



# City of Huntington Beach

**File #:** 20-1393

**MEETING DATE:** 2/18/2020

## REQUEST FOR CITY COUNCIL ACTION

**SUBMITTED TO:** Honorable Mayor and City Council Members

**SUBMITTED BY:** Oliver Chi, City Manager

**PREPARED BY:** Ursula Luna-Reynosa, Director of Community Development

**Subject:**

**City Council's Denial of Tentative Tract Map No. 18157 and Conditional Use Permit No. 17-042 (Ellis Avenue Condos). The matter is re-agendized at the Appellant's request.**

**Statement of Issue:**

Transmitted for your consideration is Tentative Tract Map No. 18157 and Conditional Use Permit No. 17-042, a request to permit a one-lot subdivision and development of a four-story mixed-use building including 48 new condominium residences with 891 square feet of commercial space and three levels of subterranean parking (the "Project") located at 8041 Ellis Avenue (the "Site"). Staff recommended approval of the Project with suggested findings and conditions of approval to the Planning Commission. On June 11, 2019, the Planning Commission voted to deny the Project. The property owner, Tahir Salim, (the "Appellant") filed a timely appeal, per Section 248.20 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO), of the Planning Commission's decision on June 20, 2019. At the August 19, 2019, City Council meeting, the Council opened the public hearing and continued the appeal to the September 3, 2019, meeting at the Appellant's request. At the September 3, 2019 City Council meeting, the Council voted to deny the appeal and upheld the Planning Commission's decision. The Appellant, through his attorney, sent a letter to the City Attorney's Office requesting a re-hearing on the Project, or else he would file a lawsuit on the previous denial. The Project is herein presented to City Council for re-hearing at the Appellant's request.

**Financial Impact:**

No fiscal impact.

**Action:**

The City Council may take one of the following action(s):

A) Deny Tentative Tract Map No. 18157 and Conditional Use Permit No. 17-042 with findings (Attachment No. 1); **OR**

B) Deny Without Prejudice Tentative Tract Map No. 18157 and Conditional Use Permit No. 17-

042 with findings (Attachment No. 1); **OR**

C) Tentatively Approve Tentative Tract Map No. 18157 and Conditional Use Permit No. 17-042 and direct Staff to conduct environmental analysis on the new information provided in the Expert Traffic and Fire Code/Life Safety Reports in accordance with Section 15162 of the CEQA Guidelines (Attachments No. 2 and 3), and re-agendize for a future meeting.

### **Analysis:**

#### **A. PROJECT PROPOSAL:**

Applicant: Jeff Herbst, MCG Architecture, 111 Pacifica, Suite 280, Irvine, CA 92618

Appellant/Property Owner: Tahir Salim, THDT Investment, Inc., 4740 Green River Road, Suite 304, Corona, CA 92880

Location: 8041 Ellis Avenue (North side of Ellis Ave., between Beach Blvd. and Patterson Ln.)

A comprehensive description of the Project can be found in the May 28, 2019, Planning Commission staff report (Attachment No. 7). The staff report and attachments include the proposed site plan, floor plans, elevations, subdivision map, technical studies related to air quality, traffic, hydrology/water quality, and geological/soils, and written communications regarding the project. History of the Planning Commission's decision and subsequent appeal by the property owner can be found in the September 3, 2019 Request for City Council Action (Attachment No. 5).

#### **B. BACKGROUND**

On September 3, 2019, the City Council held a public hearing to consider the appeal of the Project. Eleven people spoke during public comments on the Project. Seven members of the public spoke in opposition to the Project, citing traffic issues, Site access issues, small lot size for the proposed density, parking, and the existing supply of apartments within the City. Four members of the public spoke in support of the Project including, the Appellant, a representative from People for Housing OC, and two representatives from Abundant Housing LA. The Appellant spoke in support of the Project describing the benefits of redeveloping the underutilized and dilapidated Site. The organization representatives spoke in support of affordable ownership opportunities and expressed dissatisfaction with the possibility that the Project would be operated as rental units.

The City Council then deliberated and expressed concerns; issues were raised regarding the Project's impact on Ellis Avenue traffic, shadows on adjacent properties, unsafe ingress/egress to the Site, increased U-turns at Patterson Lane, the area of the project devoted to commercial use being too small, and marginal public open space. Ultimately, the City Council was unable to make all of the required findings for a CUP and denied the Project. In the denial, the City Council made findings that the Project would result in negative impacts to health and safety because:

- (1) There is unsafe vehicular ingress and egress to the Site which will result in exacerbated

accident rates, and

- (2) There is no feasible method to satisfactorily mitigate this adverse impact because there is no alternative or additional access point to the Site.

