



Legislation Details (With Text)

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Title: CONSIDER APPROVING RESOLUTION NO. 22-084 REJECTING THE PROTEST OF PAYMENT OF INTERIM DEVELOPMENT IMPACT FEES BY BRANDYWINE HOMES FOR THE "CARSON LANDING" DEVELOPMENT PROJECT (CITY COUNCIL)

Sponsors:

Indexes:

Code sections:

Attachments: 1. Exhibit No. 1 - IDIF Ordinance, 2. Exhibit No. 2 - DIF Protest Notice (Brandywine 03.09.22), 3. Exhibit No. 3 - Rutan & Tucker, LLP Memo_02.23.22, 4. Exhibit No. 4 - Brandywine DIF Payment Protest Resolution, 5. Exhibit No. 5 - PC Resolution No. 19-2669, 6. Exhibit No. 6 - CC Resolution No. 19-145, 7. Exhibit No. 7 - Building Permit Issuance, 8. Exhibit No. 8 - Fee Schedule Resolution and CCCI Index, 9. Exhibit No. 9 - Webserver Screenshot of Uploaded Documents for IDIF Webpage

Date	Ver.	Action By	Action	Result
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Report to Mayor and City Council

Tuesday, May 03, 2022

Discussion

SUBJECT:

CONSIDER APPROVING RESOLUTION NO. 22-084 REJECTING THE PROTEST OF PAYMENT OF INTERIM DEVELOPMENT IMPACT FEES BY BRANDYWINE HOMES FOR THE "CARSON LANDING" DEVELOPMENT PROJECT (CITY COUNCIL)

I. SUMMARY

Brandywine Homes ("Brandywine") is protesting the Interim Development Impact Fees ("IDIF") imposed on their Carson Landing 175 residential unit development at the northeast corner of S. Central Avenue and E. Victoria Street. Specifically, the amount under dispute is the annual IDIF adjustment that takes into effect every July 1. Brandywine is asserting that the Carson Landing's IDIF rate is fixed at \$14,000 per unit as referenced in their Planning Commission conditions of approval for their vesting tentative tract map.

The City's Interim Development Impact Fee Ordinance ("IDIF Ordinance" or "CMC Section 11100 et. seq.") (Exhibit No. 1) states that IDIF shall be calculated and paid prior to issuance of building permit. Brandywine paid their IDIF during FY 21-22. The IDIF for residential developments (all other category) for FY 21-22 is \$15,087.23 per unit.

Therefore, the IDIF amount currently under dispute is \$1,087.23 per unit or \$70,669.95 for the first sixty-five units of IDIF paid by Brandywine. At project completion, however, Carson Landing will have a total of 175 units, or 110 additional units. Brandywine's Protest Notice (Exhibit No. 2) stated that disputed adjustment amounts would carry over to all IDIF payments, which would include the remaining 110 units. This could be a reduction of an additional \$120,000 to \$150,000 in IDIF revenue depending on when IDIF payments are actually made by Brandywine at the time or prior to issuance of building permits. Therefore, the total potential IDIF amount under dispute is approximately \$200,000.

IDIF Ordinance Section 11902 (also same as CMC 11902) provides a process for a developer to submit fees under protest to allow for an administrative hearing on the protest. To meet this requirement, Brandywine took the following required actions: (1) Tendered the required IDIF amounts under dispute, (2) Provided notice to the City, and (3) Provided the legal theory to justify their position (Exhibit No. 3). Staff and the City Attorney's Office have thoroughly reviewed materials submitted by Brandywine and their legal Counsel Rutan & Tucker LLP and have concluded that the protest lacks timeliness and merit. Therefore, staff is recommending the adoption of Resolution No. 22-084 (Exhibit No. 4) to reject Brandywine's protest ("Exhibit No. 4A; the "Protest").

II. RECOMMENDATION

1. **OPEN** the public hearing, **TAKE** public testimony, and **CLOSE** the public hearing;
2. **WAIVE** further reading and **ADOPT** Resolution No. 22-084 "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, REJECTING THE PROTEST OF PAYMENT OF INTERIM DEVELOPMENT IMPACT FEES BY BRANDYWINE HOMES FOR THE "CARSON LANDING" DEVELOPMENT PROJECT"

III. ALTERNATIVES

1. TAKE another action the City Council deems appropriate, subject to the requirements of applicable law.

IV. BACKGROUND

On June 25, 2019, the Carson Planning Commission adopted Resolution No. 19-2669 (Exhibit No. 5), approving Site Plan and Design Review No. 1695-18, Conditional Use Permit No. 1040-18, and Vesting Tentative Tract Map No. 78226 (subject to City Council approval of Specific Plan Amendment No. 4-93 Revision 4 by the City Council as stated in Section 11 of the resolution) and recommending to the City Council adoption of Specific Plan Amendment No. 4-93 Revision 4 and Approval of Mitigated Negative Declaration, for the Development of a 175-Unit Residential Condominium Project on an 8.07-acre project site located at the northeast corner of S. Central Avenue and E. Victoria Street, now known as the "Carson Landing" project ("Project"). The IDIF condition (Condition No. 2) in Planning Commission Resolution No. 19-2669 reads as follows:

