



City Council Staff Report

Date: October 5, 2016

CONSENT CALENDAR

Subject: CONSIDERATION OF A REQUEST FOR A REHEARING OF THE CITY COUNCIL'S DENIAL OF AN APPEAL FOR AN EXTENSION OF TIME REQUEST FOR THE CRESCENDO PLANNED DEVELOPMENT DISTRICT (PDD 294); A PREVIOUSLY APPROVED PROJECT CONSISTING OF A TENTATIVE TRACT MAP (TTM 31766), AND PLANNED DEVELOPMENT DISTRICT 294 FOR THE CONSTRUCTION OF 79 HOMES LOCATED AT W. RACQUET CLUB ROAD AND VISTA GRANDE AVENUE; (CASE 5.0996/PDD 294/TTM 31766)

From: David H. Ready, City Manager

Initiated by: Department of Planning Services

SUMMARY

Per Palm Springs Municipal Code Section 2.05.120, City Council will consider granting a request for a rehearing on the City Council's action taken on September 21, 2016, to deny an appeal for an extension of time request for the Crescendo Planned Development District 294.

RECOMMENDATION:

Direct staff as appropriate.

STAFF ANALYSIS:

On September 21, 2016, the City Council conducted a public hearing to consider an appeal filed by Wessman Holdings, regarding the action of the Planning Commission on August 10, 2016, to deny a request for a one-year extension of time for the Crescendo development – a previously approved project consisting of a Tentative Tract Map (TTM 31766) and Planned Development District 294 (PD 294). The Crescendo development was originally approved by the City Council on October 17, 2007, for a 79-lot subdivision on an undeveloped 42.2-acre parcel located along West Racquet Club Drive and Vista Grande Avenue.

After reviewing and considering all of the evidence presented in connection with the appeal, including, but not limited to, the staff report, and all written and oral testimony

presented, the City Council took action and voted 4-1 (Mills voting no) to uphold the Planning Commission's action to deny the requested one-year extension of time for PD 294.

Chapter 2.05 "Appeal to City Council" of the Palm Springs Municipal Code (PSMC) regulates the manner in which all appeals to the City Council otherwise allowed by the PSMC or other ordinances are prosecuted. In accordance with Section 2.05.100 "Time for decision – Effective when" of the PSMC, the City Council's decision of an appeal shall be final and effective at the final adjournment of the meeting at which the decision is rendered, except in those cases where the City Council is authorized to grant a rehearing, in which case the City Council's decision shall be final and effective:

- (1) When the time to petition for rehearing has expired without the filing of a petition for rehearing; or
- (2) Upon the denial of a petition for rehearing.

Section 2.05.120 "Rehearing" of the PSMC states:

In those cases where the effect of a decision on appeal is to deny a permit or entitlement, an appellant may apply for a rehearing by filing with the city clerk and serving upon the other parties, within fifteen days of the date when the decision was rendered, a petition therefor. Within thirty days after the filing of such petition, the council shall grant or deny the petition, in whole or in part. Failure to act within the thirty day limit shall constitute denial of the petition.

In accordance with Section 2.05.120 of the PSMC, on September 27, 2016, a request for rehearing on the City Council's action to deny the appeal was timely filed. A copy of the request for a City Council rehearing is included as **Attachment 1**.

If City Council desires to consider the request for a rehearing on its prior action to deny the appeal, staff would be directed to schedule a public hearing for October 19, 2016, for the formal rehearing pursuant to Section 2.05.120 of the PSMC. Absent the City Council's approval of the request for rehearing and direction to schedule the public hearing for October 19, 2016, the petition for rehearing filed September 27, 2016, will be automatically deemed denied after the expiration of 30 days, on October 27, 2016. At that time, the City Council's prior action taken on September 19, 2016, denying the appeal will become final and effective.

ENVIRONMENTAL IMPACT:

The Crescendo development is considered a "project" pursuant to the terms of the California Environmental Quality Act (CEQA), and the City prepared and completed a Final Environmental Impact Report (FEIR) for the project. In accordance with CEQA, on November 7, 2007, the City Council adopted Resolution No. 22064 certifying the FEIR, adopting Statement of Overriding Considerations, and approving Planned Development District 294, Case No. 5.0996 – PD 294, Tentative Tract Map 31766. No further actions with regard to CEQA are required.

FISCAL IMPACT:

None.