The City Council also found the Project did not comply with the provisions of the base district and other applicable provisions in Titles 20 through 25 in that the Project does not further the vision of the Town Center Neighborhood Segment of the BECSP, which envisions a vibrant commercial corridor within the Five Points District of the BECSP. The Site is located within the Five Points District and the City Council found that the Project does not further a vibrant commercial corridor because:

- (1) Only one and a half percent (1.5%) of the total square footage of the project is allocated to commercial use,
- (2) There is insufficient vehicular ingress and egress to the site, and
- (3) The Project proposes marginal public open space that does not contribute to the BECSP's vision of walkability and pedestrian connections between public and private property.

City Council Action on September 3, 2019

A motion made by Posey, seconded by Semeta, to deny Tentative Tract Map No. 18157 and Conditional Use Permit No. 17-042 with findings, carried by the following vote:

AYES: Brenden, Carr, Semeta, Peterson, Posey, Delgleize,  
Hardy  
NOES: None  
ABSTAIN: None  
ABSENT: None

**MOTION PASSED**

C. ATTORNEY SUBJECT MATER EXPERT REVIEW

The City was sued by Californians for Homeownership on October 28, 2019 in the case Californians for Homeownership v. City of Huntington Beach. As part of the defense of the lawsuit, the City Attorney's Office retained two experts, a traffic safety expert, and a fire code and safety expert, to review the Project as originally proposed and considered, then denied, by City Council. Initially, the purpose of the expert retainers was to assist in providing a defense to the City in the lawsuit. The experts, Mr. Miller and Mr. McMullen, respectively (collectively, the "Experts"), were asked to review the entire Project as proposed and considered by the Planning Commission and City Council. Both experts have confirmed they did in fact review the entire Project, including scaled plans and reports, before rendering any findings or opinions. The scope/purpose of their review was to analyze everything objectively and offer findings and opinions regarding the proposed project via separate reports (collectively, the "Expert Reports") (Attachments 2 and 3). Such reports are normally kept confidential as "attorney work-product" and used only at a certain time in court for purposes of

defending a lawsuit.

In addition to the pending lawsuit, the Appellant, through his attorney, sent a letter to the City Attorney's Office requesting a re-hearing on the Project, or else the Appellant would file a second lawsuit on the previous denial. To be clear, it is the position of the Appellant and Californians for Homeownership that the Project must be approved. They requested, therefore, a second presentation to City Council on re-hearing in hopes for approval.

When the Expert Reports were recently provided to the City Attorney's Office, it was notable that new material information, new material findings, new material perspectives, and new material opinions were being offered by the Experts. With that new information in hand, and in light of the re-hearing on the Project, the City Attorney determined that this information, which includes new findings and opinions, could not remain "confidential." The City Council must have before it all the information available to make an informed decision. Keeping these reports confidential (merely for defense of the lawsuit) and not presenting them (with the new information) to City Council would be improper. To that end, as of the publish date of the February 18, 2020 Agenda, the City Attorney is waiving the "attorney work-product" privilege and sharing these Expert Reports with City Council. The decision to approve or deny the Project is ultimately at the discretion of the City Council via the consideration of the TTM No. 18157 and CUP No. 17-042.

**Environmental Status:**

Should the City Council wish to consider approval of the proposed project, it is recommended that they direct staff to conduct further environmental analysis on the new information recently received via the Expert Reports.

**Strategic Plan Goal:**

Not Applicable.

**Attachment(s):**

1. Findings for Denial of TTM No. 18157/ CUP No. 17-042
2. Traffic Expert Review by Albert Grover & Associates
3. CA Fire Code/Life Safety Expert Review by James F. McMullen
4. Appellant's Request for the Item to be Reagendized
5. Project Plans (see Attachment No. 5 of Attachment No. 7 - May 28, 2019 PC Staff Report)
6. September 3, 2019 Request for City Council Action and Attachments
7. June 11, 2019 Planning Commission NOA of Denial
8. June 11, 2019 Planning Commission Staff Report with Attachments
9. May 28, 2019 Planning Commission Staff Report with Attachments