



City Council Meeting
Public Comments
September 28, 2022

Law Offices of Andrea Contreras
LAND USE | REAL ESTATE | ENVIRONMENTAL

September 26, 2022

By email only: (zbeck@escondido.org)

Mayor Paul McNamara and
Members of the City Council
c/o Zack Beck, City Clerk
City of Escondido
201 North Broadway
Escondido, CA 92025-2798

Re: Request for Waiver of Condition 11 to Project ID No.: PL21-0304
Agenda of the City Council September 6, 2022, Item No. 7

Dear Mayor and Councilmembers:

I represent Cross Real Estate Investors, LLC (“Cross”), the prospective owner and developer of a new apartment building at 1401 & 1405 S. Escondido Avenue (the “Project”). The Project will create forty-eight (48) workforce units and six (6) affordable housing units on a site with prior residential and commercial uses. On August 23, 2022, the City conditionally approved a Plot Plan for the Project. The purpose of this letter is to appeal Plot Plan Condition 11, which reads as follows:

Condition of Approval 11: **Costs of Municipal Services**. In accordance with the General Plan, the Developer shall fund all on-going operational costs of providing municipal services required for the Project, the amount of such funding shall be in accordance with the special tax levy adopted annually by the City Council based on the project density, unless another amount is approved by the City Council at the time of Project approval. Such funding shall occur through either an agreement to form or annex into a Community Facilities District (“CFD”) or the establishment of another lawful funding mechanism reasonably acceptable to the City (“Public Services Funding Agreement”). Projects that elect to annex into the Services CFD shall submit consent forms prior to the first permit issuance if they have not done so already. The provisions of the Public Services Funding Agreement shall specify any terms and limitations necessary to implement the CFD or other funding mechanism to offset the impacts to public services associated with the project. The City Manager, or City Manager’s designee, shall be authorized to approve and execute the Public Services Funding Agreement, and the Public Services Funding Agreement shall be finalized prior to the City’s issuance of any permit for the Project.

Cross appealed the Plot Plan to the Planning Commission on September 13, 2022, challenging the inclusion of Condition 11. At that hearing, the Planning Commission voted to recommend the City Council waive Condition 11. Cross respectfully requests the City Council grant the appeal and affirm the Planning Commission’s recommendation.

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The City Council Has the Authority to Waive Condition 11

Cross initially submitted a plot plan application for this Project to the City in June of 2021. Since then, construction and other project costs have increased by more than thirty-five percent (35%). Due to the affordable housing aspect of the Project, application of Condition 11 will make the Project economically infeasible. We request the City waive the Condition 11 as an incentive or concession under California's density bonus law.

The Project is entitled to three incentives under the state Density Bonus law. The breakdown of the application of density bonus and incentives is as follows:

DENSITY BONUS - 2021 (AB 2345)	
CALCULATION	
Maximum Permitted Density	30 Units
Property Size	1.17 Acres
Allowable Units at Max Density	36
Affordable Units	15% 6
Density Bonus Units	50% 18
Base Units	36
Density Bonus Units	18
Total Units	54
Market Rate Units	48
Affordable Units	6
Total Units	54
% Affordable	13.0%
Incentives	3

Density Bonus Incentive: Waiver

As is shown in the above graphic, Cross is entitled to three (3) density bonus incentives. Using one of these incentives, Cross requests the City grant the concession of waiving Condition 11 and annexation into CFD 2020-1 for the Project.

The California density bonus law directs cities to grant incentives, concessions and waivers to developers providing affordable housing projects. (Ca. Gov. Code § 65915.). The City of Escondido has complied with the state requirement in its municipal code. Escondido Municipal Code ("EMC") section 33-414(D) allows the City to grant regulatory incentives or concessions proposed by the developer that result in identifiable, financially sufficient, and actual cost reductions that contribute to the economic feasibility of a project. EMC section 33-414(E) allows the City to provide direct financial incentives in the form of a waiver of fees or dedication requirements.

