



# REPORT TO COUNCIL

## City of Sacramento

915 I Street, Sacramento, CA 95814-2604  
www.CityofSacramento.org

**Public Hearing**  
**May 12, 2009**

**Honorable Mayor and  
Members of the City Council**

**Title: Call Up of 403 38th Street Tentative Map (Z08-144)**

**Location/Council District:** 403 38th Street; APN: 004-0232-027-0000, District 3.

**Recommendation:** Conduct a public hearing and upon conclusion adopt 1) a **Resolution** determining the project exempt from environmental review; and 2) a **Resolution** approving the 403 38th Street Tentative Map with a subdivision modification.

**Contact:** Robert W. Williams, Associate Planner, (916) 808-7686; Sandra Yope, Senior Planner, (916) 808-7158

**Presenters:** Robert W. Williams, Associate Planner

**Department:** Development Services

**Division:** Current Planning

**Organization No:** 21001221

### **Description/Analysis**

**Issue:** The project is before the council on a call up by Councilmember Waters. The applicant is proposing to divide one existing parcel of approximately 18,338 square feet into two parcels in the Standard Single-Family (R-1) zone. The existing lot contains an existing single-family home which will be on proposed Parcel #1. Proposed Parcel #2 is vacant and will be less than the 52 foot width at the building front setback line required by the city subdivision code and therefore requires a subdivision modification to create this parcel. Parcel #1 (with the existing home) conforms to the minimum width requirements. Both proposed parcels exceed the minimum length and area requirements as required by the design standards of the city subdivision code (Section 16.40.220).

The Subdivision Map Act requires approval of a propose map if none of the negative findings listed in the state code can be made. This map is consistent with applicable general and specific plans. The site is physically suitable for the type of development proposed and for the density of development. The design of the

subdivision and the proposed improvements are not likely to cause substantial environmental damage, injure fish or wildlife, cause serious public health problems, and will not conflict with any easements. Therefore, none of the negative Subdivision Map act findings can be made.

Lot design standards for the R-1 zone require an interior lot to be at least 5200 square feet in area, at least 100 feet deep, and 52 feet wide (at the front setback line). A subdivision modification may be granted to deviate from these standards when it is impossible or impractical to conform to these standards. Subdivision modifications are routinely granted to parcel splits of large existing lots when it is impossible to meet these design standards. It is impossible to divide this lot and maintain a 52 foot width standard for both lots. Many lots in this neighborhood do not meet some or all of these standards and would require a subdivision modification under current regulations. Both of these proposed lots will be over 8000 square feet in area, which is larger than most of the lots in the neighborhood.

**Applicant:** Jordan Magill, 403 38th Street, Sacramento, CA 95816.

**Policy Considerations:** The subject site is designated Traditional Low Density Residential in the recently adopted 2030 General Plan. This allows for residential densities between 3 and 8 dwelling units per net acre. The proposed project is consistent with the General Plan, at approximately 4.76 units per net acre. The division of this property would allow for the future construction of a new single-family home on proposed Parcel #2, which is consistent with the R-1 zoning.

**Environmental Considerations:** This project is exempt from the provisions of CEQA (the California Environmental Quality Act) under Class 15, Section number 15315, Minor Land Divisions.

**Sustainability Consideration:** The proposed project is consistent with the Sustainability Master Plan and will allow for a single-family residence to be constructed on an underutilized infill site.

**Commission/Committee Action:** The Zoning Administrator held a public hearing for the project on September 18, 2008, and approved the project with conditions. The approval was appealed by a neighboring property owner. The Planning Commission first heard the appeal on October 23, 2008. Commissioners requested that geotechnical study and a drainage plan be prepared before taking an action on the appeal. These items were provided and reviewed by the Utilities and Transportation departments. On March 12, 2009 the Planning Commission voted seven ayes and one no to approve the project with conditions (thereby denying the appeal). The project is before the council on a call up by Councilmember Waters.

