



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen
Joseph Horwedel

SUBJECT: PLANNING PERMIT PD05-069
REIMBURSEMENT APPEAL

DATE: 10-15-07

Approved

Paul Kruttschnitt

Date

10/19/07

COUNCIL DISTRICT: 4

RECOMMENDATION

The Director of Public Works and the Director of Planning, Building and Code Enforcement recommend the Council approve staff's recommendation for a final adjustment to the reimbursement amount from \$548,268 to \$263,834 (a reduction of \$284,434), which incorporates a greater reduction than the \$341,349 total previously recommended by staff on September 18, 2007.

OUTCOME

Should the Council approve the action recommended above, the Permittees will be required to pay the final adjusted reimbursement cost of \$263,834 which staff believes is an amount that fair and reasonably removes the hardship condition (San Jose Municipal Code Chapter 14.13).

BACKGROUND

On September 18, 2007, the Council conducted the administrative hearing (Council agenda item 4.2) related to the appeal of condition no. 15.f (Public Works reimbursement condition) in Planned Development Permit No. PD05-069 (Project) for proposed construction of six single-family detached residences on a 0.83 gross acre site located on the southeast corner of Hostetter Road and Sierra Creek Way. Staff recommended that the Council deny the appeal and request for adjustment of Public Works reimbursement condition to the Permittees'/Appellants' requested amount of \$87,250, and also recommended approval of staff's recommendation to adjust the reimbursement amount of \$548,268 to the reduced total of \$341,349 (a reduction of \$206,919) based on staff's finding that the original reimbursement amount may have an unfair or inequitable result and an adjustment is appropriate considering the size of the Project and the benefits derived by the surrounding neighborhood from the Project.

The administrative hearing concluded with a direction to staff by the Council to restudy the hardship potential and work with the Project Permittees/Appellants to further reduce staff's recommended amount, if possible, based on the finding that the Project is unique in character

10-15-07

Subject: Planning Permit PD05-069 Reimbursement Appeal

Page 2

and that further reduction will eliminate any hardship potential. Staff was also directed to return to Council with a recommendation within six weeks.

ANALYSIS

On October 1, 2007, Public Works staff held a meeting with Mr. Marvin Bamburg and Ms. Bonnie Bamburg (Permittees/Appellants). Staff presented a revised amount of **\$263,834** which represents the original, staff recommended revised amount of \$341,349 less \$77,515, the Permittees'/Appellants' cost estimate for improving the remaining portion of Hostetter Road. See summary table below.

Revised Reimbursement Estimate Presented at 9/18/07 City Council Hearing			Deduct Permittee's Cost Estimate of Improving Remaining Portion of Hostetter Road (c)	Revised Amount (2 nd Adjustment) (a) + (b) - (c)
Right-of-Way Amount (a)	Improvement Amount (b)	Revised Amount (1 st Adjustment) (a) + (b)		
\$251,300	\$90,049	\$341,349	\$77,515	\$263,834

However, after hearing staff's recommended revised amount, Permittees/Appellants stated that this amount remains unacceptable and is far from their desired reduction to \$87,250. They also stated that unless it is significantly reduced to the above amount, their Project is not financially viable.

Per Council's direction, staff evaluated the hardship potential. Part of staff's evaluation included the consideration of the cost of improving three frontages as well as the original purchase agreement between the City and the Mattos Family (previous owner of property) as part of the Hostetter Road Improvement Project. The Mattos Family was paid by the City approximately \$372,000 for the half-street portion of Hostetter Road along the Project frontage. Staff believed that the first reduction to \$341,349 already represented a reasonable amount to avoid an unfair or inequitable result. The additional reduction to \$263,834, as recommended in this memo, removes any hardship potential because 1) it eliminates the Project's construction cost to improve Hostetter Road where the Project does not have frontage and, 2) it is over \$108,000 less than the amount paid to the Mattos Family.

Per the attached Project and Appeal Timeline (Exhibit A), the Permittees/Appellants were aware of the City's reimbursement requirement prior to purchasing the project property from the Mattos Family on November 9, 2006. The Permittees/Appellants were notified of the reimbursement requirement through the Public Works initial memo to Planning (Exhibit B) for the Planned Development Rezoning application (PDC05-086) which was sent by Planning through a 30-day letter to the permittees on September 30, 2005. This notification occurred **over one year** prior to the permittees'/appellants' November 9, 2006 property purchase. This information is to clarify the statement provided by the Permittees/Appellants at the September 18, 2007 Council Hearing. The first draft reimbursement estimate of \$548,268 was provided by staff to the Permittees/Appellants in May 2006, six months prior to the Permittees'/Appellants' property purchase.