When a developer requests a concession or incentive, the burden is on the City to demonstrate the concession or incentive will not result in a more affordable project. That is, the City must grant the

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concession or incentive if it cannot produce substantial evidence the project will not be more affordable with the concession or incentive. California Government Code section 65915 provides as follows:

(d)(1) An applicant for a density bonus [as requested in accordance with this subdivision] (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county **shall grant the concession or incentive** requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

(Emphasis added).

Government Code section 65915(k) directs that an incentive or concession “does not limit . . . the provision of direct financial incentives for the housing development” and further notes an applicant may request incentives such as waiving fees or costs.

During the Planning Commission hearing, the city attorney opined that Government Code section 65915(l) did not require the City to grant a financial incentive. Notably, subsection (l) refers back to subsection (k), but not to subsection (d)(1), which requires the City to make written findings before denying the requested incentives. Furthermore, Government Code section 65915(r) directs the law be interpreted liberally so as to provide the maximum number of units possible.

In 2021, the Court of Appeal determined the City must have supporting evidence to determine the requested “concession or incentive does not result in identifiable and actual cost reductions” in order to deny the request. *Schreiber v. City of Los Angeles* (2021) 69 Cal.App.5th 549. The law recognizes a presumption the concession or incentive will result in an identifiable and actual cost reduction. “By requiring the city to grant incentives unless it makes particular findings, the statute places the burden of proof on the city to overcome the presumption that incentives will result in cost reductions.” *Id.* at 556. This point was more recently affirmed for a San Diego project in *Bankers Hill 150 v. City of San Diego* (2022) at 74 Cal.App.5th 755.

Both state and local law support the City granting Cross’s request to waive Condition 11. The City is required to do so if it cannot make the findings from Government Code section 65915(d)(1).

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CFD is Inequitable

CFD No. 2020-1 was enacted to finance public services for a new single-family, large-scale master planned community subdivision at the edge of the City limits (see table below). There had never been any other development there, and extending necessary public services came with a cost. That cost was covered by CFD No. 2020-1. The City went on to require all new residential projects be included in the CFD. Cross's Project is a multi-family, workforce, infill project that is replacing existing development. At least some of the cost contemplated by CFD No. 2020-1 is already provided for in the current budget. The blanket application of CFD No. 2020-1 ignores the locational efficiencies of infill development. As shown in Table 1, the size and scale of the projects that initiated the CFD are significantly larger than Cross's project. **Cross's project represents less than 0.3% of these master-planned projects.** Further, at the Planning Commission hearing, City Staff suggested that the CFD covered different types of housing, but the CFD only addresses different densities, which places an even greater cost burden per housing unit on higher density projects when in fact large-scale, single-family projects with spread out housing are arguably more expensive to service. Finally, the CFD does not look at the costs of services for a project on the outer limits of the City versus an infill project.

Table 1

CFD PROJECTS						
CFD #	COMMUNITY NAME	YEAR	PRODUCT TYPE	DEVELOPMENT TYPE	# HOMES	SITE SIZE
2000-01	Hidden Trails	2000	For sale single-family	Greenfield	291	178 acres
2006-01	Eureka Ranch	2006	For sale single-family	Greenfield	290	107 acres
2020-2	Villages - Canopy Grove	2020	For sale single-family	Greenfield	380	120 acres
TOTAL					961	405 acres

THIS PROJECT						
CFD #	COMMUNITY NAME	YEAR	PRODUCT TYPE	DEVELOPMENT TYPE	# UNITS	SITE SIZE
	1401 & 1405 S Escondido Blvd	2022	Rental Apartments	Infill	54	1.17 acres

Cross Is Already Required to Pay Significant Fees

During the Planning Commission hearing, Commissioners mused about how items like parks and water and sewer would be paid without requiring Condition 11. Please note that Condition 10 of the Parcel Map already requires: "'Permit and Plan Checking Fees, Water and Sewer Service Fees, School Fees, Traffic Mitigation Fees, Flood Control Mitigation Fees, Park Mitigation Fees, Fire Mitigation/Cost Recovery Fees, and other fees listed in the Fee Schedule, which may be amended. Arrangements to pay these fees shall be made prior to building permit issuance to the satisfaction of the Development Services Department." The Project will pay approximately two million (\$2,000,000) in development impact fees. Furthermore, the property taxes will increase from approximately \$3,000 per years to more than \$240,000 per year.