**Rationale for Recommendation:** Under the Subdivision Map Act, a subdivision map that complies with all applicable codes and directives shall be approved. The proposed map to subdivide one large interior infill lot into two lots meets all the applicable codes and directives. The unusual shape of the site causes the need for the granting of the subdivision modification, as it is not possible for this parcel to meet the 52 foot width requirement. The parcel is 52 feet wide in the middle of the

lot, over 90 feet wide in the rear of the lot, and over 8000 square feet. A geotechnical report has verified a home can be constructed on the lot and a drainage plan will alleviate any potential flooding issues.

**Financial Considerations:** This project has no fiscal considerations.

**Emerging Small Business Development (ESBD):** No goods or services are being purchased under this report.

Respectfully Submitted by:   
David Kwong  
Planning Manager

Approved by:   
William Thomas  
Director of Development Services

Recommendation Approved:

  
Ray Kerridge  
City Manager

**Table of Contents:**

Report	pg. 1
<b>Attachments</b>	
1 Background Information	pg. 4
2 Vicinity Map	pg. 8
3 Land Use and Zoning Map	pg. 9
4 Resolution determining project exempt from CEQA	pg. 10
5 Resolution to approve the Tentative Map	pg. 11
Exhibit A – Tentative Map	pg. 17

## Attachment 1 – Project Background

**Background Information:** The subject property is located in East Sacramento in the McKinley Park neighborhood. This area was annexed into the City of Sacramento in 1911. The parcel is on the east side of 38th Street, about 130 feet south of McKinley Boulevard. The surrounding area is mostly zoned Standard Single-Family (R-1), consisting of mostly single-family uses and a few two-family uses. Most of the existing homes in the surrounding neighborhood were constructed in the 1920's and 1930's. The majority of the lots in this older neighborhood do not meet the minimum width and depth standards (52 feet by 100 feet) found in today's Subdivision Code.

The existing parcel is a large trapezoid shaped lot that is 67.5 feet at the street frontage but widens out to over 183 feet wide along the rear property line, which is over 145 feet from the front property line. The existing home on the subject site was most likely originally constructed in the late 1920's or early 1930's, however the County Assessor records list the effective year built date as 1970, when the home was expanded. A detached garage that was next to the home was demolished in 2006. No previous entitlements have been located for the property.

The application was submitted on May 23, 2008. The project was routed to the other city departments and outside agencies for comments and conditions to be placed on the tentative map. Neighborhood groups including the McKinley East Sacramento Neighborhood Association (MENA), the East Sacramento Improvement Association, the East Sacramento Preservation Task Force, the Friends of H Street, and the East Sacramento Chamber of Commerce were also notified of the project.

Staff received a couple of telephone inquiries about the project. Staff also received a call from an adjacent neighbor (the appellant of the Zoning Administrator approval) who voiced his opposition to the project. He presented staff with signatures from other neighbors who were also opposed to the project. The project was continued for two additional weeks to give all parties additional time to address concerns that were raised.

Some of the concerns expressed about the project were about the possible size and design of a future single family home on the property. The size and design of a future home on the newly created lot have not yet been proposed and are not a requirement of the tentative map. Any future home on the site will have to comply with the East Sacramento design ordinance and citywide design review, and will have to comply with all zoning regulations. Staff did examine a site plan with an example of a house that could be built on the lot without additional entitlements in order to support the subdivision modification request. This is a typical requirement of an application that includes a subdivision modification and is for theoretical purposes and not a proposed or required structure to be built by the applicant.

Other concerns expressed were about potential flooding issues of the property due to the presence of an old slough that used to run through this property and neighboring developed properties. Neighbors expressed concerns that the addition of a future structure could increase the potential flooding during future storm events. Staff

consulted with the utilities department to investigate these issues. Their determination was the conditions placed on the proposed map would actually further improve the drainage of the lot and area.

**Zoning Administrator Hearing:** The Zoning Administrator heard the project on September 18, 2009. A Utilities Department representative was present at the hearing and addressed the potential flooding issues. The Utilities Department representative stated that the storm drains had recently been improved and would be able to handle most storm events. They also stated that a grading plan would help mitigate issues associated with future storm events. The Zoning Administrator reviewed all written material and listened to 40 minutes of testimony before rendering a decision. The Zoning Administrator approved the project based on the requirements of the Subdivision Map Act, with an additional condition that a grading plan must be submitted and approved by the Department of Utilities prior to recording of the final map. The project was appealed by the adjacent neighbor to the Planning Commission.