"On April 16, 2019, the City Council adopted Ordinance No. 19-1931 to implement the City's Interim Development Impact Fee ("IDIF") Program. In accordance with this IDIF

program, the applicant, property owner, and/ or successor to whom these project entitlements are assigned ("Developer"), shall be responsible for payment of one-time impact fees of \$14,000 per dwelling unit prior to issuance of building permit. The Project contemplates a 175-unit residential condominium project. Based on the number of proposed dwelling units of the Project, Developer will be responsible for development impact fees in the amount of \$2,450,000 (DIF Amount), provided that if the Project increases or decreases in size, the DIF Amount will be adjusted accordingly at the same rate. No building permits shall be issued prior to the full payment (per phase of development) of the DIF Amount. See the following City webpage for additional information:

<http://ci.carson.ca.us/communitydevelopment/IDIFProgram.aspx>

On August 6, 2019, the City Council adopted Resolution No. 19-145 (Exhibit No. 6), approving Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program and adopting Specific Plan No. 4-93 Amendment No. 4 for the Project, subject to the conditions of approval attached to the City Council resolution to the extent applicable (collectively with Planning Commission Resolution No. 19-2669, the "Project Entitlements"). The Project Entitlements were subsequently transferred and assigned to Brandywine. The IDIF condition (Condition No. 2) in City Council Resolution No. 19-145 reads as follows:

"City adopted Ordinance No. 19-1931 to implement the City's Interim Development Impact Fee ("IDIF") Program. In accordance with this IDIF program, the applicant, property owner, and/ or successor to whom these project entitlements are assigned ("Developer"), shall be responsible for payment of one-time impact fees in effect at the time of issuance of building permits currently \$14,000 per dwelling unit prior to issuance of building permit.

The Project contemplates a 175 -unit residential condominium project. Based on the number of proposed dwelling units of the Project, Developer will be responsible for development impact fees in the amount of \$ 2,450,000 (DIF Amount), provided that if the Project increases or decreases in size, the DIF Amount will be adjusted accordingly at the same rate. No building permits shall be issued prior to the full payment (per phase of development) of the DIF Amount. See the following City webpage for additional information;

<http://ci.carson.ca.us/communitydevelopment/IDIFProgram.aspx>

Since Brandywine's project approval, the IDIF rate has been adjusted twice pursuant to Section 11500 of the IDIF Ordinance, which provides that the IFID amounts shall increase annually every July 1st based on the California Cost of Construction Index ("CCCI"). On July 1, 2020, the IDIF rate increased by 5.00% to \$14,700 per residential development unit, and on July 1, 2021, the IDIF rate increase by 2.63% to \$15,087.23 per residential unit. Earlier this fiscal year, Brandywine began pulling permits for the Carson Landing project and provided IDIF payments to the City at a rate of \$14,000 per unit. City staff informed Brandywine that the payments due to the City pursuant to the IDIF Ordinance was \$15,087.23 per unit, which is the current rate for fiscal year 21-22.

The communications between City staff and Brandywine later involved the parties'

respective legal counsels and continued with no resolution. On March 9, 2022, Brandywine submitted the Protest to the City and tendered the disputed IDIF amounts (i.e. \$1,087.23 per unit) for sixty-five (65) units. Of the sixty-five (65) units, forty-four (44) building permits were issued between December 28, 2021 to February 15, 2022 (Exhibit No. 7). The Protest Notice stated that it shall apply to all payments of IDIF for building permits to be issued related to the Project, which would include the 110 outstanding unissued building permits. IDIF Ordinance Section 11902 provides that the City Council consider the protest at a public hearing within sixty (60) days after it is filed, and the decision of the City Council shall be final.

Analysis

Tonight's recommended actions are to: (1) hold the public hearing to take testimony on the matter, including from Brandywine or their legal counsel if they see fit to do so: and (2) adopt Resolution No. 22-084. Adoption of Resolution No. 22-084 would reject Brandywine's Protest based on the findings set forth in the resolution, which are based on/consistent with staff's discussion and analysis as detailed below, and which are supported by substantial evidence in the record (including, without limitation, the staff report and attachments, and the Protest):

- **Timeliness.** CMC 11901 provides that any protest be filed at the time of the approval or conditional approval for the development when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved. The tentative map for the Project was conditionally approved effective August 6, 2019. Accordingly, the Protest was required to have been filed at that time in order to be timely. Because the Protest was not filed at that time, and was instead filed on March 9, 2022, the Protest was not timely.
- **Merit.** Even if the Protest were timely, it would lack merit. The basis for Brandywine's Protest is that Planning Commission Resolution No. 19-2669 specified an IDIF amount of \$14,000 per dwelling unit (or \$2,450,000 total when the \$14,000 per unit figure is multiplied by the 175 dwelling units included in the Project) for the Project, and that any higher rate the City requires or purports to require Brandywine to pay is unjustified and is the subject of the Protest.