The City has waived the annexation into the CFD in the past—most significantly to the much larger market-rate housing development on the former Palomar Hospital site. Cross's affordable housing project should

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not bear extraordinary financial burdens beyond the already significant impact fees that will be paid for the project.

Community Facilities District No. 2020-1 is Legally Unsound

On February 26, 2021, the Building Industry Association of San Diego County filed a Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief against the City of Escondido and the City Council of Escondido (“Petition”) challenging the legality of Council Resolution No. 2020-44 (“Resolution”), which establishes the requirement of future annexation into the CFD.¹ The Petition alleges the CFD was improperly formed, the Resolution and the CFD violate California state law and the California Constitution, and that the City Council acted without proper authority, among many other allegations. The lawsuit is underway, and no trial date has been set.

Cross has also learned the Council approved a sales tax increase ballot measure that will be on the November 2022 election ballot. The measure is popular and expected to pass.² The purpose of the sales tax increase is to provide a significant infusion into the budget and alleviate the need for development fees over and above the current impact fees, which are already a barrier to affordable and workforce housing. Cross has also learned BIA lawsuit has been stayed pending the outcome of the ballot measure.

Cross submits the City should not be implementing the CFD and Resolution until the lawsuit is decided. It is arbitrary and capricious to subject Cross to a requirement that is legally questionable, if not unconstitutional.

For the foregoing reasons, Cross respectfully requests the City Council waive Condition 11 for this affordable housing project.

Sincerely,



Andrea Contreras

Cc:

Andrew Firestine, Director of Development Services (by email only: afirestine@escondido.org)

Adam Finestone, City Planner (by email only: afinestone@escondido.org)

¹ *Building Industry of San Diego County v. City of Escondido, et al.*, Superior Court for the County of San Diego, Case No. 37-2021-00008423.

² <https://www.sandiegouniontribune.com/communities/north-county/escondido/story/2022-07-17/escondido-sales-tax>

Marcus & Millichap

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September 12, 2022

Mayor Paul McNamara, City Council Members, and Planning Commission
City of Escondido
201 N. Broadway
Escondido, CA 92025

Via Email

Dear Mayor, City Council and Planning Commissioners:

My name is Aaron Bove, and I am a 20+ Commercial Real Estate Broker in San Diego. I specialize in multifamily and multifamily development deals and have been fortunate to close over 450 transactions in my 20 years. My company, Marcus & Millichap, is the largest brokerage company in the country. I am the Listing Agent of the property located at 1600 S Escondido Blvd, Escondido, CA 92025 and I am thoroughly opposed to the CFD condition applied to Project PL22-0032.

The cost of this tax is considerably greater for multi-family development than for single-family detached development, therefore by imposing these special taxes, the City has impaired the ability of all future housing providers to develop much needed medium to high density housing to address the State's housing crisis, and violates the stated objectives of incentivizing this very type of development.

Many developers have removed Escondido in their search for new opportunities because of this CFD condition. Frankly, I worry for the City of Escondido and its ability to create new housing for as long as this CFD condition remains. Please remember, the city is in competition with other cities and when it is more expensive to build or develop the builders will go elsewhere.

I encourage you to vote in favor of the appeal and waive the CFD condition on this project.