**Planning Commission Hearing:** The Planning Commission held a public hearing on October 23, 2008 and listened to testimony from the neighbor, the applicant, and the Utilities department. At the hearing, concerns were raised about the physical suitability of the site for the development of a single-family resident due to the underlying soil condition and potential drainage problem. The commissioners requested that the geotechnical study and a drainage plan be prepared and reviewed by appropriate staff before taking an action on the appeal.

After the requested items were prepared by the applicant and reviewed by City staff, the project was heard again on March 12, 2009. The Department of Utilities also placed a new entitlement condition that the applicant will enter into an agreement for maintenance of drainage with the city prior to finalizing the tentative map. The Planning Commission voted (7 ayes and 1 no) to approve the project with conditions (thereby denying the appeal).

On March 23, 2009 the item was called up by Council Member Waters.

### **Subdivision Map Act:**

The subdivision map act requires that the Council make one or more of the following findings to **deny** the map:

1. None of the conditions described in Government Code Section 66474, subsection (a) through (g), inclusive, exist with respect to the proposed subdivision;
2. The proposed subdivision, together with the provisions for its design and improvement, is consistent with the City General Plan, all applicable community and specific plans, and Title 16 Subdivisions of the City Code, which is a specific plan of the City (Gov. Code §66473.5);
3. The discharge of waste from the proposed subdivision into the existing

community sewer system will not result in a violation of the applicable waste discharge requirements prescribed by the California Regional Water Quality Control Board, Central Valley Region, in that existing treatment plants have a design capacity adequate to service the proposed subdivision (Gov. Code §66474.6);

4. The design of the proposed subdivision provides, to the extent feasible, for future passive or natural heating and cooling opportunities (Gov. Code §66473.1);
5. The City Council has considered the effect of the approval of this tentative subdivision map on the housing needs of the region and has balanced these needs against the public service needs of its residents and available fiscal and environmental resources (Gov. Code §66412.3).

The Subdivision Map Act requires approval of a propose map if none of the negative findings can be made. This map meets the requirements of Section 66474 in that it is consistent with applicable general and specific plans. The site is physically suitable for the type of development proposed and for the density of development. The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage, injure fish or wildlife, cause serious public health problems, and will not conflict with any easements. In addition, the discharge of waste from the proposed subdivision into the existing community sewer system will not result in a violation of the applicable waste discharge requirements and the design provides, to the extent feasible, for future passive or natural heating and cooling opportunities. Therefore, the proposed map should be approved as none of the negative findings can be made.

