



CITY OF ESCONDIDO
Planning Division
 201 North Broadway
 Escondido, CA 92025-2798
 (760) 839-4671
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**APPEAL OF ADMINISTRATIVE DECISION
 TO PLANNING COMMISSION**

FOR INTERNAL USE ONLY	
Case No.:	PL22-0032
Date Submitted:	8-8-2022
Project Planner:	JPAL
Fees Paid:	✓
Receipt No.:	
Date Deemed Complete:	
Planning Commission Hearing Date:	9-13-22

APPLICANT/CONTACT PERSON/APELLANT

Name (Print): Fieldxstudio, Inc.
 Address: 2033 San Elijo Ave #643
 City, State, Zip: Cardiff by the Sea, CA 92007
 Phone: 858-752-9212
 Fax: _____
 E-mail: scott@fieldxstudio.com
 Signature: [Signature]
 Date: 8/5/2022

OWNER (If multiple owners/addresses, attach additional sheets as necessary.)

Name (Print): Spinezone Equity Partners LLC
 Address: 1600 S. Escondido Blvd
 City, State, Zip: Escondido, CA 92025
 Phone: 858-337-6909
 Fax: _____
 E-mail: kam@spinezone.com
 Signature: [Signature]
 Date: 8/8/2022 | 11:10:15 PDT

Description of Administrative Decision Being Appealed: As detailed in Attachment 1, Applicant is appealing the City's conditional approval of the Major Plot Plan and Density Bonus to develop 48 apartment units and 58 surface parking spaces at 1600 S. Escondido Boulevard ("Project"). Specifically, Applicant appeals from the City condition requiring Applicant to fund all on-going operational costs of municipal services associated with the Project via (a) annexation into Community Facilities District ("CFD") 2020-1; or (b) establishment of another lawful funding mechanism. Applicant requests an incentive/concession waiving this condition, as permitted by State Density Bonus Law.

Related Case No. (if applicable): Planning Case No. PL22-0032

Site Address: 1600 S. Escondido Boulevard

Assessor Parcel Number: APN 236-460-16-00

Submittal Requirements:

As determined by the Director of Community Development, additional information may be required to make a complete application. This will be determined on a case-by-case basis.

1. Completed and signed Appeal Application form (a letter of permission, signed by the owner may be substituted for the owner's signature on the application form)
2. Plat map showing all properties within 500 feet of the subject property with the 500-foot radius drawn (see attached)
3. Typewritten list of all current Assessor Parcel Numbers within the 500-foot radius (see attached)
4. Plans as needed on a case-by-case basis
5. Photographs of the site and the adjacent property, mounted on 8½" x 11" paper and labeled (if applicable)
6. Fees

The Administrative Decision shall be final unless a written appeal to the Planning Commission and fee are filed in accordance with Section 33-1304 of the Zoning Code.

ATTACHMENT 1

Allen Matkins

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Direct Dial: 6192351510 File Number: 392846.00002/4869-0139-4221.3

August 8, 2022

Mayor Paul MacNamara and Escondido City Council
City of Escondido
201 North Broadway
Escondido, CA 92025-2798

**Re: Appeal of Administrative Decision Conditionally Approving
Project No. PL22-0032; Request for Density Bonus Incentive**

Dear Honorable Mayor MacNamara and esteemed Councilmembers:

This firm represents KirE Builders, Inc. ("KirE"), a prospective purchaser and developer of the real property located at 1600 S. Escondido Boulevard, in Escondido, CA (APN No. 236-460-16-00) ("Property"). We write this letter in support of the Appeal of Administrative Decision ("Appeal") filed by FieldXStudio ("Applicant") for the above-referenced project.

On July 28, 2022, the City conditionally approved a Major Plot Plan and Density Bonus to develop 48 apartment units and 58 surface parking spaces at 1600 South Escondido Boulevard, in Escondido, CA (the "Project"). The Conditions of Approval for the Project require Applicant to fund all on-going operational costs of providing municipal services required for the Project through either (1) an agreement to form or annex into a Community Facilities District, or (2) the establishment of another lawful funding mechanism reasonably acceptable to the City. The Conditions of Approval specifically provide that Applicant will meet this requirement through annexation into the Citywide Community Facilities District ("CFD 2020-1").

By this appeal, Applicant requests that the City approve a Density Bonus concession waiving the requirement that Applicant "fund all on-going operational costs of providing municipal services required for the Project," via annexation into CFD 2020-1 or otherwise.