Sincerely,



Aaron Bove

September 12, 2022

Mayor Paul McNamara, City Council Members, and Planning Commission
City of Escondido
201 N. Broadway
Escondido, CA 92025

Via Email

Dear Mayor, City Council and Planning Commissioners:

My name is Kamshad Raiszadeh, and I am the Owner of the property located at 1600 S Escondido Blvd, Escondido, CA 92025. I am thoroughly opposed to the CFD condition applied to Project PL22-0032.

The City of Escondido has created a significant financial barrier to achieving its own clearly-identified housing objective, thus undermining the City's attempts to comply with its RHNA obligations. The special tax should not be applied to in-fill developments, especially this development which includes several units restricted to very low income residents.

This is simply bad policy. One class of residents will be paying twice for the same level of services enjoyed by the entire community, while existing residents would not be providing additional funds for the increasing costs of the same services that they enjoy. More than that, the market rate residents of all CFD conditioned projects will have to subsidize the CFD fees on behalf of their very low income neighbors, thus increasing the market rate tenants' cost of housing.

I encourage you to vote in favor of the appeal and waive the CFD condition on this project.

Sincerely,

A handwritten signature in black ink, appearing to read "Kamshad Raiszadeh", written in a cursive style.

Kamshad Raiszadeh
Spinezone Equity Partners, LLC.

September 20, 2022

Mayor Paul McNamara, City Council Members, and Planning Commission
City of Escondido
201 N. Broadway
Escondido, CA 92025

Dear Mayor, City Council, and Planning Commissioners:

I am the owner of 220 South Citrus Avenue, in Escondido. I write to share my opposition to the CFD condition applied to Project PL22-0032, and any other infill project. I plan to develop my property into workforce housing. The possibility of this CFD condition being applied to my project may prevent that project from moving forward.

By enacting a CFD on an in-fill, workforce housing project, with very-low-income affordable units, the City has created two classes of City residents: A) ones that live at existing properties (i.e. "grandfathered in"), and B) residents of newly developed properties that pay twice as much for the same services and infrastructure that their neighbors, and all residents of Escondido, currently enjoy.

In addition to being an Escondido property owner, I also own a boutique capital placement firm (Fident Capital) that advocates for developers and their projects. Developers, contrary to much popular opinion, have a very hard time finding viable sites in San Diego County and need to work each aspect of costs to make projects pencil. The type of mechanism this CFD represents is precisely the type of cost that will lead developers to forgo opportunities in the City of Escondido. Furthermore, capital providers and downstream buyers of completed deals will view this CFD as a special tax that increases operating expense ratios, drives down returns, and lowers the assets' terminal value. At the margin, these actors will be less willing to invest. This can create funding gaps and/or make many projects infeasible. The City of Escondido must eliminate this CFD condition on all workforce, affordable projects, failure to do so will hinder its ability to create badly needed, new housing.

I encourage you to vote in favor of the appeal and waive the CFD condition on this project.

Sincerely,



Kevin Choquette
Escondido Property Owner

Submitted on Wednesday, September 28, 2022 - 9:14am

Submitted by user: Visitor

Submitted values are:

Board or Commission for Public Comment City Council

Email Serrano598@gmail.com

Council Meeting Date 09/28/2022

Item # NA

Subject Street Vendors

Position In Favor

First and Last Name Cesar Serrano

Are you an Escondido Resident? Yes

Comments

Esteemed Council:

I write to you in support of street vendors. They are not an eye sore, as some have described them; rather, they embody the entrepreneurial spirit that this nation purports to value. They are a symbol of resilience. Times are tough, and when basic needs such as affordable housing are withheld, it is only right for people to find a living where they can. Better a fruit stand than other alternatives. Some have suggested that street vendors undercut storefront profits because storefronts must pay rent and incur other costs. It is extremely unlikely that a fruit stand or any other street vendor will put a storefront out of business—they provide fundamentally different services. Suppose that they could put a storefront out of business, though: wouldn't that just be a result of the free market that the nation supposedly embraces? All of this to say, street vendors have added value to our communities and they deserve the support of our City Council. Thank you for your time.