



4021 Port Chicago Highway
Concord, California 94520
(925) 671-7711
CA Lic. #469096 / NV Lic. #34659

January 23, 2024

City of Brentwood
City Council
150 City Park Way
Brentwood, California 94513

**Re: Lone Tree Way Project – Subdivision 9597
7590 & 7650 Lone Tree Way, Brentwood, CA**

Dear City Council Members:

On December 5, 2023, the Vesting Tentative Map for Subdivision 9597 was considered for recommendation for approval by the City of Brentwood Planning Commission. At that meeting, the Planning Commission recommended modifications to the proposed plan which will be explained further below.

In an effort to accommodate the Planning Commission's suggested modifications to the proposed project, I agreed to review the economic feasibility of the Planning Commission's recommendation. Below is a summary of the Project as proposed, the Planning Commission's recommended modifications, and a compromise -- a third alternative plan for the City Council's consideration which is the result of an effort to accommodate elements of the plan recommended by the Planning Commission while keeping the Project financially viable and increasing the number of affordable units.

Applicants Project:

The project as proposed includes 34 single family detached homes (at market rate) plus 2 duet homes (including one duet with 5 shared units, and with both duet homes being affordable) for a total of 36 homes.

Planning Commission Recommended Plan:

The Planning Commission recommended a modified plan consisting of 33 single family detached homes plus 4 duet homes (where all duets are affordable) for a total of 37 homes. This would result in the loss of one market rate unit and increase the number of affordable duet homes from 2 to 4. We conducted several analyses on the economic viability of the Planning Commission’s recommended plan and it is not financially feasible. However, in the spirit of collaboration, we have identified a third alternative site plan.

Alternative Plan:

The Alternative Plan proposes 36 single family detached market rate homes and 4 duet homes (all duets will be affordable) for a total of 40 homes. The addition of 2 single family homes at market rate supports the inclusion of 2 additional duet homes.

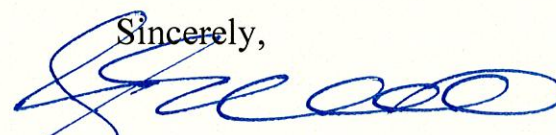
The table below further clarifies these 3 plans:

Lone Tree Way Residential Project, Comparison between Site Plans						
	Proposed by Applicant (baseline)	PC-Preferred	Delta		Alternate	Delta
SF-Detached	34	33	-1		36	2
Duet Homes (affordable)	2	4	2		4	2
TOTAL LOTS	36	37			40	

The PC version would result in a loss of 1 SF-detached home while obligating Applicant with 2 additional affordable duet homes.

The Alternate version would result in a gain of 2 SF-detached homes to help with the 2 additional affordable duet homes.

We look forward to presenting the Project for your consideration this evening and appreciate all the work Staff has done to keep this project progressing. Thank you for your time and consideration.

Sincerely,

 Jackie Seenó

Holland & Knight

560 Mission Street, Suite 1900 | San Francisco, CA 94105 | T 415.743.6900 | F 415.743.6910
Holland & Knight LLP | www.hklaw.com

Chelsea Maclean
+1 415-743-6979
Chelsea.Maclean@hklaw.com

Memorandum

January 22, 2023

To: Jackie Seeno, Seecon Financial & Construction Co., Inc.
From: Chelsea Maclean, Holland & Knight
Re: **Lone Tree Way Project – City Council Agenda Item No. F**

I. Introduction

In response to your request, on behalf of Seecon Financial & Construction Co., Inc. (“Applicant”), we reviewed the City Council staff report for Applicant’s proposed residential project located at 7590/7650 Lone Tree Way (APN 018-060-006/007), to be considered by the City Council on January 23, 2024 as Item No. F1. Specifically, we identified certain rights and protections afforded under the Housing Accountability Act (“HAA”)¹, the State Density Bonus Law (“SDBL”)², and other state laws, as well as other clarifications in the spirit of collaboration.

II. Summary

As discussed in further detail below, we understand the project as proposed by Applicant includes 34 single family-detached homes plus 2 duet homes (including one duet with 5 shared units, and with both duet homes being affordable). The Planning Commission recommended a modified plan with 33 single family-detached homes plus 4 duet homes (where all duets are affordable). In this extremely challenging economic climate for residential development, we understand that the Planning Commission’s version is not economically viable for Applicant as it reduces 1 single family market rate unit, but adds 2 more affordable units. Since the Applicant’s proposed project is protected by the HAA and SDBL, it would not be permissible for the City Council to require the Planning Commission version of the project since the requisite findings to deny or make the project infeasible have not been made. We understand that you, as the Applicant, continue to request approvals for the originally proposed project. However, in the spirit of collaboration, Applicant has identified an alternative site plan that includes 36 single family detached homes plus

¹ Govt. Code § 65589.5.

