



AGENDA REPORT

Meeting of the San Marcos Planning Commission

MEETING DATE: December 3, 2012
SUBJECT: Proposed 22 Lot Single Family Subdivision (Includes a 35% Density Bonus)
CASE: TSM 470/ND 12-821 - 1188 Borden Rd LLC & 1200 Venture LLC

Recommendation

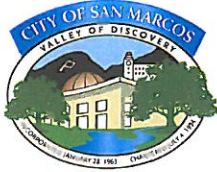
Conditionally approve entitlements (Attachment A) to allow the subdivision of 4.01 gross acres into twenty-two single family lots through a density bonus application in the Richland Neighborhood.

Introduction

Access to the proposed residential lots will be provided by a private street. The proposed project also includes grading of the site and construction of private street improvements and two detention basins. The project has requested a 35% density bonus (and 2 development concessions) in accordance with California Government Code Section 65915 et seq, and will provide 2 very low income lots within the subdivision.

The project has gone through a number of redesigns (See Attachment B for additional Background) since the project was submitted, primarily to ensure compliance with the City Zoning Ordinance, Subdivision Ordinance, and Municipal Code relating to public safety access, as well as compliance with Storm Water regulations. A public workshop was held with the Planning Commission on August 3, 2009, which was primarily attended by residents (approximately six) who live on El Toro Lane and are contiguous to the proposed subdivision.

The project was scheduled to go to the Planning Commission on September 15, 2009 was continued to November 2, 2009 at the applicant's request. The applicant subsequently requested the project be tabled. The project was conditioned and had a recommendation of conditional approval. Since 2009, a new applicant representative has been working with staff to resolve subdivision design issues as well as interpretations of State Density Bonus Law as it relates to this project. The original application had requested concessions in the form of 1) reduced lot sizes and reduced setbacks; and 2) private street access. The requested concessions have been modified since 2009 and are discussed below.



Discussion

In accordance with the California State Government Code, the applicant has requested a density bonus as well as two concessions and development standard waivers. The proposed development meets the statutory requirements of the California Government Code regarding thresholds to qualify for the 35% bonus, as well as two concessions (See Attachment F for more explanation). The twenty-two lot subdivision has been designed with net lot sizes ranging from 4,667 square feet to 7,797 square feet, with an average net lot size of 5,810 square feet.

The subject site has a General Plan land use designation of Very low density residential, 2.1-4.0 dwelling units per acre; and zoning of Single Family R-1, minimum lot size of 10,000 square feet (SMMC 20.36.060). Standard setbacks (SMMC 20.36.030, 20.36.040, 20.36.050) are: Front setback, 50 feet from center line of street; side yard minimum is 10 feet from property line; and rear yard setback minimum is 25 feet from property line. In addition, the Subdivision Ordinance requires (SMMC 19.16.010(f)) minimum lot depth of newly created lots to be a minimum of ninety (90) feet; and that all newly created lots front on a public street (SMMC 19.16.010(c)). In addition, Council Policy requires neighborhood compatibility guidelines for projects that are contiguous to existing development.

The 35% density bonus equates to an additional six units above the city's maximum density permitted by the general plan. The two (modified since 2009) concessions requested by the applicant include:

- 1) Private Street
- 2) Ability to construct a combination retaining wall with decorative wood fence along the perimeter of the project (in lieu of a solid retaining wall);

And development standards concessions that include:

- 1) Reduced lot size; Reduced Setbacks; and Lot Depth less than 90'

The first requested concession is to allow the subdivision to be constructed with a private street. The applicant is not proposing for this to be a gated community. The applicant has revised the design of the private street to provide a forty (40) foot curb to curb design for Street "A" with a sidewalk on the east side of the street. This will allow on street parking on both sides of the street and will also provide pedestrian movement from the subdivision to Borden Road. Street "B," which serves three lots, will be designed with a curb-to-curb dimension of twenty-four (24) feet, with a four foot sidewalk on the north side of the street. Street "C," which serves four lots, will be designed with a curb-to-curb dimension of thirty-two (32) feet with a five foot sidewalk on the south side. Staff also worked with the applicant regarding the design of the street to ensure the design complies with the City standards for emergency vehicle access. The Fire Marshal has reviewed the design and has determined the design is in compliance with City standards based on the ability for fire apparatus to access the lots. The Fire Marshal will also require that each home be designed with a fire sprinkler system.