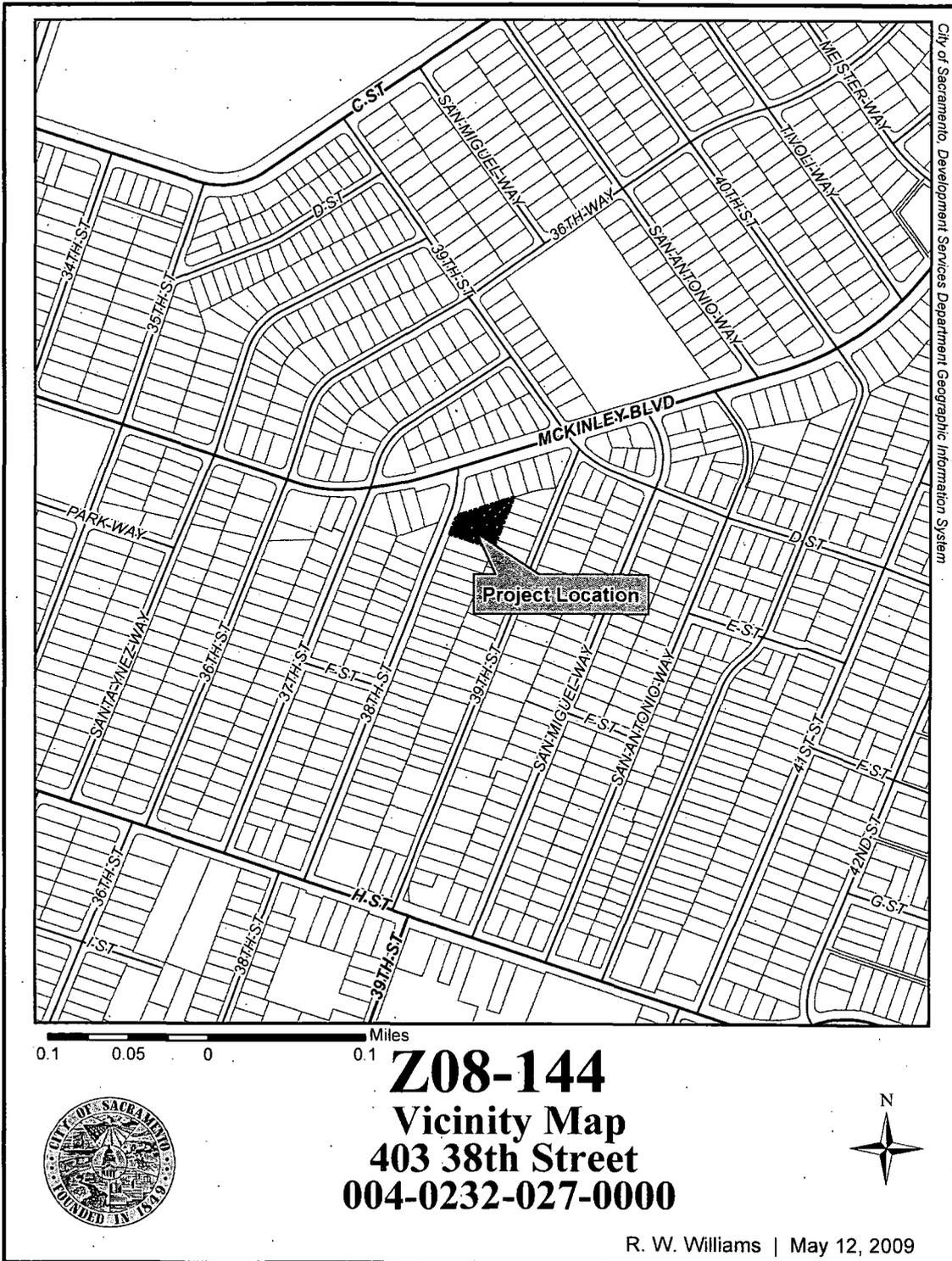
Additionally a subdivision modification is required in order to deviate from lot width requirements. Section 16.52.020 of the city code requires the following findings to be made in order to grant a subdivision modification:

1. That the modification will not be detrimental to the public health, safety or welfare or be injurious to other properties in the vicinity;
2. That the property to be divided is of such size or shape, or is affected by such topographic conditions, or that there are such special circumstances or conditions affecting the property that it is impossible, impractical, or undesirable in the particular case to conform to the strict application of these regulations;
3. That the cost to the subdivider of strict or literal compliance with the regulation is not the sole reason for granting the modification;
4. That granting the modification is in accord with the intent and purposes of these regulations and is consistent with the general plan and with all other applicable specific plans of the city.