Since it is only the City Council that can make the findings of hardship and only one adjustment can be made to the reimbursement amount in connection with the development permit, staff recommends that the Council approve of the staff recommended final adjustment to the reimbursement amount from \$341,349, as stated in a previous recommendation to Council on September 18, 2007, to the reduced total of \$263,834 based upon the Council finding that this second reduction eliminates any hardship and any question that it is an unfair or inequitable obligation for the Project.

Required Findings by Council:

The Council is required to make findings under Section 14.13.100 of the Municipal Code, which states in relevant part:

“...the council may, but shall not be required to, make adjustments to the development permit condition required under Section 14.13.020. Only the council may make such adjustments and the council may make only such adjustments in such condition as it finds reasonably necessary *because of unusual circumstances peculiar to the subject land and/or the uses which may lawfully and feasibly be made thereof to avoid an unfair or inequitable result or an unnecessary hardship (hereinafter “adjustment limitation”). Adjustments to the development permit condition required under Section 14.13.020 shall be made only once in connection with the development of any subject lands and shall be made only in connection with the first development permit in which such condition is imposed.*”

Staff agrees the original reimbursement amount may be an unfair or inequitable result and the recommended adjustment may be appropriate considering the size of the Project, the frontage of the project, and the Project’s benefits to the surrounding neighborhood. Since it is only the City Council that can make the findings of an unfair or inequitable result, staff recommends:

- (1) that the City Council make a finding that the appeal does not have any merit for the reasons contained in the preceding discussion of the appeal and staff’s responses; and
- (2) that the Council approve of the revised staff recommended reduction in the reimbursement amount of \$548,268 stated in permit condition no. 15.f in Planned Development Permit PD05-069 to the reduced total of \$263,834 (a reduction of \$284,434) based upon the Council finding that the reduced amount is to avoid an unfair or inequitable result when compared to other residential development obligations for street improvements for the reasons specified in this memorandum.

EVALUATION AND FOLLOW-UP

As directed by the Council, staff evaluated Council’s concern regarding the hardship. Staff recognized the potential hardship and met with the Permittees’/Appellants’ to present a new reduced amount.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

While this action does not meet any of the above criteria, staff has been in contact with the Permittees regarding this appeal. This memorandum will be posted on the City's website for the November 6, 2007 Council agenda.

COORDINATION

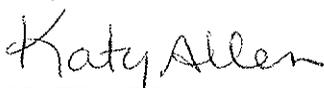
This memorandum has been coordinated with the Planning, Building and Code Enforcement Department, City Manager's Budget Office and the City Attorney's Office.

COST SUMMARY/IMPLICATIONS

The cost implication to the City of the recommended action is \$284,434 (the difference between original reimbursement amount stated in the Project's permit condition, \$548,268, and the revised reduced amount recommended by staff in this memo, \$263,834).

CEQA

The Director of Public Works and the Director of Planning, Building and Code Enforcement recommend the Council approve staff's recommendation for a final adjustment to the reimbursement amount from \$548,268 to \$263,834 (a reduction of \$284,434), which incorporates a greater reduction than the \$341,349 total previously recommended by staff on September 18, 2007.



KATY ALLEN
Director, Public Works Department



JOSEPH HORWEDEL
Director, Planning, Building and
Code Enforcement

For questions please contact: TIMM BORDEN, DEPUTY DIRECTOR, PUBLIC WORKS DEPARTMENT, at 408-535-8300.

Attachments

PD:MBA:dcs

(CM2_memoPlanningPermitPD05_069ReimAppeal)