The second concession the applicant is requesting is the ability to construct a combination decorative retaining wall and wood fence along the western perimeter of the subdivision. The design of the subdivision gradually slopes upward from Borden Road to the northern boundary (adjacent to Calle Maria). The subdivision design will require retaining walls along the western perimeter (and throughout the subdivision). In 2009, staff conditioned the project to construct a solid retaining wall along this perimeter, in part due to concerns raised by adjacent property owners about privacy. The applicant has since requested a concession to allow a combination of a retaining wall and decorative wood fence along this perimeter. Per State Density Bonus Law, the City must grant this concession, however, the design will be required to be approved by the Planning Director.

When the project was initially submitted and conditioned by staff, the applicant considered and therefore requested the reduced lot sizes and setbacks as a concession. Staff initially interpreted the request for reduced lot sizes and reduced setbacks (front, side, rear) as two concessions, thus exceeding the amount of concessions allowed per the state law provisions. However, after considerable discussion on the matter and a determination from State Housing and Community Development's legal counsel that the two "concessions" are "inextricably linked." Furthermore, the applicant has since revised the request; the applicant considers the reduced lot sizes and setbacks as waivers of development standards that are necessary in order to meet the density that is allowed per the density bonus law. Staff agrees with this interpretation of the State Density Bonus Law provision. The reduced lot depth would also fall under this determination as well since it is affected by the lot size. Proposed lot sizes range from 4,667 square feet to 7,797 square feet, with an average gross and net lot size of 5,810 square feet.

The applicant is proposing the following reduced setbacks: front setbacks of twenty (20) feet (measured from the back of sidewalk or curb, whichever is applicable) for straight entry garages, and fifteen (15) feet to habitable structures. Although the setback is reduced, the twenty-foot driveway will enable vehicles to be parked in the driveway without encroaching into the street or sidewalk. Side yard setbacks are proposed at five feet; and staff has conditioned the project to prohibit any ground level encroachments (such as chimneys, eaves, etc) into the side yard. Rear yard setbacks are proposed as fifteen (15) feet. The proposed setbacks are consistent with the City's setbacks for clustered developments (PRDs), which traditionally are designed with smaller lots.

Staff requested the applicant prepare a visual simulation for the project, given the overall density as related to the surrounding homes. The applicant submitted visual simulations (See Attachment H) of homes that could be representative of what gets built on site. Given the size of the lots, it is likely the homes will be two story, which is permitted in the single family zone. The simulations identified portions of the proposed single family residences will be visible from the surrounding streets (Anna Lane and El Toro Lane), and the homes will be visible from Borden Road. The project has been conditioned to submit three house plans to the Planning Division for review and approval prior to the issuance of a grading permit. The affordable lots will require the same architectural treatment and design of the



market rate homes in the subdivision, which is consistent with the City's policy that affordable housing design be consistent with market rate units.

Issues raised at the public workshop in 2009 included concerns about privacy given the grade differences between the proposed project and adjacent properties to the west. The public also asked about the amount of space that will be between the proposed homes and their homes. The majority of the property owners who live along El Toro Lane indicated concern with residents of the two story homes looking down into their property. The property owners requested solid block wall along the subdivision boundary to assist with privacy. Other issues raised by the property owners were potential drainage impacts associated with the proposed project; the brow-ditches proposed along the western perimeter of the project; and the proposed down slopes proposed in a the rear yards of Lots 5-12; Lot 1 and 22.

