STAFF REPORT

September 28, 2022
File Number 0610-75

SUBJECT

APPEAL OF A CONDITION OF APPROVAL APPLIED TO A MAJOR PLOT PLAN REQUIRING FUNDING OF ONGOING MUNICIPAL SERVICES REQUIRED BY THE PROJECT

DEPARTMENT

Development Services Department, Planning Division

RECOMMENDATION

It is requested that the City Council consider an appeal of a condition of approval requiring funding of ongoing municipal services required for a 48-unit apartment project located at 1600 S. Escondido Boulevard and either a) adopt Resolution No. 2022-141, denying an appeal and upholding a condition of approval; or b) adopt Resolution No 2022-142, granting the appeal and waiving the condition of approval.

Staff Recommendation: Denial of appeal (Development Services Department: Andrew Firestine)

Planning Commission Recommendation: Granting of appeal (Vote: 4-2-0)

Presenter: Adam Finestone, City Planner

BACKGROUND

An administrative approval for a Plot Plan, inclusive of a density bonus, was issued on July 28, 2022, for a 48-unit apartment complex located at 1600 S. Escondido Blvd. (included as Attachment "1" to this staff report). The project includes five units that will be deed-restricted for very-low income households. The applicant appealed the inclusion of the condition of approval which requires the developer to fund ongoing operational costs of providing municipal services required for the project. The appeal, a copy of which is included as Attachment "2" to this report, is based on the premise that density bonus projects are entitled to certain incentives and waivers, in addition to an increase in allowable density, in order to make a project financially feasible. (All other aspects of the project have been approved and not subject to the appeal.)

FISCAL ANALYSIS

As a part of the City of Escondido's ongoing effort to address projected budget shortfalls, the City conducted a Fiscal Impact Analysis ("FIA") for new residential development in 2019. The FIA determined the per capita cost of providing municipal services for new residential development involving Police, Fire, Public Works, Community Services, and General Services (support departments) exceeds the anticipated revenue received, including property taxes, property tax in lieu of vehicle license fees, intergovernmental, property transfer tax, fines, forfeitures, permits, licenses, and sales tax generated by new residents. Based on these findings, the current structural budget deficit is anticipated to increase with each new residential development project approved. Below is a summary of the FIA findings by development type for a typical 5-acre site at the time the analysis was conducted:

	Single Family	Small Lot Single Family	Townhomes	Apartment/Condos
Project Size (5-acre site)	25 units	75 units	125 units	200 units
Avg. Density	5 units/acre	15 units/acre	25 units/acre	40 units/acre
Revenue Generate	$52,900	$128,800	$157,900	$204,700
Cost to Provide Municipal Services	$66,300	$184,500	$248,500	$361,200
Annual Unfunded Cost	$13,400	$55,700	$90,600	$156,500
Unfunded Cost/Unit	$536	$743	$725	$783

City policy currently requires all residential development to offset its impact on the general fund by providing an ongoing funding source to pay for public services demanded by the project. The following is a brief history of the creation, purpose, and implementation of that policy:

On June 12, 2019, the City Council directed staff to investigate all options to address the structural budget deficit to ensure the budget deficit does not grow as the City develops, including evaluating the feasibility of a Citywide Services Community Facilities District ("CFD") as a streamlined means for projects to offset their ongoing impact to the general fund.

On April 8, 2020, the City Council indicated its intent to require new residential development to offset the ongoing costs of providing public services.

On May 13, 2020, the City Council held a duly noticed public hearing and adopted Resolution No. 2020-44 (Resolution of Formation) establishing CFD 2020-1, the Citywide Services CFD.

On September 16, 2020, the City Council adopted Resolution No. 2020-115 annexing five projects with 66 units into CFD 2020-1 creating the second (2) zone of the Services CFD (Zone 2020-2).

On September 23, 2020, the City Council restated its intent to require new residential development to offset the ongoing costs of providing public services, specifically noting that the requirement be applied to any project approved after May 13, 2020.

On October 21, 2020, the City Council adopted Resolution No. 2020-147 annexing a 42-unit project located at 2608 S. Escondido Blvd. into CFD 2020-1 and creating the third (3) zone of the Services CFD (Zone 2020-03).

On November 18, 2020, the City Council adopted Resolution No. 2020-160 annexing two (2) projects containing 21 units into CFD 2020-1 creating the fourth zone of the Services CFD (Zone 2020-04).

On July 21, 2021, the City Council adopted Resolution No. 2021-77 approving the special tax rate for CFD 2020-1 (Public Services) for fiscal year 2021/22.

On September 15, 2021, the City Council adopted Resolution No. 2021-130 annexing three (3) projects containing 65 units into CFD 2020-1 creating the fifth (5) zone of the Services CFD (Zone 2020-5).

On March 2, 2022, the City Council adopted Resolution No. 2022-14 annexing two (2) projects containing 44 units into CFD 2020-1 creating the sixth (6) zone of the Services CFD (Zone 2020-6).

On July 20, 2022, the City Council adopted Resolution No. 2022-87 approving the special tax rate for CFD 2020-1 (Public Services) for fiscal year 2022/23.

