



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: January 18, 2006

REPORT NO. 06-002

ATTENTION: Council President and City Council
Docket of January 24, 2006

SUBJECT: MILAZZO CONDOMINIUMS, VESTING TENTATIVE MAP, PROJECT
NO. 43646, COUNCIL DISTRICT 1, PROCESS 5

REFERENCE: Report to the Planning Commission, Report No. PC-05-243, approved
October 13, 2005, for the approval of a Vesting Tentative Map for the
conversion of 250 residential units in the Rancho Penasquitos Community
Plan area to condominiums.

OWNER/ APPLICANT: Vista Court, Ltd., Owner (Attachment 9)
Michael Knapton, Engineer

SUMMARY

Issue: Should the City Council approve or deny the appeal of the Planning Commission's decision to approve Vesting Tentative Map No. 128329 to convert 250 residential units to condominiums on a 10.16-acre site located at 10024 Paseo Montril within the Rancho Penasquitos Community Planning area?

Staff Recommendation: DENY the appeal and APPROVE Vesting Tentative Map No. 128329.

Planning Commission Recommendation - Voted unanimously 5-0 to approve the Vesting Tentative Map, with the following recommendation:

Condition No. 10 modified to require that, prior to the recordation of the Final Map, the Subdivider shall comply with the Affordable Housing Requirements of the City's Inclusionary Housing Ordinance by paying an Inclusionary Affordable Housing In-lieu Fee of \$200,819 and also to sell six (6) one-bedroom units and four (4) two-bedroom units to, and at prices affordable to, households earning no more than 100 percent of AMI.

Community Planning Group Recommendation: The Rancho Penasquitos Community Planning Board met on October 6, 2004 and voted 9-2-1 to unconditionally recommend approval of this project (Attachment 8).

Environmental Review: The project is categorically exempt from environmental review pursuant to Article 19, Section 15301(k), Existing Facilities, of the California Environmental Quality Act (CEQA). The Environmental Exemption for this project was issued on September 3, 2004.

Fiscal Impact Statement: None with this action. All costs associated with the processing of this project are paid from a deposit account maintained by the applicant.

Code Enforcement Impact - None with this action.

Housing Impact Statement - With the proposed conversion of 250 existing apartments to condominiums, there would be a loss of 250 rental units and a gain of 250 for-sale units. The project is subject to the requirements of both the inclusionary housing ordinance and the condominium conversion ordinance. In order to meet the requirements of the inclusionary ordinance, the applicant has indicated they will pay both a reduced in-lieu fee of \$200,819 as well as provide ten (10) units of housing for sale to, and at prices affordable to, households earning no more than 100 per cent of the Average Median Income (AMI). These ten (10) units, consisting of six (6) one-bedroom units and four (4) two-bedroom units, comprise 4 percent of the total 250 units to be converted. In order to comply with the relocation requirements of the condominium conversion ordinance, a tenant survey will be completed to determine the income levels of the current tenants. Based upon the outcome of the survey, the applicant may be responsible for relocation benefits.

Water Quality Impact Statement - The project's post development runoff will be unchanged from the existing condition. Runoff will continue to be collected by a private drainage system and conveyed to the public drainage system. There is no new construction proposed with this project.

BACKGROUND

The property is located at the northwest corner of Rancho Penasquitos Boulevard and Paseo Montril in the CV-1-1 zone of the Rancho Penasquitos Community Plan area (Attachments 1 & 2). The site is developed with 250 residential units in eight buildings (Attachment 5). There are 160 one-bedroom and 90 two-bedroom units in the project. There are a total of 436 parking spaces on site within three (3) parking garages, open parking and tuck-under parking to support the project. Current criteria require only 420 on-site spaces.

