

Exhibit J



May 28th, 2020

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Planning and Development Department
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SUBJECT: Extension of Tentative Tract Map 5434 and Vested Fees

Ms. Clark,

This letter serves as an appeal to the condition proposed for the approval of the time extension for Vesting Tentative Tract 5434. The City of Fresno is recommending that the map extension be approved only if current impact fees be paid, stripping the map of these Vested Rights. This is not only unfair given the history of issues related to the complexity of this map, but it is also not justified given that neither the City of Fresno Development Code nor the Subdivision Map Act support this interpretation of the loss of Vested Rights.

An initial appeal letter was sent to the City by KB Home on May 5, 2020. The City responded to the appeal letter in the Planning Commission staff report dated May 20, 2020, and as a result, KB Home and Precision Civil Engineering, the applicant's representative, requested that the item be continued in order to talk with City staff to clarify the timeline and difficulties that have been encountered in recording the final map. After meeting with Public Work's staff, it appears that the City is not aware of the extent of the multiple delays that have resulted not only because of the complexity of this map, but also because of divergent City direction and requests for modifications to the lift station and associated improvements. **This letter serves to highlight these multiple delays and show that if these delays had not been encountered, the map would have been recorded within 2 years of tentative map approval.**

Background

Vesting Tentative Tract Map No. 5434/UGM, which proposes a 140-lot single-family residential subdivision on approximately 28.81 acres, was accepted for processing by the City of Fresno on March 14, 2006 and approved by the Fresno City Council on August 17, 2017. In a letter dated August 12, 2019, KB Home requested an initial extension of time to record the final the map, allowing an additional 6 months. This extension was granted by the City. A second extension request was submitted in February of 2020, at which time City staff made it clear that this extension would not be granted unless the new impact fees were paid by the developer

Appeal

The condition related to payment of current impact fees is being appealed for the following reasons:

1. KB Home and the project engineer (Precision Civil Engineering (PCE)), have been diligently working towards finalizing plans and documents needed to record the final map. There have been unexpected delays due to the complexity of designing the required lift station and creating a specialized CFD. In addition, some of this delays and modifications have resulted in additional expenses incurred by KB Home. The total delay equates to approximately 10 months, which is the additional time that is/was needed to record the final map.
2. A map extension should not have been required in the first place since the Final Map was filed in February of 2019 (within 24 months of Tentative Map approval).
3. The evidence used to make the findings contained in Section 15-3316-C-2(c and d) to support the imposition of new fees are based on a comparison to 2006 conditions, even though the map was approved in 2017. This is not the intent of the ordinance.

Below is a detailed analysis of the items listed above.

1. **KB Home and our Engineer (PCE) have been diligently working towards finalizing plans and documents needed to record the final map, but there have been delays due to the complexity of designing the required lift station and creating a specialized CFD. In addition, some of this delays and modifications have resulted in additional expenses incurred by KB Home.**

This has been a difficult project for all involved and do want to acknowledge City's help in getting to where we are at today. However, we do want to point out several things that have caused significant delays and cost impacts to KB Home. The timeline and discussion below demonstrate the efforts made by the applicant to continuously keep the project moving. The applicant should not be penalized due to unforeseen circumstances and multiple requests for modifications by the City.

1. **12/5/18:** Initial submittal of preliminary sewer design. Shortly after submittal, we were asked by the City to hold off due to several developments in the area that the City needed to decide how to handle sewer connections. This was after multiple meetings where client and City officials mutually agreed on the lift station.
2. **1/23/19:** Received fee amount for initial review (requested on 12/5/18).
3. **2/8/19:** Submitted the Final Map, including Improvement Plans.
4. **3/26/19:** The City asked KB Home to explore a gravity feed sewer design down Temperance to Floradora Avenue instead of the lift station. This resulted in a complete shift in engineering work that had already occurred

5. **6/12/19:** City decided that the gravity feed sewer would not work and that to continue with the lift station. This cost us both time and money with the multiple designs (**4 month delay**). At this meeting the City also mentioned they did not have staff to create a Communities Facilities District in a timely matter. PCE agreed to take on this task in order to assist KB Home and not delay the recording of the map.
6. **7/26/19:** The flowline elevation at Temperance and McKinley provided to PCE, but it didn't work (**1.5 month delay**).
7. **8/7/19:** Applicants met with City to discuss lift station location (PW did not accept previous proposed location).
8. **8/12/19:** Received sewer design tie-in elevation at Temperance and McKinley. This is the point where the sewer design could begin. Akel Engineering had to get information from Clovis to design the master sewer trunk line and provide elevation.
9. **8/19/19:** City requested to revise design to accommodate the tract to the East (Zaninovich property). It should be noted that the Mayor's office personally called and asked assistance on this item (**0.5-month delay**)
10. **9/9/19:** KB Home, City of Fresno, PCE and Wilson Homes meet to discuss changing the design to allow for them to tie-in (had to lower our sewer) and enlarge our lift station to take their sewer flows. (**0.5-month delay**)
11. **10/9/19:** We received email confirmation from the City that City would place a lien on the Zaninovich property. This gives KB Home some assurance that we'll be made whole on the lowering of the sewer and upsizing of the lift station. We then redesigned our plans (**1-month delay**).

We do want to note, that by KB Home accommodating the Zaninovich property, this prevented a lawsuit against the City of Fresno and we believe showed good faith efforts on our part to work with the City. With the multiple sewer designs, enlarging the lift station, the location change, this cost addition money in the sum of approximately \$245,000, not to mention our carry cost for the lost time of approximately \$275,000.