A. Density Bonus Incentives and Concessions

Under State Density Bonus Law, a developer who agrees to include a specified percentage of affordable housing in a project is entitled to a density bonus, plus incentives and concessions intended to reduce the costs of building projects with affordable housing. (Gov. Code § 65915(d).) Here, the Project will provide five affordable units (15% of base density) for very low-income households and, for that reason, Applicant is entitled to three incentives or concessions under State Density Bonus Law and the Escondido Municipal Code. (See Gov. Code § 65915(d)(2)(C); EMC §

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33-1414(a)(1)(A), Table E.) Incentives or concessions may include any “regulatory incentives or concessions proposed by the developer or the [local agency] that result in identifiable and actual cost reductions to provide for affordable housing costs.” (Gov. Code § 65915(k)(3).) Direct financial incentives (e.g., the waiver of fees or dedication requirements) are permitted. (Gov. Code § 65915(l); EMC 33-1414(a)(2)(E).)

Under State Density Bonus Law, local agencies have limited discretion to deny requested concessions or incentives. Specifically, Government Code section 65915(d)(1) provides that a local agency “shall grant the concession or incentive requested by the applicant” unless the local agency 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 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.

Importantly, the applicant “is not required to establish that cost reductions result.” (*Schreiber v. City of Los Angeles* (2021) 69 Cal.App.5th 549, 555.) Instead, the local agency “shall bear the burden of proof for the denial of a requested concession or incentive.” (Gov. Code § 65915(d)(4).) “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.” (*Schreiber, supra*, 69 Cal.App.5th at 556.) Here, the burden clearly falls on the City to support and make a written finding to deny the concession. In other circumstances where development regulations or conditions are implicated in a concession or incentive request, there can be debate about whether the requested concession would actually reduce costs for a project providing affordable housing. Here, that question is easily answered in the affirmative.

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B. Elimination of the CFD 2020-1 Annexation Requirement Will Reduce Costs Associated With the Project, and No Other Grounds Exist to Deny the Requested Concession

CFD 2020-1 was formed on May 13, 2020 as part of the City's efforts to fund municipal services associated with new residential development. In furtherance of this goal, each new residential unit permitted after May 13, 2020 must be annexed into CFD 2020-1 and pay a special annual tax or, alternatively, provide an alternate funding mechanism to offset the development's impact to municipal services.

Here, Applicant requests that the City grant a Density Bonus concession waiving the requirement that the Project be annexed into CFD 2020-1 or provide an alternative funding mechanism. As you are likely aware, the creation of CFD No. 2020-1 was initially driven by the City's approval of a single-family home project planned for land that had previously been a golf course. The CFD is thus intended to cover the costs of extending municipal services to parts of the City where they were not previously needed. By contrast, this Project is an infill project that is replacing existing commercial development. As a result, at least some of the costs that would be covered by CFD No. 2020-1 are already provided for in the current budget. Still, the cost impacts are unknown, but likely to be tens of thousands of dollars annually for the Project. For the affordable units in the Project, where rents are capped at 30% of 50% of area median income, the annual CFD expense may approach the monthly rent that can be charged. For the market-rate units, some or all of the CFD expense will necessarily be passed onto residents, thereby increasing the cost of housing for those units and pushing them out of reach for some tenants.

Even with the exact amount levied against the Project still to be determined, elimination of such a tax would unquestionably reduce costs associated with the Project, and thereby assist the developer as it strives to provide affordable housing in the City. There is no evidence that elimination of this requirement would have a specific, adverse impact on public health and safety or on any real property that is listed in the California Register of Historical Resources; nor is there evidence that granting such a concession would be contrary to state or federal law. Under these circumstances, approval of the requested concession is appropriate and consistent with the Density Bonus Law.

Eliminating this requirement is likewise consistent with the City's prior waiver of the CFD annexation requirement for other projects, most recently for the Palomar Heights project approved in January 2021. The Palomar Heights project included 510 market-rate units. The much smaller size of the Project – and the provision of affordable housing – makes elimination of the CFD requirement even more appropriate in this case.

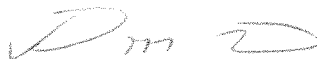
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For all of the reasons discussed above, KirE supports Applicant's Appeal and respectfully requests that the City grant the requested Density Bonus concession.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tim Hutter", written in a cursive style.

Timothy M. Hutter

TMH