As a result of this discussion, staff has worked with the applicant to revise the proposed drainage for the project by eliminating the brow ditches (except along the northern property line, which will carry drainage from Calle Maria) and incorporating a storm drain that will be located in the private street. The project has also eliminate the down slopes in the rear yards, which will provide more functional rear yards for the property owners and will lower the height of the future homes. However, this design change has resulted in retaining walls along the western perimeter of the project along the rear yards of Lots 8-12, with anticipated heights that will vary between three (3) and five (5) feet. In the 2009 conditions, the applicant was conditioned to provide a solid retaining wall that accomplished the retention of soil but also the height that would provide privacy between the subdivision and the existing residences to the west. As mentioned previously, the applicant has requested a concession per State Density Bonus law to allow for a combination wall/fence design along all perimeters of the project. State law requires this concession be granted. However, staff has conditioned the project to submit a fencing plan that will require a decorative wooden fence with cap to be incorporated into the project. This will provide a consistent wall design along this boundary that will be incorporated into the retaining wall design and will provide privacy to the adjacent property. Because the lot sizes are smaller in the proposed subdivision, some of the homes on El Toro Lane will potentially have two homes sharing the property line. The project has also been conditioned to coordinate the installation of a 24 or 36 inch box evergreen species in the rear yards of four of the adjacent properties of residents who live on El Toro Lane, or pay an in-lieu fee to the residents of \$1,000. The remainder of the project will be required to provide decorative wood fences, with the design of the block wall and wood fence to be approved by the Planning Division. The proposed project also incorporates two bio-retention basins located at the entrance to the subdivision, along the Borden Road frontage. The design and landscaping of the basins will be required to accommodate the project's drainage and comply with NPDES Permit requirements. The conditions also require enhanced landscaping, with decorative treatment of any headwalls, spillways, risers, etc. subject to the review and approval of the Engineering and Planning Divisions and Public Works.



The proposed project is required to comply with the City's Inclusionary Housing Ordinance (SMMC 20.129). The City's Inclusionary Housing Ordinance (IHO) requires 15% of the target units (two lots) be provided on site to accommodate affordable housing, or allows an in-lieu fee. Prior to 2009, the applicant disagreed with staff's implementation of the IHO, because they felt this requirement was satisfied with the two lots on-site that are designated for very low income households. Staff believes that the applicant is required to comply with all of the statutory requirements of the California Government Code relating to density bonus law in addition to the City's Inclusionary Ordinance. Applying both results in the applicant providing either four on-site affordable housing units out of the 22 total or (2) two on-site affordable units in addition to payment of an in lieu fee for two additional units. The applicant has agreed to comply with the City's Inclusionary Housing Ordinance, and has signed an agreement with the City to pay an in-lieu fee. Additionally, the applicant will be required to enter into an affordable housing regulatory agreement with the City to address how the two on site very low lots are regulated. The state law requires these lots to be affordable for a minimum of thirty years.

The proposed project will be required to have a Homeowner's Association and CC&Rs to address the maintenance of common improvements, such as the street and bio-retention basins.

Attachment(s)

Adopting Resolution

- A – Requested Entitlements
- B – Background
- C – Vicinity Map
- D – Site and Project Characteristics
- E – General Plan/Zoning Conformance
- F – State Density Bonus Law (CGC 65915 et al)
- G – Tentative Subdivision Map
- H – Visual Simulations and Cross-Sections
- I – Mitigated Negative Declaration 12-821
- J – Objection Letter dated September 10, 2009 and Staff Response



Prepared by:


Karen Brindley, Principal Planner

Reviewed by:


Mike Edwards, Public Works Director/ City Engineer

Approved/Submitted by:


Jerry Backoff, Planning Division Director

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ATTACHMENT A
Requested Entitlements

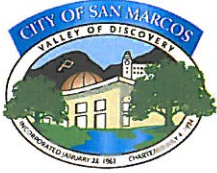
- Tentative Subdivision Map to allow the subdivision of three parcels (4.01 acres) into twenty-two single family lots in the R-1 Zone in the Richland Neighborhood.
- Grant a 35% density bonus (six additional lots over the General Plan maximum), in compliance with the provisions of State Government Code 65915 et seq. Concessions of SMMC: 19.19.010(f); and 19.19.010(c), Allowance to provide a combination of retaining wall/decorative wood fencing along the western perimeter; and waiver of the following development standards: R-1 minimum lot size (20.36.060); front, rear, and side yard setbacks (20.36.030; 20.36.040; 20.36.050); and minimum 90' lot depth (19.16.010(f)).