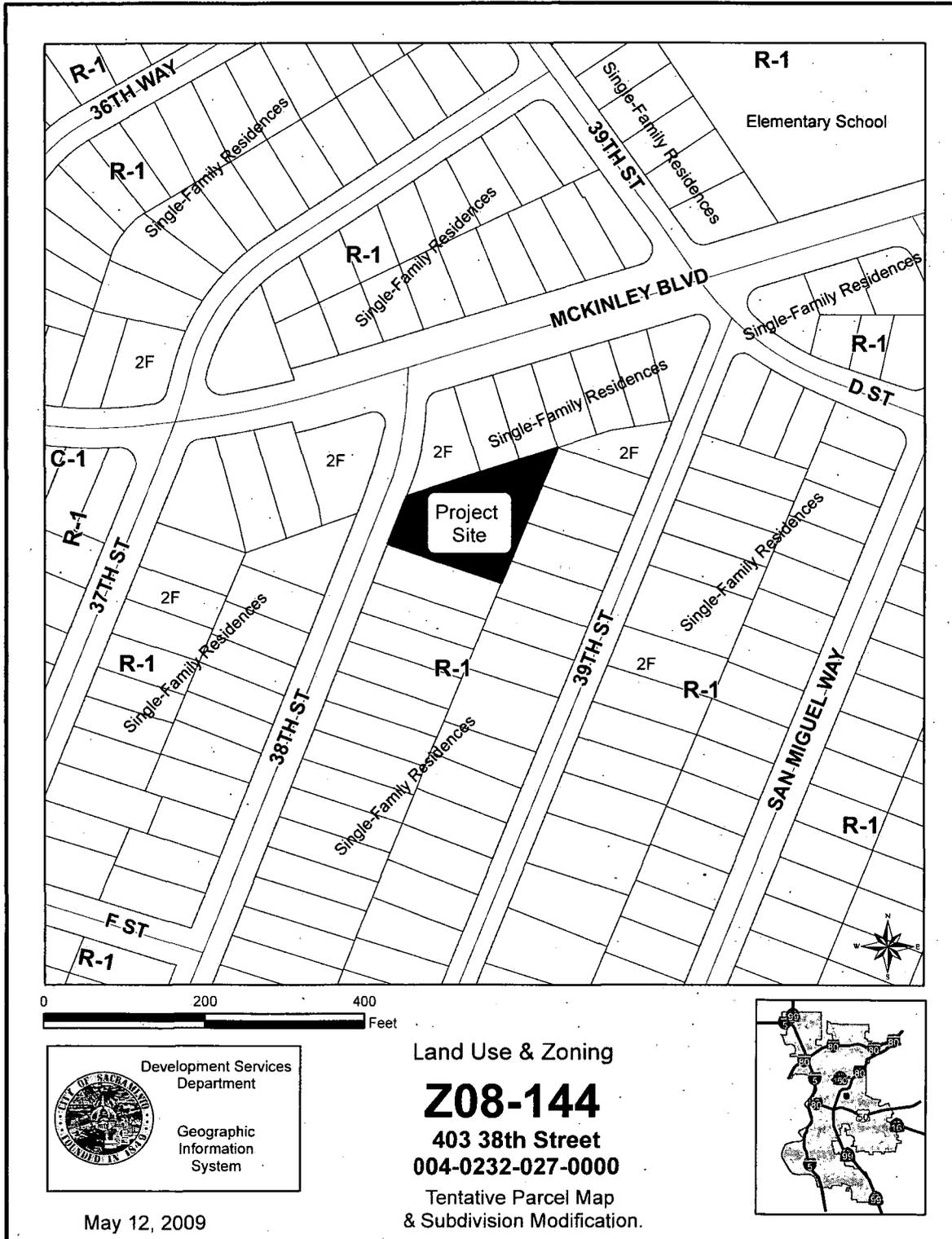
In this case, staff finds that the unusual shape of the site causes the need for the narrow lot. Because of this, the subdivision modification is not based solely on the cost

to the subdivider. Since the lots will meet the minimum size requirements and all other standards, they will be able to accommodate standard setbacks and a reasonable size and shape of house so that the modification will not be detrimental to the public health and safety and it will not violate the density requirements of the General Plan.