² Govt. Code § 65915. We understand that the City’s SDBL ordinance is not currently in compliance with the SDBL. In preparing this memo, we relied on the State’s SDBL in project planning and in our analysis herein.

4 duet homes (again, all duet units would be affordable). In order to provide 4 affordable units, 36 single family market rate units are needed to support the affordable units.

We have addressed other clarifications below as well. The following provides more detail.

III. Request for Approval of Applicant’s Proposed Project

As discussed in the City Council staff report for the upcoming hearing on January 23, 2024 (“City Council staff report”), Applicant submitted applications VTSM 9597 and DR 22-005. The Applicant requests that the City approve a residential subdivision consisting of 34 single family homes and a set of duet units; totaling 36 single family homes on 36 lots. One of the duet units is proposed to include 5 shared housing units and to be dedicated to the City. As stated in the City Council staff report, the shared housing is “allowed through the SDBL.”³ This project is referred to herein as the “Proposed Project,” and shown in Exhibit A.

There is on-going discussion regarding the Zoning Code compliance of the units that are planned to be dedicated. As we have discussed (Applicant), our position is that the Zoning Code grants credit for two affordable units for each dedicated unit and that the Proposed Project is therefore in compliance with the affordable housing obligation. The Zoning Code provides that “a residential developer *may propose* one of the alternative equivalents set forth below to meet the requirements of Section 17.725.003.”⁴ One of the options that an applicant is provided is to dedicate affordable units to the City. That section is copied verbatim below⁵:

D. Dedication of Affordable Units to the City of Brentwood. *An applicant may dedicate constructed or converted on-site or off-site affordable units to the city’s rental housing program to satisfy the requirements of this chapter. Mobile homes and units within cooperative developments are excluded from dedication. Each unit dedicated to the city shall equate to the construction of two affordable units that would otherwise be required pursuant to Section 17.725.003(D). Income from these affordable rental units shall be deposited into a Brentwood rental housing trust fund administered by the city’s finance director in accordance with Section 17.725.008. [Emphasis added]*

As shown in emphasis above, it is the applicant’s option to choose this selection. Where the applicant chooses to do so, the Zoning Code states that such unit “shall” equate to the construction of two affordable units. The City Council staff report says that “[i]n the event the City accepts such an offer of dedication, ‘each unit dedicated to the City shall equate to the construction of two affordable units that would otherwise be required.’” However, the Zoning Code does not include the underlined language. As such, the Zoning Code, as currently written, grants the applicant the option to dedicate a unit and the mandatory right to receive credit for each dedicated unit. The Zoning Code does not expressly provide the City the option to accept or not. Also, Zoning Code

³ City Council staff report, p. 3; Govt. Code § 65915

⁴ Zoning Code §17.725.004 (*emphasis added*).

⁵ Zoning Code §17.725.004(D) (*emphasis added*).

Section 17.725.005 (Implementation Procedures) contains no special procedures for dedicated units as a method for meeting the City’s affordable housing requirements.

Applicant has worked very hard to develop a program based on the published Zoning Code. Based on these efforts and in compliance with the published Zoning Code and other State laws, the Proposed Project is consistent with objective standards and therefore protected pursuant to the HAA.⁶ As such, it may be denied or conditioned only where certain narrow findings are made.⁷

Moreover, since the Proposed Project includes twenty percent of its units as low income units (consisting of 10 lower income units), it is further protected by an additional provision of the HAA requiring even more stringent findings for denial.⁸

IV. The Version of the Project Recommended by the Planning Commission is Not Economically Feasible and, Therefore, Impermissible

The City Council staff report recognizes that the version of the project recommended by the Planning Commission may not be required and may proceed only “if the applicant agrees to” the modifications.⁹ The modification recommended by the Planning Commission eliminates the shared housing unit and includes an additional set of duet units, instead of one set of duets. The Planning Commission’s proposal results in 37 lots, 33 of which are single family units and 4 are duet units (with all duet units being affordable). This is referred to herein as the “Planning Commission Project.”