However, the IDIF payment requirement for the Project was/is imposed pursuant to the City's IDIF Ordinance, which provides, at Section 11504, that IDIF "shall be calculated and paid prior to issuance of the building permit" (unless the Council authorizes payment of specified fees to be deferred to a later date, which is not the case here). Per CMC 11500, the IDIF amounts increase annually on July 1st of each year based on the State of California Construction Cost Index increase for the previous calendar year as determined on March 1st of each year. Such increases occurred on July 1, 2020 (increase of 5.00%), and July 1, 2021 (increase of 2.63%) from the base year set under City's Fee Schedule Resolution No. 19-068 (Exhibit No. 8).

The conditions of approval of the Project Entitlements related to IDIF made it clear that they were imposed pursuant to the City's IDIF Ordinance. Although Condition of

Approval No. 2 of Planning Commission Resolution No. 19-2669 does not specifically state that the applicable rates would be the rates payable at the time of issuance of building permits, it does expressly cite to the IDIF Ordinance, stating that the DIF payment requirement is imposed “in accordance with the IDIF program,” and it contains the following reference: “See the following City webpage for additional information:

[<http://ci.carson.ca.us/communitydevelopment/IDIFProgram.aspx>](http://ci.carson.ca.us/communitydevelopment/IDIFProgram.aspx)”

The linked webpage contains and at all relevant times has contained the City’s IDIF Ordinance, which includes the aforementioned provision of CMC Section 11504 stating that IDIF “shall be calculated and paid prior to issuance of the building permit.” The IDIF Ordinance was uploaded to the webpage on June 11, 2019, 14 days prior to the date of the Planning Commission’s hearing on the Project and adoption of Resolution No. 19-2669 (Exhibit No. 9).

Accordingly, although said condition of approval could have been worded more clearly, it sufficed to establish and convey its intended effect of implementing the requirement of the IDIF Ordinance, and to the extent it did not, it would be invalid as conflicting with the requirement of the IDIF Ordinance, which would apply even absent the condition.

Additionally, Condition of Approval No. 2 of City Council Resolution No. 19-145 contained clearer language, expressly stating that the Developer shall be responsible for payment of IDIF “in effect at the time of issuance of building permits currently \$14,000...” No objection to the clarified language was made at the Council hearing on the Project (immediately following which Council Resolution No. 19-145 was adopted), and no legal challenge was filed to the Project Entitlements or any of them.

As of the date of this Resolution, building permits have paid DIF for 65 units of which 44 building permits have been issued for the Project’s 175 dwelling units, and those building permits were all issued after July 1, 2021. Accordingly, the applicable IDIF amount for them is the increased rates in effect as of July 1, 2021, at \$15,087.23 per dwelling unit, and not the \$14,000 per dwelling unit amount that was in effect as of the date the Project Entitlements as is contended in the Protest. Staff has sought to impose the IDIF amount in effect as of July 1, 2021 for the aforementioned building permits, which is the correct amount for said building permits. Future building permits issued for the Project will be subject to payment of IDIF at the amounts in effect as of the time of issuance of the building permits.

Adoption of Resolution No. 22-084 would reject the Protest, requiring Brandywine to pay the applicable IDIF amounts in effect at the time of issuance of the applicable building permits for the project.

V. FISCAL IMPACT

The IDIF amount currently under dispute is a total of \$70,669.95. The disputed amount is \$1,087.23 per unit for first sixty-five units. However, the Carson Landing project at completion will have a total of 175 units, or 110 additional units. Staff estimates that the amount that would be disputed for the additional 110 units would range from \$120,000 to \$150,000 depending on when IDIF payments are actually made by Brandywine at the time

or prior to issuance of building permits. Therefore, the total potential IDIF amount under dispute is approximately \$200,000.

VI. EXHIBITS

1. IDIF Ordinance (pgs. 7-29)
2. DIF Protest Notice, dated March 9, 2022 (pg. 30)
3. Rutan & Tucker, LLP Memo, dated February 23, 2022 (pgs. 31-32)
4. Proposed Resolution No. 22-084 (pgs. 33-50)
5. PC Resolution No. 19-2669 (pgs. 51-83)
6. CC Resolution No. 19-145 (pgs. 84-113)
7. Building Permit Issuance Records (pg. 114)
8. City's Fee Schedule Resolution No. 19-068 and Annual California Cost of Construction Index Adjustments (pgs. 115-123)
9. Webserver Screenshot of Uploaded Documents for IDIF Webpage (pg. 124)

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