The 250-unit residential project was constructed in 1986-87 when the site was zoned CR (Commercial Recreation) and permitted up to 295 units. The site is currently zoned CV-1-1. This is the Commercial Visitor zone which replaced the earlier CR zone in January 2000 with the adoption of the Land Development Code. Under current regulations, residential development

would be permitted only as a part of a mixed use (commercial/residential) project. However, the project has previously conforming rights to be maintained as outlined in Chapter 12, Article 7, Division 1, of the Land Development Code.

The surrounding neighborhood include single family residences to the west and commercial development consisting of the Rancho Villas apartments to the north, a Kinder Care and 7/11 convenience store to the south, and the Arbors – Assisted Living Facility and a gas station to the east. The neighborhood is fully developed with all street improvements and utilities existing and no new improvements are required for this application.

The project proposes a Vesting Tentative Map for the subdivision of a 10.16-acre site to convert 250 residential apartment units into condominiums on one existing lot (Attachment No. 5). Section 125.0410 of the San Diego Municipal Code (SDMC) requires a Tentative Map be processed for the subdivision of land. According to San Diego Municipal Code Section 144.0444, *Findings for Tentative Maps for Condominium Conversion*, the decision maker may approve a Tentative Map for the purposes of the conversion of residential property into a condominium project if the decision maker finds the proposed conversion complies with the requirements of the Subdivision Map Act and the San Diego Municipal Code. Municipal Code Section 125.0130 provides that a Vesting Tentative Map may be filed instead as provided by the Subdivision Map Act (Section 66498.1). Staff reviewed the proposed condominium conversion, and determined it complies with both the Subdivision Map Act and the Municipal Code.

The construction of the existing 250-unit apartment project (the “Project”) was financed with the proceeds from the sale of certain bonds (the “Bonds”) issued by the Housing Authority of the City of San Diego. In connection with the issuance of the Bonds, the Project is currently subject to the Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants between the Housing Authority of the City of San Diego, U.S. Bank Trust National Association and Vista Court Ltd, a California limited partnership (the “Regulatory Agreement”, amended July 1, 1999, Attachment 11). The Regulatory Agreement specifically allows at any time the obtaining and recording of a condominium plan and map for the project and the processing of a white report with the California Department of Real Estate. Under the Regulatory Agreement, the Project was also required to provide for occupancy by lower income tenants in at least twenty percent of the units. Under the terms of the Regulatory Agreement, this requirement expires as of July 1, 2005 or when the bonds are paid off, whichever occurs later.

San Diego Municipal Code §125.0444 (b) and (c) require that the decision maker must find that “the project was not financed by funds obtained from a governmental agency to provide for elderly, disabled, or low income housing;” and that “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.” After receiving City building permits in 1986 and 1987, the project was built. There is no mention made in any of the approved drawings or other documentation available regarding this project that identifies it as being approved by the City in order to provide low-income housing. “Project,” as used in subsections (b) and (c) refer to that development previously approved by the City. In this case, the project, as previously approved by the City, was neither financed by government agency funds nor was it approved for the purpose of providing low-income housing.

On September 15, 2005, the Planning Commission conducted a Process 4, public hearing to consider Vista Court, Ltd. and Michael Knapton's application for a Vesting Tentative Map to convert the existing 250-unit apartment complex to condominiums. The Planning Commission voted to continue the public hearing of this project to October 13, 2005 in order that the Owner's representative, Fairfield Residential, LLC, might reconsider their decision to meet the requirements of the City's Inclusionary Housing Ordinance by payment of the in-lieu alone, which was calculated at \$334,555. On October 13, 2005, the Planning Commission, after public testimony, voted unanimously, with Chairman Schultz and Commission Steele recusing, to approve the project, with a modification to Condition No. 10 to reduce the proposed in-lieu fee by approximately 40 percent to \$200,819 as well as provide ten (10) units of housing for sale to, and at prices affordable to, households earning no more than 100 percent of the Average Median Income (AMI).

On October 27, 2005, Ms. Karen Grube, a resident of Milazzo Apartments, filed an appeal of the Planning Commission's decision to approve the Vesting Tentative Map based upon new information and city-wide significance.