12. **8/2019-12/2019:** Various meetings with City and FID occurred regarding lift station site location. We received push back from FID on clearance to Mill Ditch and boring locations (adding 3 months), this caused multiple variations of force main bends that would work with the limited space to go under the ditch. (**Additional 2-month delay**)
13. **12/2019:** DPU requested that KB Home install the 30" truck line in McKinley that was not part of the conditions. KB Home agreed to install. PCE then had to add this to their plans.
14. **1/7/20:** The last meeting with Wastewater occurred. At this meeting we received final design comments and could final our lift station design. Once design was final, it could be sent to the Electrical Engineer for his electrical design

15. 1/8/20: Steps to initiate and process the formation of a new CFD received from the City.
16. 1/31/20: CFD formation request and legal documents submitted to the City.
17. 2/27/20: Received email from Art at Wastewater confirming testing of bends under canal and acceptance of our design, previous configurations had failed maintenance test.
18. 2/28/20: Received comments on CFD submittal. At that time Ann Lillie stated that DPU/DPW will need a detailed breakdown of the cost estimate prior to going to Council.
19. 3/5/20: Received email from Art at Wastewater regarding annual cost for maintenance of lift station per the specific bend configuration that passed testing on 2/27. Even though CFD could have been started sooner, there is no way it could have been complete any quicker with the testing that needed to be completed by the City of Fresno. Meaning the CFD was not critical path.
20. 3/11/20: CFD was accepted as complete and Council dates set for 4/23/20 and 6/11/20 but process was complete as of 5/21/20.

As shown above, there were approximately 10 months' worth of delays, if not more. These delays were mostly outside of our control and in some cases, outside of anyone's control. This is a very difficult project and we have been working with the City every step of the way. As shown above, we've accommodated every change requested by the City, even changes and additions that have resulted in additional time and money. As mentioned above, these additional improvements and delays have resulted in costs of over half a million dollars.

2. **A map extension should not have been required in the first place since the Final Map was filed in February of 2019 (within 24 months of Tentative Map approval).**

Based on the staff report, it can be concluded that the City is relying on Section 15-3403 of the Fresno Municipal Code (FMC) to indicate that Vested Rights (including the right to be protected from the imposition of new impact fees) granted through the approval of a Vesting Tentative Tract Map expire if a Final Map is not approved before the expiration of the Vesting Tentative Tract Map. Based on a review of the Development Code and Subdivision Map Act, we disagree with this interpretation. Below is an analysis of the applicable City of Fresno Development Code:

Section 15-3403 (EXPIRATION OF VESTING TENTATIVE **MAP**) of the Fresno Municipal Code states the following:

*The development rights vested by this section shall expire if a Parcel Map or Final Map is not approved before the expiration of the Vesting Tentative Map or Vesting Tentative Parcel Map **in compliance with Section 15-3316**, Time Limits and Expiration of Approved Maps ...*

Section 15-3316 **clearly indicates that a tentative map does not expire if a Final Map has been filed with the City before the original 2-year time limit ends.** Specifically, this section reads as follows:

SEC. 15-3316. - TIME LIMITS AND EXPIRATION OF APPROVED MAPS.

A. Time Limits. An approved Tentative Map or Tentative Parcel Map is valid for 24 months after its effective date, except as otherwise provided by the Map Act (Sections 66452.6, 66452.11, 66452.13, 66452.21, 66452.22, 66452.23, 66452.24 and/or 66463.5).

*B. **Expiration.** At the end of the time period per Subsection A of this section, the approval shall expire and become void **unless:***

*1. **A signed Parcel or Final Map has been timely filed with the City.** The City may process, approve, and record the map if it is prepared in accordance with the approved tentative map, subject to the limitations and requirement of the Map Act.*

2. An extension of time has been granted in compliance with this section.

The City of Fresno is basing the expiration of the map on Section 15-3316-A of the FMC (Time Limits) rather than Section 15-3316-B (Expiration). Section 15-3316-B clearly states that if a Final Map **is timely filed** with the City, the Tentative Map (and thus the rights granted under that map) do not expire within that 2-year timeframe. The Final Map was filed in February of 2019 and accepted as complete by the City in March 2019. This is well before the original map expiration date of August 17, 2019. **Thus, the map has not expired, and no map extension is required.**

3. The evidence used to make the findings contained in Section 15-3316-C-1(c and d) to support the imposition of new fees are based on a comparison to 2006 conditions, even though the map was approved in 2017. This is not the intent of the ordinance.

As shown in Exhibit H of the City of Fresno's staff report for this project, the City of is basing the justification for imposing new fees on Finding 15-3316-C-2-c and d

Finding C states the following: *There have been no changes in the character of the site or its surroundings that affect how the policies of the General Plan or other standards of the Development Code apply to the project.*

Finding D states the following: *There have been no changes to the capacities of community resources, including roads, schools, sewage treatment or disposal facilities, or water supply, so that there is no longer sufficient remaining capacity to serve the project.*

The intent of these findings is to determine if there have been substantial changes **since the original project approval** that would disallow an extension or require additional conditions to accommodate any changes that have occurred since the original approval. Rather than compare conditions/circumstances that existed in August of 2017 when the map was originally approved, the City is comparing current conditions/circumstances to conditions that existed in 2006. This applicant disagrees with this analysis as this appears to not be the intent of the Development Code.

In conclusion, we ask that you extend our Tentative Map and keep the impact fees as they were when the map was approved. We believe we have made every effort to get this map finalized and feel it is unfair to be assessed additional impact fees that will make this project no longer pencil out, especially because this project has been uniquely complex.

I appreciate your time and understanding. Please let me know if you have any questions.

Sincerely,



Zach Gomes
Vice President, South Valley Business Unit
KB Home

CC:
Wilma Quan
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