

April 16, 2019

To: PLUM Committee

From: Keith Nakata (appellant)

Re: Council File 19-0342 (Case No. VTT-74129-CN-2A, 714-718 North Sweetzer Ave)

The applicant, Etco Homes, argues in its April 15, 2019 letter to the PLUM Committee that the “Housing Accountability Act” (HAA), and specifically Cal. Gov't Code § 65589.5, prohibits the City from disapproving the tract map. Etco misstates the law.

The code section cited by Etco provides: “When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist: [proceeding to state the two necessary findings].” Cal. Gov't Code § 65589.5(j)(1) (emphasis supplied).

Etco's tract map does not trigger this provision for two reasons. First, the tract map is not a “proposed housing development project” at all. As Etco emphasizes in its April 15 letter, the tract map is for an existing, permitted apartment building already under construction, and merely allows the conversion of the apartments into condominiums:

“The current case only concerns a condominium map and waiver of dedication for the previously approved building, which remains under construction. . . . The Map itself only facilitates the sale of the individual units as condominiums. It proposes no physical changes to the building. . . . [T]he Map and Waiver only constitute the subsequent administrative approvals required for sale, rather than rental, of the units in the approved building . . .” (Etco 4/15/19 letter, at pp. 6-8.)

The second reason that section 65589.5 does not apply to the tract map is because the map does not “comply with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete.” Specifically, the map does not comply with the 20-foot minimum alley width, which is set forth in the Street Design Standards, and which resulted in the 2.5 foot dedication condition recommended by the Bureau of Engineering (BOE). Etco does not dispute this. Further, Etco concedes in its April 15 letter that it was well aware of the dedication requirement at the time it filed its tract map application, because it expressly requested a waiver of the requirement. (See Etco 4/15/19 letter at pp. 4-5 (“Regarding condition S.3.(i).ii (alley dedication and improvement), Etco Homes requested the waiver as part of its map application . . .”).)