DISCUSSION

Ms. Karen Grube's Appeal

Ms. Karen Grube's appeal cites concern with the Planning Commission's motions of approval for the Vesting Tentative Map with the modification that the in-lieu fee be reduced by approximately 40 percent due to the Owner/Applicant's decision to provide ten (10) units of housing for sale to, and at prices affordable to, households earning no more than 100 percent of the Average Median Income (AMI). Specifically, Ms. Grube states six reasons of appeal:

1. The lack of available parking forces workmen to park illegally in fire lanes.
2. There was no plan required for any rehabilitation work so that current residents would not be forced out by the construction.
3. The offer by Fairfield Residential, LLC to offer reduced deposits at the canyon Rim Apartments to current tenants who choose to relocate there is inadequate, given the past crime history of these apartments.
4. There was no plan required to help those individuals who, like Ms. Grube, are either being required for the second time to relocate due to a condominium conversion, or else have special needs.
5. The condominium conversion will result in the removal of available rental units from the affordable housing market.
6. The condominium conversion will have a negative impact on the current condominium market.

Evaluation of Appeal Issues

Issue No. 1: The lack of available parking forces workmen to park illegally in fire lanes.

The site provides 436 parking spaces while current criteria require only 420 spaces. They have

met the requirements of the Municipal Code (SDMC § 142.0510, 142.0525 and 142.0560) with respect to the amount of parking to be provided on-site.

Issue No. 2, There was no plan required for any rehabilitation work so that current residents would not be forced out by the construction.

There is no requirement in the Municipal Code for the provision of a phasing plan or schedule for improvements to be done at a site as a condition of approval for a Tentative Map or Vesting Tentative Map.

Issue No. 3: The offer by Fairfield Residential, LLC to offer reduced deposits at the Canyon Rim Apartments to current tenants who choose to relocate there is inadequate, given the past history of crime at these apartments.

The choice of relocation with reduced deposits to Canyon Rim was made by Fairfield as an alternative to allow current tenants with children to move yet remain in the same school district as the Milazzo Apartments to minimize disruption to families with school-age families. There is no requirement in the Municipal Code for a subdivider to provide current tenants with an option to relocate to another apartment complex with a reduced deposit. The applicant's offer of reduced deposits for tenant relocation to Canyon Rim goes beyond what is required of the applicant under the Municipal Code (SDMC Chapter 14, Article 4, Division 5).

Issue No. 4: There was no plan required to help those individuals who, like Ms. Grube, are either being required for the second time to relocate due to a condominium conversion, or else have special needs.

Condition 11 of the Vesting Tentative Map resolution requires that prior to recording the Final Map, the subdivider must demonstrate conformance with the Municipal Code (SDMC Chapter 14, Article 4, Division 5) regarding Tenant Relocation Benefits to the satisfaction of the City Manager and the Housing Commission. There are no other applicable Municipal Code sections for relocation benefits or other forms of tenant assistance that the applicant can be required to fulfill.

Condition 12 states that the project is subject to a bond regulatory agreement that requires 20 percent of all units located within the project to be occupied by and affordable to persons earning no more than 80 percent of area median income until the bonds are repaid in full. It further states the applicant has agreed to comply with certain provisions of the Government Code (GC §65863.10(a)(2)) which provide that at least 12 months and 6 months prior to the termination of the Rent Restrictions for the Restricted Units a notice of the proposed termination of the Rent Restrictions be given to each affected tenant household residing in the project in a form to be agreed upon with the Housing Commission.

