the Variance was not granted because the sheer size of the projects and amount of the in-lieu fee. Applicant's Attachment A to the Variance applications states it most succinctly:

The ongoing real estate depression has had a materially adverse impact on San Diego housing prices. The price of a median home in San Diego fell by 37.2 percent, from \$517,500 in November 2005, shortly after the Costa Verde projects' applications were deemed complete September 2009. The downturn has had a tremendous impact on condominium values in the project's market . . . the median price for similar units in University City has dropped from around \$500,000 in 2005 to about \$200,000 today, a roughly 40 percent decline. In addition, converted units are not likely to be sold any time soon.

Importantly, the applicant has also stated that payment of the \$1,104,937.75 in-lieu fee would cripple Applicants' cash flows, would take over 10 percent of projected maximum gross rents and over 100 percent of project net profits for an entire year. This certainly constitutes a substantial financial hardship.

4. No alternative means of compliance are available which would be more effective in attaining the purposes of this Division than the relief requested:

Based on the unique nature and immense size of the Costa Verde projects, there are no viable alternatives that would not effectively render the projects infeasible. No alternatives exist that would be more effective in attaining the purposes of the Inclusionary Housing Ordinance than the payment of the in-lieu fee of \$1,104,937.75, even when such payment is deferred until first retail sale. Since the units in question are luxury apartments, generally larger and containing additional amenities, the conversion of these units is different than the normal conversion of apartments to condominiums. Therefore, payment of an in-lieu fee at first retail sale at the amount determined at the projects' deemed complete date, would be very effective in attaining the purposes of the Inclusionary Housing Ordinance while mitigating the hardship to the developer.

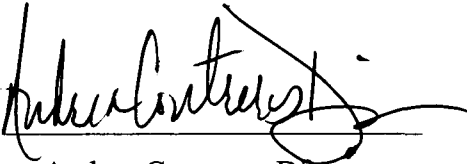
The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference; and

BE IT FURTHER RESOLVED, by the City Council of the City of San Diego, that the appeal of Paul E. Robinson, Hecht Solberg Robinson Goldberg & Bagley, LLP, Attorneys for the applicant, is granted; the decision of the Planning Commission is overruled; and Variance No. 758755 is granted to Costa Verde Developers, LLC, a California limited liability company,

Owner/Permittee, under the terms and conditions set forth in Variance No. 758755 attached hereto and made a part hereof.

APPROVED: JAN I. GOLDSMITH, City Attorney

By:

A handwritten signature in black ink, appearing to read "Andrea Contreras Dixon", written over a horizontal line.

Andrea Contreras Dixon
Deputy City Attorney

ACD:cw
10/19/10
Or.Dept:DSD
PL#2010-01039

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24000757

VARIANCE NO. 758755
COSTA VERDE SOUTH - PROJECT NO. 206871
CITY COUNCIL

This Variance Approval No. 758755 is granted by the City Council of the City of San Diego to Costa Verde Developers, LLC, a California Limited Liability Company, Owner/Permittee, pursuant to San Diego Municipal Code (SDMC) section 142.0304. The 8.6-acre site is located at 8510-8550 Costa Verde Boulevard in the RS-1-14 zone of the University Community Plan area within the Costa Verde Specific Plan area. The project site is legally described as Lots 3, 4, and 5 of Costa Verde, Map No. 12045.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to set the in-lieu fee amount at the amount required when the project was deemed complete, and to be allowed to pay that amount at the sale of the first unit, rather than at the recordation of the Final Map as approved on October 12, 2010.

Specifically, the project shall include:

- a. Variance from the Inclusionary Housing Regulations to set the in-lieu fee amount required for Tentative Map (TM) No. 216966, Project No. 71257, at the rate required when the project was deemed complete, for a total in-lieu fee of \$1,104,937.75, and to be allowed to pay that amount on the close of escrow on the first retail sale of a condominium dwelling unit sold within the property (rather than at the recordation of the final map); the in-lieu fee shall not be due and payable upon a bulk sale of the entire development to another developer or owner to be held and operated as a rental project.

STANDARD REQUIREMENTS

1. The Conditions for TM No. 216966, and Planned Residential Permit No. 91-0452, shall remain in effect except where modified by this Permit.

2. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
3. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
4. Issuance of this Permit by the City of San Diego (City) does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 (ESA) and any amendments thereto (16 U.S.C. § 1531 et seq.).
5. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

6. The Owner/Permittee shall defend, indemnify, and hold harmless the City (including its agents, officers, and employees [together, Indemnified Parties]) 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 in California Government Code sections 66499.37 or 65009. City shall promptly notify Owner/Permittee of any claim, action, or proceeding and shall cooperate fully in the defense. If the City fails to promptly notify the Owner/Permittee of any claim, action, or proceeding, or if City fails to cooperate fully in the defense, the Owner/Permittee 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. The Owner/Permittee shall not be required to pay or perform any settlement unless the settlement is approved by the Owner/Permittee.
7. The Owner/Permittee shall post a copy of each approved discretionary Permit or TM in its sales office for consideration by each prospective buyer.

INFORMATION ONLY:

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the City Council of the City of San Diego on October 12, 2010, and Resolution No. R-306218.

Permit Type/PTS Approval No.: Variance No. 758755/Project No. 206871
Date of Approval: July 22, 2010

AUTHENTICATED BY THE DEVELOPMENT SERVICES DEPARTMENT

Jeannette Temple
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

**The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.**

**Costa Verde Developers, LLC, a
California Limited Liability Company
Owner/Permittee**

By _____
NAME
TITLE

By _____
NAME
TITLE

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**