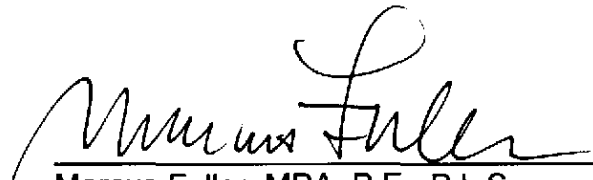
NOTIFICATION:

To the extent the City Council grants the request for rehearing and directs staff to schedule a public hearing for October 19, 2016, to consider the rehearing, a public hearing notice will be mailed to property owners within a 500-foot radius of the project site, a public hearing notice will be published in the local newspaper, and the surrounding neighborhood organizations will be notified.

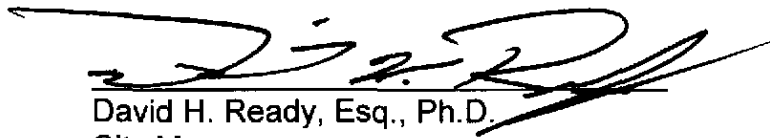
SUBMITTED:



Flinn Fagg, AICP
Director of Planning Services



Marcus Fuller, MPA, P.E., P.L.S.
Assistant City Manager/City Engineer



David H. Ready, Esq., Ph.D.
City Manager

Attachments:

1. September 27, 2016, request for rehearing

ATTACHMENT 1

Emily Perri Hemphill

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September 27, 2016

Flinn Fagg
City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92264

RE: Request for rehearing—Crescendo PDD 294

Dear Mr. Fagg:

This office represents Wessman Holdings. Pursuant to Palm Springs Municipal Code Section 2.05.120, please accept this letter as my client's formal request for a rehearing of the action taken by the Palm Springs City Council on September 21, 2016 with regard to the denial of an extension of PDD 294 for the Crescendo Project.

FACTS

PDD 294 and Tentative Tract Map 31766 (the "Map") were approved in 2007. Concurrent with the adoption of those entitlements, the City approved the project's Environmental Impact Report (the "EIR"), and that EIR was challenged by a group of neighbors calling themselves the Friends of the Desert Mountains. That lawsuit was ultimately settled, via a three party settlement agreement between the Petitioner, the City and Wessman, dated May 29, 2008 (the "Settlement Agreement.")

Under the terms of the Settlement Agreement, Wessman made certain concessions to the Petitioners, namely, the elimination of rock crushing on the site, and the promise to pursue permission from the Tramway Authority for use of Tramway for hauling of material to and from the Crescendo site. The Settlement Agreement also required Wessman to include, in the architecture for the Project, a variety of architectural styles, prohibited two story units along the Project perimeter or adjacent to other two story units, and provided that no more than 25% of all units may have a second story.

In the context of that Settlement Agreement, the City agreed that the term of both the Map and the PD would be extended for an additional three years, and that such extension was in addition to any extensions that might be granted by the State. Since that time, the State recognized the severe economic downturn that occurred and passed several pieces of legislation over the course of several years, each of which extended the life of the Map, and each of which provided it was in addition to any extensions granted by the City. As a result of those State extensions and the Settlement Agreement extension, the Map remains valid until 2019. This has been confirmed by both the City Attorney and City Staff.

When the City approved the Map and the PD, it took the unusual step of drafting only one set of conditions for both entitlements, rather than a set of conditions for

the Map and separate set of conditions for the PD. Among those conditions, was a requirement that the Map could not be finalized until the PD was finalized. When first approved, this was not problematic as the life of the Map and the PD were co-extensive. When the Council denied extension of the PD on September 21, it essentially terminated the Map, contrary to State law and the Settlement Agreement, as without the PD, the Map can never be finalized.

BASIS FOR APPEAL

1. In its review of the PD, the City focused on issues related to grading design, which is established by the Map and not by the PD.

The purpose of the PD is to establish architectural design of the homes, and to define setbacks and development standards within the lots established by the Map. Yet in denying the extension of the PD, the Council did not even look at those issues. Rather, they objected to the grading design and the "terracing" it included, claiming that this project would not be approved today.

Grading is established by the Map, not the PD. Therefore, by denying the extension of the PD because they don't like the grading, the City is attempting to force a new condition on the Map. Such an action is a violation of the Subdivision Map Act ("SMA") which provides that the city may not impose new or different conditions on a final map than those that were in effect at the time the tentative map was approved. (Gov. Code 66473, 66474.1.)

Suggesting that the City's policies or design standards are different today and that justifies their action cannot be used to defeat the Map, directly or indirectly as the City is attempting to do by denying the PD. There is abundant case law affirming that the SMA does not permit a City to impose changes on a tentative Map, whether those changes be to city codes or aesthetic philosophy. Even a change in the General Plan would not affect a tentative map as all tentative maps must be evaluated under the General Plan that existed at the time the tentative map was approved. (Youngblood v. Board of Supervisors (1978) 22 C3d 644, Great W. Sav. & Loan v. City of Los Angeles (1973) 31 CA3 403.)