Attachment 2: Vicinity Map



Attachment 3: Land Use and Zoning Map



**RESOLUTION NO. 2009-**

Adopted by the Sacramento City Council

**DETERMINING PROJECT EXEMPT FROM REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (Z08-144)**

**BACKGROUND**

- A. On September 18, 2008 the Zoning Administrator conducted a public hearing and acted to approve with conditions the 403 38th Street Tentative Map.
- B. On September 23, 2008 the decision of the Zoning Administrator was appealed to the Planning Commission.
- C. On October 23, 2008 the Planning Commission conducted a public hearing and acted to continue the 403 38th Street Tentative Map.
- D. March 12, 2009 the Planning Commission conducted a public hearing and acted to approve with conditions the 403 38th Street Tentative Map.
- E. On March 23, 2009 the project was called up to be heard before the City Council.
- F. On May 12, 2009, the City Council conducted a public hearing, for which notice was given pursuant Sacramento City Code Section 17.200.010(C)(2)(d) (posting and mail (300')), and received and considered evidence concerning the 403 38th Street Tentative Map.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1 Based on the determination and recommendation of the City's Environmental Planning Services Manager and the oral and documentary evidence received at the hearing on the Project, the City Council finds that the Project is exempt from review under Class 15, Section number 15315, Minor Land Divisions which consists of the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in accordance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope greater than 20 percent.

**RESOLUTION NO. 2009-**

Adopted by the Sacramento City Council

**ADOPTING FINDINGS OF FACT AND APPROVING THE 403 38TH STREET TENTATIVE MAP PROJECT (Z08-144)**

**BACKGROUND**

- A. On September 18, 2008 the Zoning Administrator conducted a public hearing and acted to approve with conditions the 403 38th Street Tentative Map.
- B. On September 23, 2008 the decision of the Zoning Administrator was appealed to the Planning Commission.
- C. On October 23, 2008 the Planning Commission conducted a public hearing and acted to continue the 403 38th Street Tentative Map.
- D. March 12, 2009 the Planning Commission conducted a public hearing and acted to approve with conditions the 403 38th Street Tentative Map.
- E. On March 23, 2009 the project was called up to be heard before the City Council.
- F. On May 12, 2009, the City Council conducted a public hearing, for which notice was given pursuant Sacramento City Code Section 17.200.010(C)(2)(d) (posting and mail (300')), and received and considered evidence concerning the 403 38th Street Tentative Map.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1 Based on the verbal and documentary evidence received at the hearing on the 403 38th Street Tentative Map, the City Council approves the Project entitlements based on the findings of fact and subject to the conditions of approval as set forth below.
- Section 2 The City Council approves the Project entitlements based on the following findings of fact:
  - A. Environmental Determination:** The Exemption for the Project has been adopted by Resolution No. 2009-\_\_\_\_\_.
  - B. Tentative Map:** The Tentative Map to subdivide 0.42 acres into 2 lots is approved

based on the following findings of fact:

1. None of the conditions described in Government Code Section 66474, subsection (a) through (g), inclusive, exist with respect to the proposed subdivision;
2. The proposed subdivision, together with the provisions for its design and improvement, is consistent with the City General Plan, all applicable community and specific plans, and Title 16 Subdivisions of the City Code, which is a specific plan of the City (Gov. Code §66473.5);
3. The discharge of waste from the proposed subdivision into the existing community sewer system will not result in a violation of the applicable waste discharge requirements prescribed by the California Regional Water Quality Control Board, Central Valley Region, in that existing treatment plants have a design capacity adequate to service the proposed subdivision (Gov. Code §66474.6);
4. The design of the proposed subdivision provides, to the extent feasible, for future passive or natural heating and cooling opportunities (Gov. Code §66473.1);
5. The City Council has considered the effect of the approval of this tentative subdivision map on the housing needs of the region and has balanced these needs against the public service needs of its residents and available fiscal and environmental resources (Gov. Code §66412.3).

**C. Subdivision Modification:** The Subdivision Modification to create one (1) interior parcel of less than 52 feet in width (at the front building setback line) is approved based on the following findings of fact:

1. That the property to be divided is of such size or shape, or is affected by such topographic conditions, or that there are such special circumstances or conditions affecting the property that it is impossible, impractical, or undesirable in the particular case to conform to the strict application of these regulations;
2. That the cost to the subdivider of strict or literal compliance with the regulation is not the sole reason for granting the modification;
3. That the modification will not be detrimental to the public health, safety or welfare or be injurious to other properties in the vicinity;
4. That granting the modification is in accord with the intent and purposes of the provisions of Title 16 of the Sacramento City Code (the Subdivision

Ordinance) and is consistent with the general plan and with all other applicable specific plans of the city.