Following the Planning Commission hearing, Applicant evaluated the Planning Commission Project proposal and determined after thorough review that it is not economically viable for several reasons. I understand that Applicant’s review included factors such as: the extremely challenging residential market given homebuyer interest rates, rising costs of building materials, labor, builders insurance, and almost every other component large or small that is a part of buying, planning, developing, building, and selling a residential community at this point in time. As compared to the Proposed Project, the loss of one (1) market rate single family lot and the addition of two more affordable duet units makes the project financially infeasible acting as an effective denial. Without

⁶ Govt. Code § 65589.5(j).

⁷ Generally, these findings are that the housing development project would have a specific, adverse impact upon the public health or safety and that there is no way to mitigate the impact. (Govt. Code. § 65589.5(j)(1)).

⁸ A project with cities 20% low-income units may deny a project only if one of the following conditions are met: (1) the city has a “substantially compliant” housing element and has “met or exceeded” its share of regional housing need for the types of housing the project would provide; (2) The project would have “a significant, quantifiable, direct, and unavoidable impact” on public health or safety; (3) The project violates a “specific state or federal law” and there is “no feasible method” to comply without rendering the project “unaffordable to low- and moderate-income households”; (4) The project site is zoned for agricultural or resource preservation or lacks adequate water or wastewater service; (5) The project is inconsistent with the city’s zoning and the land-use designation of its general plan (as of the date the application was deemed complete), and the city “has adopted a revised housing element in accordance with [statutory deadlines] that is in substantial compliance with this article.” (Govt. Code § 65589.5(d)(5).) Notably, since Brentwood has not adopted a substantially compliant Housing Element (based on the [HCD compliance tracker](#)) denial based on inconsistency with the General Plan or Zoning is not a permissible basis at this time.

⁹ City Council staff report, p. 3.

the requisite findings under the HAA, approving the Planning Commission Project and denying the Proposed Project would be impermissible.

V. Alternative Project Proposed In Applicant’s Historical Spirit of Collaboration

In an effort to be collaborative, I understand that Applicant identified an alternative project that with effort is feasible. The alternative would continue to include 4 duet homes (which would continue to be affordable), but would increase the market rate single family lots to 36. This is referred to herein as the “Alternative Project,” and shown in Exhibit B. Increasing the number of single family lots (by 2 as compared to the Proposed Project, and by 3 as compared to the Planning Commission Project) would give Applicant a means to offset the costs of constructing and selling the affordable units and other increased project costs that will exist if something other than the Proposed Project is approved.

Alternative Project is consistent with the General Plan density. The R-VLD designation is designed predominantly for larger single family residence lots. The permitted density range is 1.1 to 3.0 units per gross acre (du/ac). The Alternative Project would include the same number of units as the Proposed Project (i.e. 40 units by replacing the 5 shared units with single family and duet units) and density would remain at 2.45 du/ac (40 units/16.32 acres = 2.45) which is consistent with the General Plan. Therefore, with the same number of units, the park calculation would also remain unchanged.

The Alternative Project also continues to satisfy the SDBL and the City’s inclusionary ordinance.¹⁰

VI. Park In-Lieu Fee Required Instead of Park Dedication

As we have discussed, the Zoning Code makes a distinction between the park requirement for subdivisions depending on whether it includes 50 units or less. Municipal Code Section 16.150.120 requires the dedication of park land for a “proposed subdivision of more than fifty parcels.” Separately, Section 16.150.130 requires the payment of a park fee-in-lieu for a “subdivision of fifty or less parcels.” Since the Applicant proposes less than 50 parcels, Applicant need only pay the in-lieu fees, and is not required to dedicate park land.

VII. SDBL Clarifications

I understand that Applicant desires to make clarifications regarding its SDBL requests.

- In order to satisfy the City’s density transition, Applicant designed the Proposed Project subdivision to include “wings” (essentially six-foot extensions on two of the lots), in order to buffer the new lots from the surrounding properties. However, Applicant has requested a waiver under the SDBL to remove these projections. We understand that staff supports this request.¹¹

¹⁰ The Alternative Project includes 2 duet homes at very low income, 1 duet home at low income, and 1 duet home at moderate income.

¹¹ See City Council staff report Table 3, Row 1.

- The Applicant also requested a waiver to grant it relief from the 20-foot front yard setback requirement for the single family homes and proposes instead 15-foot front yard setbacks. Granting the requested front yard setbacks supports the affordable housing economics because it would allow for larger yards, porches and other amenities that increase desirability and values for those homes, thus further offsetting the cost of the affordable units.

VIII. Response to Recent Public Comment

A nearby developer provided public comment regarding a desire for a ten-foot masonry wall along the perimeter of the project. A ten-foot wall would not comport with the appearance of the area.

