

PLANNING COMMISSION  
RESOLUTION NO. 2009-18

A RESOLUTION APPROVING THE NORTH EMERALD VESTING TENTATIVE SUBDIVISION MAP TO CONVERT 37 RENTAL TOWNHOME UNITS ON 3.23 ACRES TO 37 FOR-SALE UNITS WITH ONE COMMON LOT, PROPERTY LOCATED AT 601 NORTH EMERALD AVENUE (PONTES FINANCIAL GROUP)

WHEREAS, the City Council by Ordinance No. 2331-CS, which became effective on May 7, 1985, granted Planned Development Zone P-D(373), to allow 37 single-family rental townhome units with related parking and storage on a 3.23 acre property located at 601 North Emerald Avenue; and

WHEREAS, City Council Resolution No. 85-258 adopted by the City Council on May 7, 1985, approved the development plan for P-D(373) and contained the conditions of approval thereof; and

WHEREAS, the City Council by Ordinance 3457-CS, which became effective on December 7, 2007, approved an amendment to P-D(373) to allow for the conversion of 37 existing rental townhome units to for-sale townhome units, on a 3.23 acre property located at 601 North Emerald Avenue; and

WHEREAS, City Council Resolution No. 2007-615 adopted by the City Council on October 23, 2007, approved the development plan for the amendment to P-D(373) and contained the conditions of approval thereof; and

WHEREAS, the Pontes Financial Group has filed an application for a Vesting Tentative Subdivision Map, North Emerald Subdivision, to convert 37 existing rental townhome units to for-sale townhome units, dividing 3.23 acres located at 601 North Emerald Avenue into 38 lots, comprised of 37 lots which contain one existing townhome unit within each lot, and one common-area lot; and

WHEREAS, the applicant has provided notice of intent to convert the 37 existing rental townhome units to for-sale townhome units to existing and prospective tenants in accordance to Sections 66452.8 and 66452.9 of the Subdivision Map Act; and

WHEREAS, said Vesting Tentative Map was received in the office of the Secretary of the Planning Commission on February 26, 2009, and was accepted for filing and deemed complete on March 20, 2009, in accordance with the provisions of Section 4-4.401 of the Modesto Municipal Code; and

WHEREAS, copies of said vesting tentative map have been sent to the Modesto City School District, the Modesto Irrigation District, and the City Public Works Department; and

WHEREAS, City services, including sewer and water facilities, are available; and

WHEREAS, the area can be served by elementary schools in the Modesto City School District and by Fire Station No. 2 at 420 Chicago Avenue, 1.6 miles distant; and

WHEREAS, a public hearing was held by the Planning Commission on June 1, 2009, in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, this vesting tentative subdivision map is exempt from CEQA, pursuant to Section 15301(k) of the CEQA Guidelines, which exempts the division of existing multiple family or single-family residences into common-interest ownership where no physical changes occur which are not otherwise exempt.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission that it hereby finds and determines as follows:

1. The proposed tentative subdivision map to convert 37 existing rental townhome units into for-sale units and one common lot is consistent with the General Plan of the City of Modesto and the Subdivision Map Act of the State of California.
2. The discharge of waste as a result of the proposed subdivision map into the existing sewer system will not result in a violation of existing requirements by the California Regional Water Quality Control Board pursuant to Division 7 (commencing with Section 13000) of the Water Code of the State of California.
3. The proposed tentative subdivision map is exempt from CEQA, pursuant to Section 15301(k) of the CEQA Guidelines, which exempts the division of existing multiple family or single-family residences into common-interest ownership where no physical changes occur which are not otherwise exempt.

BE IT FURTHER RESOLVED by the Planning Commission that the Vesting Tentative Map of North Emerald Subdivision, to convert 37 existing rental townhome units to for-sale townhome units, dividing 3.23 acres located at 601 North Emerald Avenue into 38 lots, comprised of 37 lots which contain one existing townhome unit within each lot, and one common-area lot, accepted for filing in the office of the Secretary of the Planning Commission on March 20, 2009, be and it is hereby approved as submitted and as shown in red on the face of the map and subject to the following conditions:

1. Prior to City Council approval of a final subdivision map, the subdivider shall submit for approval by the City Attorney the articles of incorporation and bylaws, as well as all covenants, conditions, and restrictions which are to be recorded to create a Homeowner's Association (HOA) which shall guarantee continued maintenance of common facilities in the development including: the tot-lot and hardscape (lot "A"). In addition, the HOA shall be responsible for the perpetual maintenance and preservation of the front yards of each lot. The Articles of Incorporation shall be filed with the Secretary of State prior to recordation of the final subdivision map. The covenants, conditions and restrictions shall be recorded prior to or concurrently with the final subdivision map.
2. Prior to the sale of a townhome unit, a subdivision map shall be recorded.

3. All conditions of City Council Resolution No. 2007-615 and including Ordinance 3457-CS not in conflict with this action shall remain in full force and effect.
4. The property owner and developer shall, at their sole expense, defend, indemnify and hold harmless the City of Modesto, its agents, officers, directors and employees, from and against all claims, actions, damages, losses, or expenses of every type and description, including but not limited to payment of attorneys' fees and costs, by reason of, or arising out of, this development approval. The obligation to defend, indemnify and hold harmless shall include but is not limited to any action to arbitrate, attack, review, set aside, void or annul this development approval on any grounds whatsoever. The City of Modesto shall promptly notify the developer of any such claim, action, or proceeding and shall cooperate fully in the defense.

BE IT FURTHER RESOLVED by the Planning Commission that the Secretary of the Planning Commission is hereby directed to file with the Stanislaus County Clerk a Notice of Determination in regard to the environmental impact of the proposed subdivision.

The foregoing resolution was introduced at the regular meeting of the Planning Commission held on June 1, 2009, by John Sanders, who moved its adoption, which motion was seconded by Carolina Bernal, and carried by the following vote:

Ayes:	Bernal, Brandvold, Gillum, Sanders, Tyler, Berglund
Noes:	None
Absent:	None
Recused:	None

BY ORDER OF THE PLANNING COMMISSION OF THE CITY OF MODESTO.

Original, signed copy on file in CEDD  
Patrick Kelly, Secretary