ATTACHMENT B

Background

- Application was submitted on November 28, 2006.
- The project was deemed incomplete on December 28, 2006. Staff requested: additional information to determine project compliance with the provisions of State Government Codes regulating density bonus projects, identification of concessions being requested; submittal of environmental studies necessary to prepare the CEQA analysis (copies of the biological report and traffic study already prepared for the project); modification to the hydrology and Water Quality Technical Report, in conformance with City standards; and revisions to the submitted map addressing design issues. At this time, staff also informed the applicant that this project would be subject to the City's Inclusionary Housing Ordinance, which would require two on-site affordable lots in addition to the two very lot income lots that were included in the project (as required by state law in order to qualify for the density bonus and concessions).
- On July 20, 2007 the project was deemed complete, however, based on staff feedback regarding site design issues (the subdivision did not comply with Zoning Code and Subdivision Ordinance requirements), a significant re-design of the project occurred and the applicant submitted a revised Tentative Subdivision Map.
- On December 27, 2007, based on the resubmitted design, the project was deemed incomplete by staff with the request to submit updated technical studies (hydrology, Water Quality Technical Report) based on the new design; information needed to determine compliance with State Government Codes for density bonus; an updated public notice package (initial notice data submitted by the applicant was incorrect); and other items required to analyze the project.
- Project was deemed incomplete again on March 14, 2007 with request to prepare the hydrology and Water Quality Technical Report in conformance with City standards, along with requests to provide elevations and type of proposed affordable residential unit would be constructed. Subdivision design issues remained.
- Staff determined the project is eligible to request two incentives or concessions. The applicant requested reduced lot sizes and setbacks from the standard R-1 Zone (minimum of 10,000 square foot lots); and a private street. Staff's position was that the reduced lot size and setbacks should be counted as two concessions and this was discussed with the applicant at length. Legal Counsel for the Department of Housing and Community Development determined the requested concession of the reduced lot size and reduced setbacks only count as one concession because they are "inextricably linked."
- Throughout this time frame, the City Attorney and Staff continued to work with the applicant to resolve outstanding issues, the largest being whether the project was subject to compliance with the City's Inclusionary Ordinance.
- During this timeframe, state legislation modifications were being proposed (AB 2280, which was chaptered into law.
- A revised Tentative Subdivision Map, primarily addressing design related issues was submitted on October 9, 2008.