Council policy requires that all new residential development off-site their impacts to ongoing municipal services. This requirement is identified as Condition of Approval A.11 in the Letter of Conditional Approval dated July 28, 2022, and included as Attachment "1" to this staff report. Specifically, the condition states:

> *Community Facility District or Funding Mechanism. The Applicant shall fund all on-going operational costs of providing municipal services required for the Project, the amount of such funding to be determined 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"). 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.*

The condition cited above is consistent with existing City Council policy requiring all residential development to offset its impact on the general fund by providing an ongoing funding source to pay for public services demanded by the project. The Condition provides an option for the applicant to either form or annex into the CFD or the establishment of another lawful funding mechanism reasonably acceptable to the City ("Public Services Funding Agreement"). Should the applicant choose to form or annex into a CFD, the estimated fee based on the density of the project, which is adjusted annually, is identified in the table below:

CFD levy per unit 40+ du/ac (year)	# of Units	Total annual levy	Cost per unit monthly
$840	48	$40,320	$70

PLANNING COMMISSION RECOMMENDATION:

Appeals of administrative decisions of the Director of Development Services require public hearings before the Planning Commission. However, because the Planning Commission does not have the authority to waive City Council policies and fees, they serve in an advisory role to the City Council on this matter. It should be noted that the Planning Commission considered an appeal of the same condition of approval for another project immediately prior to this one, and the discussion below reflects the combined deliberations of both appeals.

The Planning Commission considered the request at its September 13, 2022, meeting and recommended the City Council grant the appeal to waive the condition of approval that requires new residential development to offset its fiscal impacts to ongoing municipal services (vote 4-2-0; Commissioners Paul and Weiler voted no; one commissioner absent). A copy of the Planning Commission staff report is included with this report as Attachment "3." The majority of the Commissioners supported the appeal, emphasizing that the waiver should be applied on a case-by-case basis for projects that include affordable housing units as part of a density bonus request; they did not recommend that the requirement to offset fiscal impacts be waived for all projects.

Although Commissioners Paul and Weiler voted no, they noted their support for the project and affordable housing. Commissioners Paul and Weiler indicated their recommendation was not based on the Commission's role regarding implementing Council policy nor on the overall merits of the requested waiver. Rather, because the Commission was not involved in the establishment of the policy requiring funding of ongoing municipal services and thus did not have sufficient knowledge and information on the topic, they did not believe it was appropriate for them to make the recommendation to waive the requirement.

During deliberation, Commissioner Paul moved to grant the appeal only for the five units that would be deed-restricted as affordable units, however the motion failed to gain a second. Also during deliberation, the Commission discussed potential support for the City Council to reconsider and evaluate the overall policy requiring funding of ongoing public services due to potential impediments it has on the ability to construct infill and affordable multi-family housing projects.

ANALYSIS

Density bonus law (Government Code section 65915 et. seq.) and Article 67 of the Escondido Zoning Code (Density Bonus and Residential Incentives) are intended to encourage the development of affordable housing. This is accomplished through the allowance for an increase in residential density above what would typically be allowed for a property, and through the provision of incentives and waivers from development standards that make construction of the project infeasible.

Allowable increases in density are based on a sliding scale that involves the percentage of affordable units being provided, and the level of affordability of those units. Current zoning for the subject property would allow a total of 31 units; however, by deed restricting 15% of those units (amounting to five units) for very-low income households, the project is eligible for a 50% increase in allowable density, resulting in a total allowance of 48 units.

The percentage of affordable units and level of affordability also entitles the applicant to three incentives and waivers. The incentives for this project include a reduction in open space, parking design requirements, and design standards. The applicant has also requested, as an incentive to facilitate the construction of the project, the elimination of the requirement to fund ongoing operational costs of providing municipal services required for the project.

Government Code section 95915(l) states that density bonus law "…does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements." Similarly, section 33-1414(a)(2)(E) of the City of Escondido Municipal Code states that "the city council may, but is not required to, provide direct financial incentives, including direct financial aid in the form of a loan or grant, the provision of publicly owned land, or the waiver of fees or dedication requirements." Staff has applied the condition of approval in question based on existing City Council Policy. Neither City policy nor the Government Code give staff the authority to waive the condition, however the City Council does have the authority to do so.

CITY of ESCONDIDO

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ENVIRONMENTAL REVIEW

The California Environmental Quality Act ("CEQA") Guidelines list classes of projects that have been determined to not have a significant effect on the environment and as a result are exempt from review under CEQA. The Project site is located within a developed urban area of the City and previously developed with a commercial building. The proposed project qualifies for a categorical exemption from CEQA pursuant to CEQA Guidelines section 15332, "Infill Development Project." A CEQA Notice of Exemption was issued for the Project and posted with the County Clerk's Office in accordance with CEQA.

CONCLUSION

The Director of Development Services applied a standard condition of approval requiring the project to fund all on-going operational costs of providing municipal services based on existing City Council policy. Based on that policy, staff recommends the appeal be denied and that the condition be maintained as part of the project approval.

Staff acknowledges that both the Government Code and Escondido Zoning Code allow the City to waive the condition at the discretion of the City Council, and the Planning Commission recommended that the City Council do so. As such, staff has also included a resolution granting the appeal and waiving the condition, should the Council wish to exercise this option.

RESOLUTIONS

a. Resolution No. 2022-141
b. Resolution No. 2022-141 – Exhibit "A" Legal Description
c. Resolution No. 2022-141 – Exhibit "B" Findings of Fact
d. Resolution No. 2022-142
e. Resolution No. 2022-142 – Exhibit "A" Legal Description
f. Resolution No. 2022-142 – Exhibit "B" Findings of Fact

ATTACHMENTS

a. Attachment "1" – Plot Plan Conditional Letter of Approval dated July 28, 2022
b. Attachment "2" – Appeal of Plot Plan Condition of Approval
c. Attachment "3" – Planning Commission Staff Report dated September 13, 2022