Section 3 The City Council approves the Project entitlements subject to the following conditions of approval:

**B. Tentative Map:** The Tentative Map to subdivide 0.42 acres into 2 lots is approved based on the following findings of fact:

**NOTE: These conditions shall supersede any contradictory information shown on the Tentative Map approved for this project (Z08-144). The design of any improvement not covered by these conditions shall be to City standard.**

The applicant shall satisfy each of the following conditions prior to filing the Final Map unless a different time for compliance is specifically stated in these conditions. Any condition requiring an improvement that has already been designed and secured under a City approved improvement agreement may be considered satisfied:

**PLANNING:**

**B1.** The existing paved driveway must be removed and replaced with a new driveway that complies with front setback area paving limitations (40% of front setback area), prior to finalization of the map. Paved driveway may have a landscaped strip in the center and the driveway must lead to a fully paved parking area for the existing home.

**GENERAL: All Projects**

**B2.** Pay off existing assessments, or file the necessary segregation requests and fees to segregate existing assessments;

**B3.** Private reciprocal ingress, egress, maneuvering and parking easements are required for future development of the area covered by this Tentative Map. The applicant shall enter into and record an Agreement For Conveyance of Easements with the City stating that a private reciprocal ingress/egress, maneuvering, and parking easement shall be conveyed to and reserved from Parcels 1 and 2, at no cost, at the time of sale or other conveyance of either parcel.;

**B4.** Show all continuing and proposed/required easements on the Parcel Map;

**B5.** If unusual amounts of bone, stone, or artifacts are uncovered, work within 50 meters of the area will cease immediately and a qualified archaeologist shall be consulted to develop, if necessary, further mitigation measures to reduce any archaeological impact to a less than significant effect before construction

resumes. A note shall be placed on the final improvement plans referencing this condition;

**UTILITIES:**

- B6.** Prior to the recordation of the parcel map the applicant/owner shall provide to the Department of Utilities, for review and approval, a detail grading plan showing existing and proposed elevations. Adjacent off-site topography shall also be shown to the extent necessary to determine impacts to existing surface drainage paths. No grading shall occur until the grading plan has been reviewed and approved by the Department of Utilities.
- B7.** Per City Code, the Subdivider may not develop the project in any way that obstructs, impedes, or interferes with the natural flow of existing off-site drainage that crosses the property. Furthermore, all lots shall be graded so that drainage does not cross property lines. The project shall construct the required private infrastructure to handle all the pre-existing off-site runoff to the satisfaction of the DOU. The applicant shall enter into and record an Agreement for Maintenance of Drainage with the City, in a form acceptable to the City Attorney.

**DEPARTMENT OF TRANSPORTATION:**

- B8.** Construct standard subdivision improvements as noted in these conditions pursuant to section 16.48.110 of the City Code. All improvements shall be designed and constructed to the satisfaction of the Development Engineering Division. Improvements required shall be determined by the city. Any public improvement not specifically noted in these conditions or on the Tentative Map shall be designed and constructed to City standards. This shall include street lighting and the repair or replacement/reconstruction of any existing deteriorated curb, gutter and sidewalk fronting the property along 38th Street per City standards and to the satisfaction of the Development Engineering Division;
- B9.** The design and placement of walls, fences, signs and Landscaping near intersections and driveways shall allow stopping sight distance per Caltrans standards and comply with City Code Section 12.28.010 (25' sight triangle). Walls shall be set back 3' behind the sight line needed for stopping sight distance to allow sufficient room for pilasters. Landscaping in the area required for adequate stopping sight distance shall be limited 3.5' in height. The area of exclusion shall be determined by the Development Engineering Division;

**PPDD: Parks**

- B10.** Payment of In-lieu Park Fee: Pursuant to Sacramento City Code Chapter 16.64 (Parkland Dedication) the applicant shall pay to City an in-lieu park fee in the amount determined under SCC §§16.64.040 and 16.64.050 equal to the value of land prescribed for dedication under 16.64.030 and not satisfied by dedication. (See Advisory Note);