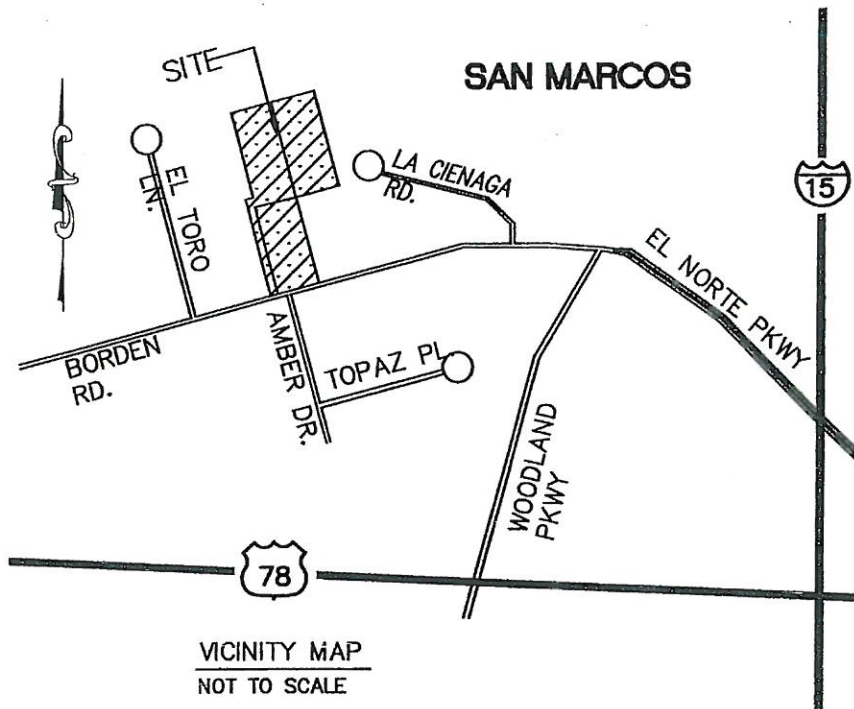


" B "

- The Mitigated Negative Declaration was posted for public review on June 18, 2009 and the public review period ended on July 8, 2009.
- A public workshop was held with the Planning Commission on August 3, 2009. Issues raised during the public workshop included compliance with State Government Codes that regulate density bonus; drainage (including the proposed brow ditches along the perimeter of the subdivision); privacy and visibility from the two story homes onto adjacent existing homes; requests for a solid block wall along the western boundary of the subdivision; traffic and parking, setbacks, size of yards; and location of affordable lots.
- Public comment during the processing of the application has included concerns about additional traffic and whether there is adequate water supply for the project; and an individual also did not agree with staff's determination that the reduced lot size and reduced setbacks should be counted as one concession.
- Planning Commission public hearing scheduled for September 15, 2009. The applicant requested a continuance to November 2, 2009.
- The applicant requested the Planning Commission table the project until a future date.
- In April 2010 staff was notified a new firm would be representing the applicant (DCM Properties Inc.)
- The project applicant modified the two concessions and subsequent request of waivers of development standards for the project.
- The applicant redesigned the subdivision and subsequent drainage and water quality improvement plan to address 2009 staff conditions.
- The revised Mitigated Negative Declaration was posted for public review on November 13, 2012.
- Planning Commission public hearing scheduled for December 3, 2012.

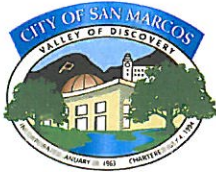


ATTACHMENT C
Vicinity Map



APN: 224-040-11, 224-040-28, 224-040-29

AGENDA ITEM NO. _____



ATTACHMENT D
Site & Project Characteristics

	Existing		General Plan
<u>Property</u>	<u>Land use</u>	<u>Zoning</u>	<u>Designation</u>
Subject	(2) single family homes	R-1	Very Low Residential 2.1-4.0du/ac
North	Single family	County A-70	Village Res 2.9
South	Borden Rd/SFR	R-1	SFR 2-4 du/ac
East	Single family	R-1	VLDR 2.1-4.0 du/ac
West	Single family	R-1	VLDR 2.1-4.0 du/ac
Flood Hazard Zone	<input type="checkbox"/> yes	<input checked="" type="checkbox"/> no	
Resource Conserv. Area	<input type="checkbox"/> yes	<input checked="" type="checkbox"/> no	
Redevelop. Proj. Area	<input type="checkbox"/> yes	<input checked="" type="checkbox"/> no	
Sewers	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no	
Septic	<input type="checkbox"/> yes	<input checked="" type="checkbox"/> no	
Water	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no	
Gen. Plan Conformance*	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no	
Land Use Compatibility	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no	

*With Compliance of State Government Code 65915 et. seq

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"D"

Setbacks

Required

Proposed

Front

50' from Center Line
Of Street

20 feet from back of sidewalk or
curb for straight entry garage;
15 feet from back of sidewalk or curb for
habitable structure

Side

10 feet

5 feet

Rear

25 feet

15 feet

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ATTACHMENT E

General Plan and Zoning Conformance

Site has a General Plan Land Use designation of Very Low Density Residential 2.1-4.0 du/ac. Maximum density per City of San Marcos is 16 units. Applying the 35% density bonus, the project is eligible for six additional units ($4.01 \text{ acres} \times [.35] = 5.6$, rounded up to 6 units), which equates to a maximum density per SGC 65915 et al to 22 units. Site consists of three parcels, total acreage of 4.01, however, there is a public street, utility and drainage easement along the frontage of all parcels where Borden Road has been improved (remaining subject site area is 3.96 acres).

