

MEMORANDUM

TO: Alex Hernandez, Brandywine Homes
FROM: Hans Van Ligten, Rutan & Tucker, LLP
DATE: February 23, 2022
RE: Carson 175 Unit Project -- Applicable Conditions of Approval for Final Map

Issue: The City has recently asked Brandywine to pay impact fees in excess of those indicated in the Resolution approving the tentative map for the project. To support this conclusion, staff has cited to language in a City Council resolution approving zoning and specific plan changes applicable to the project. However, the Planning Commission approved the tentative map and imposed the map condition to require payment of an impact fee in a set amount, which was the topic of specific discussion prior to project approval.

Brief Answer: The City's Planning Commission imposed Condition No. 2 upon Vesting Tentative Map No. 78226 requiring payment of the Interim Development Impact Fee ("IDIF") in the amount of \$14,000 per dwelling unit. That approval was *not* appealed to the City Council and became final, as provided by the City's Municipal Code. The language in Condition No. 2 did not provide for any adjustment to the per unit amount of the Interim Impact Fee. Therefore, the only operative condition requiring payment sets the amount of the Interim Impact Fee at \$14,000.

Analysis: The City's demand for payment of an increased IDIF is inconsistent with the clear language of the Conditions of Approval to VTM No. 78226, as attached to Planning Commission Resolution No. 19-2669. At the conclusion of the public hearing on June 25, 2019, the Planning Commission "*approved DOR No. 1695-18, CUP No. 1040-18 and VTTM No. 78226 subject to specified conditions of approval attached to that resolution*" (City Council Res. No. 19-345, p. 1, at bottom of page.)

Notably, the City Council's Resolution did not purport to review or revise the Planning Commission's approval of the VTM, DOR, or CUP. Of course, that was correct because those approvals were not before the City Council and had in fact already become final.

Under the Subdivision Map Act, an action challenging a map condition must be brought within 90 days of approval. (Gov. Code § 66499.37) Thereafter "all persons" are barred from challenging or asserting an invalidity of any condition of a map. Here, this provision of State law prevents the City from contesting the validity of its own Planning Commission's Condition of Approval No. 2, which sets the IDIF at a fixed amount of \$14,000. Any provision in the

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subsequent City Council resolution relating to the conditions of approval of the VTM are irrelevant, as the VTM was expressly not before the City Council.