Condition 12 further states that as a condition of the approval of the Vesting Tentative Map and filing of the Final Map, a restriction running with the land approved by the Housing Commission (the "Rent Restriction Agreement") must be recorded against the project which will identify the fifty (50) Restricted Units by address and unit number and provide that no low-income tenant's

occupancy may be unilaterally terminated during the term of the Bond Regulatory Agreement and/or the Notice Periods. The Rent Restriction Agreement shall also provide that, while the project as a whole may be sold during the term of the Regulatory Agreement, no low-income unit in the project shall be individually sold during the term of the Regulatory Agreement. This Rent Restriction Agreement shall be binding on any subsequent owner of any of the Restricted Units. The enforceability of the Rent Restriction Agreement shall be secured by a junior deed of trust in favor of the Housing Commission.

The Vesting Tentative Map has been conditioned to provide all relocation benefits that are required by Municipal Code (SDMC Chapter 14, Article 4, Division 5). And, as previously stated in the discussion of Issue No. 3, the applicant has gone beyond the requirements of Municipal Code by offering reduced deposits to current tenants who choose to relocate to Canyon Rim Apartments, another apartment complex managed by Fairfield Residential, LLC.

Issue No. 5: The condominium conversion will result in the removal of available rental units from the affordable housing market.

The conversion will result in the elimination of fifty (50) affordable rental units, however, the applicant will pay an in-lieu fee of \$200,819 to the San Diego Housing Commission fund for the construction of affordable housing in San Diego. The Vesting Tentative Map resolution contains a condition requiring the subdivider to enter into an agreement with the San Diego Housing Commission assuring that ten (10) units are sold to eligible households at restricted prices. The applicant has met and exceeded the requirements of the Municipal Code with respect to the Inclusionary Housing Ordinance (SDMC Chapter 14, Article 2, Division 13) and the Condominium Conversion Ordinance (SDMC Chapter 14, Article 4, Division 5), a fact noted by all the Planning Commissioners before they unanimously approved the project at the October 13, 2005 hearing.

Issue No. 6, The condominium conversion will have a negative impact on the current condominium market.

The appellant states these “tiny” one and two-bedroom units are not increasing in value and would result in the lowering of adjacent condominium conversion values. There are no findings or regulations in the Municipal Code which allows for an appeal of this project based on these reasons.

CONCLUSION

Staff has reviewed the request for a Vesting Tentative Map for the subdivision of land for the conversion of 250 residential apartment units into a condominium project, and found the project is in conformance with section 125.0440 (tentative map) and 125.0444 (condo conversion) of the Municipal Code of the City of San Diego and Subdivision Map Act Section 66474 regulating Vesting Tentative Maps. Staff believes the required findings can be supported and recommended that the Planning Commission approve the project as proposed at its October 13,

2005 meeting. The applicant has agreed to pay an in-lieu fee as well as to enter into an agreement with the San Diego Housing Commission assuring that ten (10) units are sold to eligible households at restricted prices. The applicant has met and exceeded the requirements of the Municipal Code with respect to the Condominium Conversion Ordinance (Chapter 14, Article 4, Division) and Inclusionary Housing Ordinance (Chapter 14, Article 2, Division 13). The appellant's issues either address matters which are regulated by Municipal Code with which the applicant has complied, or, they address matters which are not regulated by the San Diego Municipal Code. The City Manager recommends the City Council deny the appeal and approve Vesting Tentative Map No. 128329.

ALTERNATIVES

1. Deny the appeal and approve Vesting Tentative Map No. 128329, with modifications.
2. Approve the appeal and deny Vesting Tentative Map No. 128329, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,

Gary W. Halbert
Development Services Director

Approved: Ellen Oppenheim
Deputy City Manager

HALBERT/RPT

Attachments:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Project Data Sheet
5. Vesting Tentative Map
6. Draft Map Conditions and Subdivision Resolution
7. Copy of Appeal

8. Community Planning Group Recommendation
9. Ownership Disclosure
10. Project Chronology
11. Regulatory Agreement, amended July 1, 1999
12. Regulatory Agreement, December 1, 1985

*Note: Due to the size of the attachments, the distribution will be limited to the City Council Docket binders. A copy is available for review in the Office of the City Clerk.

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