**B11. Maintenance District:** The applicant shall initiate and complete the formation of a parks maintenance district (assessment or Mello-Roos special tax district), or annex the project into an existing parks maintenance district. The applicant shall pay all city fees for formation of or annexation to a parks maintenance district. (Contact Planning Department, Special Districts, Project Manager. In assessment districts, the cost of neighborhood park maintenance is equitably spread on the basis of special benefit. In special tax districts, the cost of neighborhood park maintenance is spread based upon the hearing report, which specifies the tax rate and method of apportionment.);

**ADVISORY NOTES:** The following advisory notes are informational in nature and are not a requirement of this Tentative Map:

**B12.** At the time of building permit the applicant must show that either the lots will be graded so that drainage does not cross property lines or the applicant will be required to enter into and record an Agreement for Conveyance of Easements with the City stating that a private reciprocal drainage easement shall be conveyed to and reserved from each parcel as needed, at no cost, at the time of sale or other conveyance of either parcel; (Utilities)

**B13.** Developing this property may require the payment of sewer impact fees. Applicant should contact the fee quote desk at (916) 876-6100 for sewer impact fee information; (SASD)

**B14.** Timing and Installation. When fire protection, including fire apparatus access roads and water supplies for fire protection, is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction; (FIRE)

**B15.** The furthest projection of the exterior wall of a building shall be accessible from within 150 ft of an approved Fire Department access road and water supply as measured by an unobstructed route around the exterior of the building. (CFC 503.1.1); (FIRE)

**B16.** Provide at least 5' setback for second story bedroom windows to allow for fire ladder rescue operations. Provide clear access to buildings openings, free to landscaping and other obstructions. Exterior doors and openings required by this code or the Building Code shall be maintained readily accessible for emergency access by the Fire Department. CFC 504.1; (FIRE)

**B17.** Special consideration should be given during the design phase of a development project to address the benefits derived from the urban forest by installing, whenever possible, large shade trees and thereby increasing the shade canopy cover on residential lots and streets. Trees in the urban environment reduce air and noise pollution, furnish habitat for wildlife, provide energy saving shade and

cooling, enhance aesthetics and property values, and contribute to community image and quality of life; (PARKS)

- B18.** The City adjusts its Park Development Impact Fees on July 1 of each year. Beginning July 1, 2008 the Park Development Impact Fee due for each single-family residential unit will increase from \$4,843 per residential unit to \$4,868 per unit. The fees are assessed based upon the date of submittal of the application for a Building Permit; (PARKS)
- B19.** As per City Code, the applicant will be responsible to meet his/her obligations regarding:
- a. Title 16, 16.64 Park Dedication / In Lieu (Quimby) Fees, due prior to approval of the final map. The Quimby fee due for this project is estimated at \$4,470. This is based on the creation of one new single-family lot and an average land value of \$250,000 per acre for the East Sacramento Planning Area, plus an additional 20% for off-site park infrastructure improvements, less acres in land dedication. Any change in these factors will change the amount of the Quimby fee due. The final fee is calculated using factors at the time of payment.
  - b. Title 18, 18.44 Park Development Impact Fee, due at the time of issuance of building permit. The Park Development Impact Fee due for this project is estimated at \$4,843. This is based on one new single family unit at the rate of \$4,843 per unit. Any change in these factors will change the amount of the PIF due. The fee is calculated using factors at the time that the project is submitted for building permit.
  - c. Community Facilities District 2002-02, Neighborhood Park Maintenance CFD Annexation.

**PLANNING ADVISORY NOTE:**

- B20.** Any new home to be constructed in this neighborhood will be subject to compliance with the Interim East Sacramento Design Standards (tent) ordinance and to the Citywide Design Review checklist.

**C. Subdivision Modification:** The Subdivision Modification to create one (1) interior parcel of less than 52 feet in width (at the front building setback line) is approved subject to the following conditions of approval:

- C1.** A five (5) foot minimum side yard setback requirement for all residential dwellings shall be recorded on the final map.
- C2.** The minimum distance between parallel property lines must be at least twenty (20) feet apart.