Site is zoned Single Family Residential (R-1), which requires a minimum lot size of 10,000 square feet.



ATTACHMENT F

State Density Bonus Law (SDBL) (California Government Code Section 65915 et. seq)

There are two critical components to the State Density Bonus Law:

- The number of units set aside for affordable housing determines the percentage of the bonus the developer is eligible for (between 5-35%)
- Depending on the affordability of those units (total percentage of the target units), a developer is eligible for anywhere between 1-3 incentives or concessions. "Target units" are defined as the maximum number of units allowed before the density bonus is applied.

The State Government Code DBL relates to the proposed project as follows:

- City standards: Subject site is 4.01 gross acres (3.96 acres when Borden Road public road easement is deducted from gross. Borden Road has been improved along the project frontage).
- General Plan is VLDR 2.1-4.0 du/ac. No 85% density cap. Maximum density is 16 units per COSM General Plan. Therefore, the target units for this project are 16.
- Zoning is R-1, minimum 10,000 square feet.

SGC 65915(b)(1)(B) states that if a developer seeks and agrees to construct a project that will contain at least 5% of the target units (16 lots) for very low income, then the project is eligible for a density bonus and concessions. For this project, the developer must agree to at least one very low income lot ($16 \times .05 = .8$, which must be rounded up to 1 lot). The applicant is proposing 2 very low income lots; therefore, the developer is entitled to a density bonus per the SGC.

Once the project qualifies for a density bonus, the amount (percentage) of the bonus is determined by SGC 65915(f)(2). The development is entitled to a 35% density bonus if at least 11% of the target units are very low. For this project, this is calculated by ($16 \times .11 = 1.76$ units, rounded to 2). This project proposing two lots designated for very low income in the subdivision, therefore, the project is entitled a 35% density bonus, which is the maximum per state law.

SGC 65915(d)(2) specifies the number of concessions a developer is entitled to. Specifically, SCG 65915(d)(2)(B) states the developer is entitled to two incentives or concessions for projects that include at least 10% of the target units designated at very low that are deed restricted for at least 30 years. For this project, this equates to providing two very low lots on site ($16 \times .10 = 1.6$ units, rounded up to 2 units). This project meets this standard, and is eligible for two concessions.



ATTACHMENT H Visual Simulations & Cross- Sections

TSM470



SITE PLAN ILLUSTRATIVE

TSM470

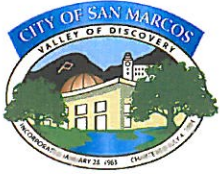


VIEW OF PRIVATE STREET FROM BORDEN ROAD

Note: This photo simulation is conceptual in nature and is intended to show the design intent of the site.

PHOTO SIMULATION - VIEW 1

AGENDA ITEM NO. _____



ATTACHMENT H Visual Simulations & Cross- Sections

TSM470



VIEW OF NEW DEVELOPMENT FROM ANNA LANE

Note: This photo simulation is conceptual in nature and is intended to show the design intent of the site.

PHOTO SIMULATION - VIEW 2



TSM470



VIEW OF NEW DEVELOPMENT FROM EL TORO LANE

Note: This photo simulation is conceptual in nature and is intended to show the design intent of the site.