EXHIBIT A

Project and Appeal Timeline for Planning Permit PD05-069

- 8/08/2003 City purchases Hostetter Road right-of-way from Mattos family for \$611,733 (amount subject to reimbursement upon development of remainder parcels).
- 9/08/2005 Staff provides initial memo for project's Planned Development Rezoning application (PDC05-086) notifying Planning and Applicant of reimbursement requirement.
- 9/23/2005 Planning receives PD Permit application for the following project:
Project Name: Twin Creeks Homes
Location: South side of Hostetter Road between Sierra Creek Way and Stone Creek Drive
Existing Use: Single-family detached residential
Project Description: Construction of six (6) single-family detached residences on a 0.83 gross acre site.
- 5/15/2006 Staff provides applicants/permittees with draft reimbursement estimate in the amount of **\$548,268**.
- 6/16/2006 Planning approves Planning Permit PD05-069. Planning notifies permittees that reimbursement amount can be appealed.
- 6/26/2006 Permittees send appeal request to Planning.
- 8/10/2006 Staff meets with Permittees and staff provides a revised reimbursement estimate in the amount of **\$341,349** (a reduction of \$206,919).
- 11/09/2006 Twin Creeks Berryessa, LLC (applicants/appellants) purchases project property for \$1,200,000. Grant deed was signed by Stephanie J. Mattos, John R. Mattos II, and Inez M. Mattos (*same individuals who signed the City's purchase agreement on 8/8/2003 for the Hostetter Road Project*).
- 3/06/2007 Permittees formally request, through an appeal letter, a City Council Appeal Hearing.
- 9/18/2007 City Council Appeal Hearing (continued from 8/21/2007).
 - City Council directs Public Works staff to work with Appellants and return to Council with a recommendation within 6 weeks.

EXHIBIT B



Memorandum

TO: Sanhita Mallick
Planning and Building

FROM: Winnie Pagan
Public Works

SUBJECT: INITIAL RESPONSE TO
DEVELOPMENT APPLICATION

DATE: 10/04/05

Approved

Date

10/04/05

PLANNING NO.: PD05-069 & PT05-089
DESCRIPTION: Planned Development Permit to construct six single-family detached residences on a 9.833 gross acre site
LOCATION: southeast corner of Hostetter Road and Sierra Creek Way
P.W. NUMBER: 3-16935

Public Works received the subject project on 09/26/05 and submits the following comments and requirements. **Upon completion of the Action/Revisions Required items by the applicant, Public Works will forward a Final Memo to the Department of Planning prior to the preparation of the Staff Report for Public Hearing.**

Actions / Revisions Required:

1. **Storm:** Revise grading plan and PT map to show a private storm drain easements and a bioswale along the back of lots 5 & 6. Also, show fence openings to allow stormwater passage.

Project Conditions:

Public Works Approval of Tract Map: Prior to the approval of the tract map by the Director of Public Works, the applicant will be required to have satisfied all of the following Public Works conditions.

2. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
3. **Flood: Zone D.** Although this property is shown on the Federal Emergency Management Agency's Flood Insurance Rate Map to be in Zone D, there is data from the Santa Clara Valley Water District Map showing this property to be located in an area with flooding up to 1 foot deep.

Therefore, it is recommended that the finish floor for Lot A is raised to elevation 89', Lot B is raised to elevation 90', and Lot C is raised to elevation 91'.

4. **Grading/Geology:**

- a) A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
- b) A soils report addressing the potential hazard of liquefaction must be submitted to and accepted by the City Engineering Geologist prior to the issuance of a Public Works Clearance or a grading permit.

5. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) that include site design measures, source controls, and stormwater treatment controls to minimize stormwater pollutant discharges to the maximum extent possible.

6. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.

7. **Reimbursement:** The developer will be required to reimburse the City for costs advanced for the construction of street improvements along Hostetter Road in accordance with City Ordinance #19663.

8. **Street Improvements:** Dedication and improvement of all public streets to the satisfaction of the Director of Public Works.

9. **Electrical:**

- a) Upgrading of existing electroliers or installation of new electroliers along the project frontage may be required. Additional details will be provided at the improvement plans stage.
- b) Electroliers or utility poles shall be located with a minimum of 5' clearance from the edge of driveways.

10. **Landscape:**

- a) Install street trees within the public right-of-way along the entire street frontage per City standards.
- b) The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only.
- c) Contact the City Arborist at (408) 277-2756 for the designated street tree.

11. **T-Map:** All existing buildings must be demolished prior to approval of tract map.

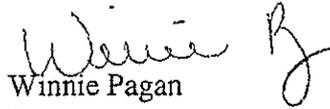
Planning and Building

10/04/05

Subject: PD05-069 & PT05-089

Page 3 of 3

Please contact me at (408) 535-6824 or Erwin Wong at (408) 535- 6823 if you have any questions.



Winnie Pagan

Project Engineer

Transportation and Development Services Division

ML:WLP

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