2. Because the City tied the Map to the final PD, elimination of the preliminary PD or requiring a change to the preliminary PD violates the SMA.

As noted above, the SMA prohibits the City from imposing new or different conditions on a final map other than those that were in effect at the time the tentative Map was approved. The condition that was imposed on the Map in this case, therefore, was the preliminary PD that was approved concurrently with the Map, itself. By forcing changes to the PD or eliminating the PD, the City is, in this case, forcing changes to the Map conditions in violation of the SMA. Changes which may occur after the tentative map was approved do not, by law, apply to the final map.

3. The City does not have the right, under State law and the terms of the Settlement Agreement to shorten the life of Map, and by eliminating the PD but not eliminating the condition for the PD from the Map, the City makes the Map a nullity.

The life of a tentative map is established by State law, and the City does not have the authority to override State law. In this case, the life of the Map is extended 3 more years beyond that given under State law as a result of the Settlement Agreement. Therefore, the City may not impose or modify a condition which, in effect, terminates the Map without violating the SMA and breaching its obligations under the Settlement Agreement.

4. Claims of CEQA issues are invalid as, by law, the EIR is final and presumed correct and there have been no changes which were not analyzed or which would increase impacts beyond those analyzed.

Commenters during the hearing attempted to claim that the PD extension should be denied based on the need for further CEQA review, however, such claim is in violation of CEQA which provides that once an EIR is certified and becomes final, it is presumed correct for all purposes, and the City may not require further review unless there are circumstances which have changed that trigger new impacts which could not be anticipated and which increase the impacts beyond those which were analyzed.

When the EIR for the project was done, the area was presumed to be bighorn sheep habitat, and mitigation measures appropriate to those circumstances were included in the project. The presence of sheep at or near the site was already considered and does not permit the City to require further review under CEQA.

In terms of traffic and other impacts, Crescendo, Boulders and Desert Palisades all did EIR's which considered cumulative impacts of known projects and full build out to the General Plan. Since that time, the Shadow Rock project, which was included as an anticipated project, has terminated, and therefore, cumulative impacts are less than anticipated in the EIR's.

Further, traffic issues which arose in the course of the Desert Palisades project were largely resolved by the developer modifying his construction traffic access such that construction vehicles used Tramway, where previously, they were using surface streets through the adjacent neighborhood. In the case of Crescendo, as part of the Settlement Agreement, Wessman has already arranged for and agreed to use Tramway for construction traffic thereby further reducing the traffic impacts to the adjacent neighborhood as analyzed in the EIR. Therefore, there is no evidence that circumstances exist which would permit the City to require further environmental review of Crescendo.

5. Wessman was misled to its detriment by direction of staff in preparing for the final map.

Wessman advised City Staff that we were prepared to finalize the Map, and were told by staff that by paying 150% of the required fees, the Map would be fast tracked to the City Council for final approval. Wessman paid the excess fees, and performed all other acts required to obtain the map, including purchasing bonds and moving forward with the annexation in the CFD. It was not until all of those actions were done, and those costs incurred that staff refused to put the Map forward for approval because of the PD condition. Had we been advised of this fact, we would not have incurred the extra fees for the map processing, we would not have paid the bond premium and we would not have annexed into the CFD thereby raising our taxes until we actually had the ability to finalize the Map.

6. Good cause exists for the extension of the PD.

If the City fails to extend the PD, it effectively terminates the Map and violates the SMA and the Settlement Agreement. Therefore, good cause exists to extend the PD and allow the developer the State given benefits of the SMA and avoid liability for the City. Further, the State clearly recognized the economic circumstances that justified numerous extensions of the Map, and those circumstances are equally applicable to the PD under these circumstances. Further, the delay in construction at Crescendo assured the neighbors that construction on Crescendo and Desert Palisades did not occur

simultaneously, thereby decreasing the impacts on the neighbors that would have otherwise occurred.

While we recognize that the personalities on the Council are different from those that approved the PD originally, a change in personalities that dictates a change in philosophy does not justify denying the developer the protections afforded him by the law. In fact, the SMA's prohibition against changed or new conditions on a map are specifically designed to afford a developer protection that his investment is not wasted because personnel changes bring changes in philosophy. In essence, the SMA is designed to prevent precisely what is happening in this case with the denial of the PD extension and its effect on termination of the Map. We therefore request a rehearing on this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Emily Perri Hemphill".

Emily Perri Hemphill

cc: Michael Braun
Doug Holland