PHOTO SIMULATION - VIEW 3



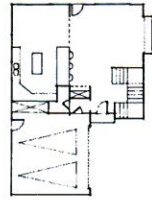
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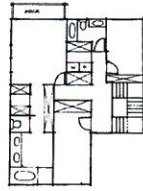
ATTACHMENT H Visual Simulations & Cross- Sections

TSM470

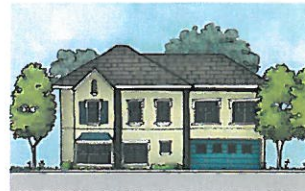
ALTERNATIVE A



FLOOR ONE

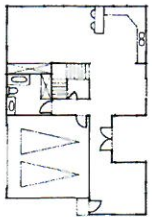


FLOOR TWO

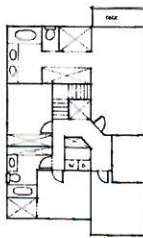


ELEVATION

ALTERNATIVE B



FLOOR ONE



FLOOR TWO

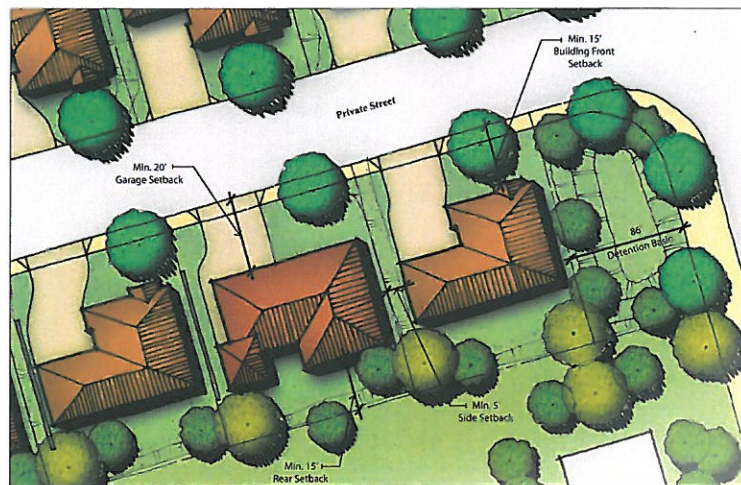


ELEVATION

PRODUCT FLOORPLANS



TSM470



SITE PLAN ILLUSTRATIVE WITH SETBACKS



AGENDA ITEM NO. _____



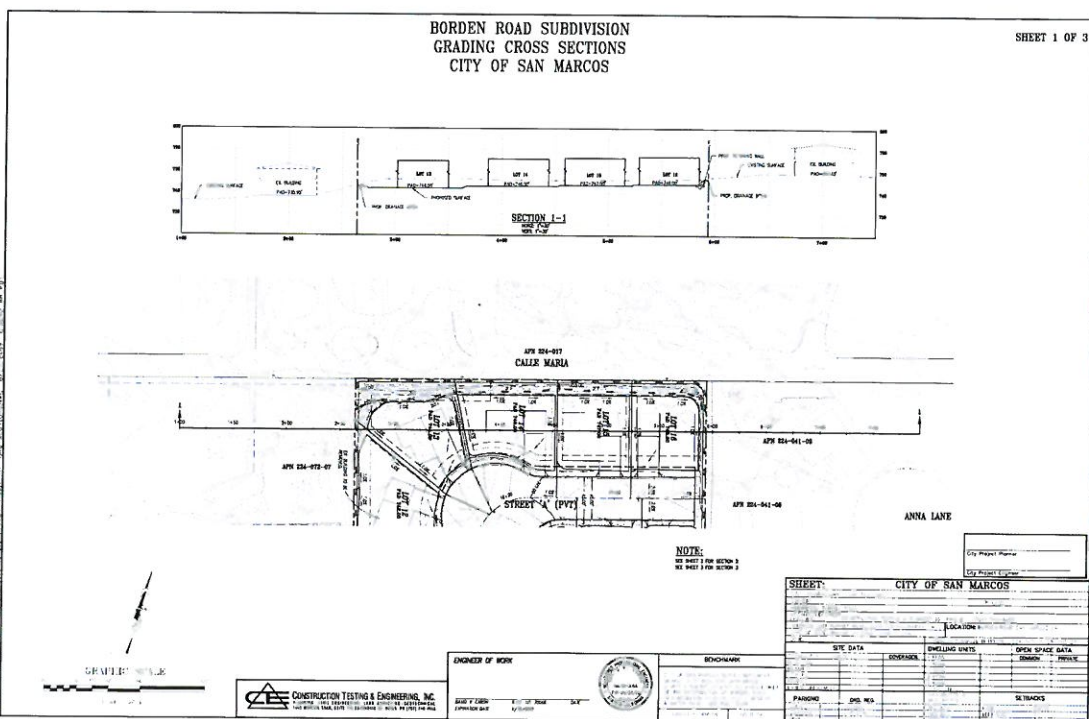
ATTACHMENT H Visual Simulations & Cross- Sections