We did not locate any requirement that requires construction of a wall between new development and existing development. Further, the California Environmental Quality Act does not include privacy of existing residents as an environmental impact. Nonetheless, Applicant designed the Project to incorporate design elements, including setbacks and landscaping, to minimize any privacy concerns of neighboring homeowners.

To the extent possible Applicant has preserved views, and neither the Proposed Project nor the Alternative Project would remove trees, rock outcroppings, or historic buildings within a state scenic highway, and the area is not designated as a scenic vista. We note that the Initial Study describes: *“the proposed project is identified for urban land uses in the Brentwood General Plan. The proposed project is consistent with the overriding considerations that were adopted for the General Plan. As such, implementation of the proposed project would not create new impacts over and above those identified in the General Plan Final EIR nor significantly change previously identified impacts.”* Therefore, in our opinion, there are no view-related impacts from either the Proposed Project or the Alternative Project.

IX. Conclusion

Therefore, Applicant’s Alternative Project satisfies the Zoning Code, the HAA, SDBL, and other state and city requirements.

Please let me know if you have questions or comments on the foregoing.

Exhibit A

Proposed Project

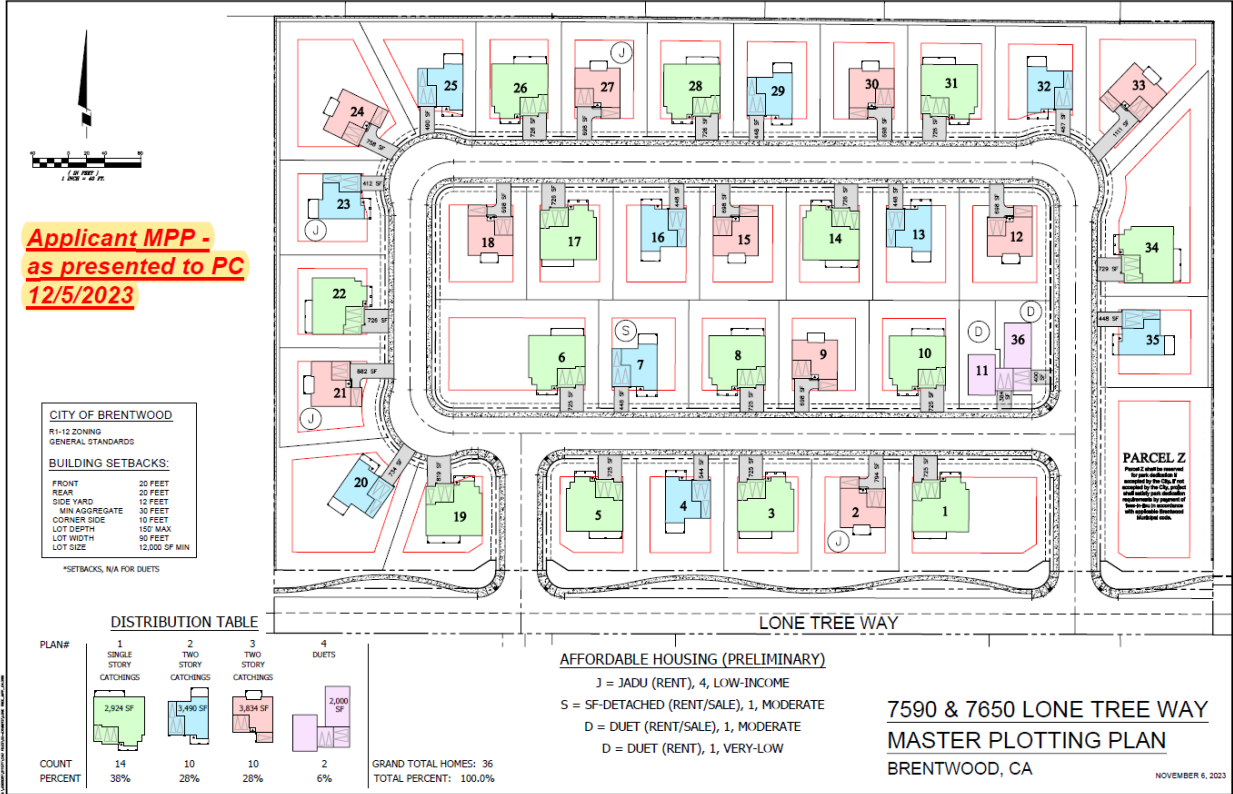


Exhibit B

Alternative Project