TSM470



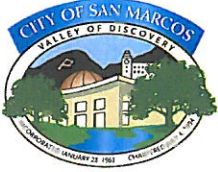
Note: This illustration is not optical in nature and is intended to show the design intent of the site.

STREETSCENE ILLUSTRATIVE



AGENDA ITEM NO. _____

ATTACHMENT H Visual Simulations & Cross-Sections



ATTACHMENT J

Objection to the Project Letter/Staff Response

-----Original Message-----

From: t.lund@cox.net [mailto:t.lund@cox.net]
Sent: Thursday, September 10, 2009 4:05 PM
To: Planning Commission
Subject: TSM-470/ND 09-785

I received notice of a public meeting on 9/15/9 regarding case TSM 470/ND 09-785. My address is 1225 Anna Ln. I received a prior notice regarding this proposed project, but did not take notice of this project as I was not aware that it bordered on Anna Ln. I would not have noticed this current letter either until it was not brought to my attention by a neighbor. No where on this notice does it mention that this proposed project borders on my neighborhood.

After reading the proposal, I became very concerned about 22 single family lots being located on this parcel, as well as the proposal that two of these lots being set aside for very low income housing. This is not a high density neighborhood. I am not aware of any low income housing being located in this area. I am also concerned that the other neighbors on my street have not been properly notified about how this development may effect our neighborhood. I have taken time to notify my neighbors, and none of them were aware of this proposed development. Unfortunately, I am unable to attend the meeting on 9/15/09 due to work conflicts. I am sending this email as a formal objection to this proposed development as I believe it would negatively effect our neighborhood. I believe that high density, low income housing does not fit into the existing neighborhood.

Sincerely,

Thadeus Lund

STAFF RESPONSE:

Public notification of this project has been done in compliance with the Public Noticing procedures of the Municipal Code. As authorized in the SMMC, the Planning Division Director expanded the public notice radius and staff has verified that all parcels on Anna Lane were sent notifications. Each notice is sent to the property owner and has a vicinity map included that shows the location of the project.

AGENDA ITEM NO. _____



" J "

Staff conducted a public workshop for this project on August 3, 2009 that was duly noticed; most participants were residents of El Toro Lane, but one individual who signed in lives on Palomino Court.

As long as the developer meets the statutory threshold requirements of the State Density Bonus Law, the city does not have legal authority to deny the requested increase in density unless very specific findings are made. The additional density is in accordance with the provisions of state law; and staff has worked with the applicant to design the subdivision to comply with City standards.

In order to meet the thresholds of the State Density Bonus law, the developer must seek and agree to include affordable housing (in this project, a minimum of 5% of the maximum allowable general plan density (16 lots) are required to be set aside for very low income households. The City does not have the ability to eliminate the affordable housing units of this project. Furthermore, it is the City's policy to locate affordable housing opportunities throughout the City, and providing for-sale affordable housing in this subdivision will comply with this policy. This project is also subject to the City's Inclusionary Housing Ordinance, which would require the applicant provide an additional two affordable units in the subdivision, however, the City has agreed to allow the developer to pay an in-lieu fee to meet this requirement.

There are affordable housing units (very low, low, and moderate) located in this neighborhood in the Woodland Village senior apartment complex, which is located in close proximity to the proposed project.