



**COMMUNITY DEVELOPMENT DEPARTMENT  
OFFICE MEMORANDUM**

DATE: **October 23, 2008**

TO: **Mayor and Members of the City Council**

FROM: **Hanson Hom, Community Development Director** *Hanson Hom*

THROUGH: **Amy Chan, City Manager** *Amy Chan*

RE: **Opportunity for Council to appeal decisions of the Planning Commission of October 13, 2008 and the Administrative Hearing of October 15, 2008.**

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Attached is the "Appeal Report" which is presented in the form of Draft Minutes from the Planning Commission Hearing and an Action Summary from the Administrative Hearing. The Planning Commission draft minutes and Action Summary from the Administrative Hearing note items that may be appealed and the final appeal date. **Staff reports and detailed minutes are available on the City's web site and one set of reports and minutes will be placed in a binder in the Council Office.**

Council should specify the reason for an appeal and indicate any appealed items on which it wishes to have expanded notification.

Attachments: A. Planning Commission Action Summary  
B. Administrative Hearing Action Summary

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**DRAFT MINUTES  
SUNNYVALE PLANNING COMMISSION  
October 13, 2008  
456 West Olive Avenue, Sunnyvale, CA 94086**

**6:30 PM – SPECIAL START TIME  
Study Session – West Conference Room**

Meeting called to order.

1. Overview of Study Issue Process (*20 minutes*)
2. **Public Comment on Study Session Agenda Items** (*5 minutes*)
3. Comments from the Chair (*5 minutes*)

**7:00 PM – SPECIAL START TIME  
Public Hearing – Council Chambers**

**CALL TO ORDER/SALUTE TO THE FLAG**

**ROLL CALL**

Members Present: Chair Harriet Rowe; Vice Chair Bo Chang; Commissioner Charles Hungerford; Commissioner Larry Klein; Commissioner Dianne McKenna; Commissioner Brandon Sulser; and Commissioner Nick Travis.

Staff Present: Trudi Ryan, Planning Officer; Kathryn Berry, Senior Assistant City Attorney; Gerri Caruso, Principal Planner; Steve Lynch, Senior Planner; and Debbie Gorman, Recording Secretary.

**SCHEDULED PRESENTATION** - None

**PUBLIC ANNOUNCEMENTS/CITIZENS TO BE HEARD**

Speakers are limited to three (3) minutes. If you wish to address the Planning Commission, please complete a speaker's card and give it to the Recording Secretary. If your subject is not on the agenda, you will be recognized at this time; but the Brown Act (Open Meeting Law) does not allow action by Planning Commission Members. If you wish to speak to a subject listed on the agenda, you will be recognized at the time the item is being considered by the Planning Commission.

**Trudi Ryan**, Planning Officer, commented that since the 7:00 p.m. start time of this meeting is a special start time that the Public Announcements/Citizen to be Heard section of the meeting should have been included during the regular meeting time, starting at 8:00 p.m. She recommended that after 8:00 p.m. another opportunity for the Public Announcements/Citizen to be heard portion of the agenda be provided to allow public comment during the regular meeting time.

### **PUBLIC HEARINGS/GENERAL BUSINESS**

- 1. 2008-0482 - Determine the Enforceability of CC&Rs (conditions, covenants & restrictions) for Violations to City Code and Project Approvals** – Study Issue to determine the various issues associated with residential common interest developments (i.e., townhomes, condominiums, or detached single-family homes with common areas); how these issues can be better addressed; and the level of involvement the City could undertake in the enforcement of CC&Rs. RZ

**Trudi Ryan**, Planning Officer, offered an apology to the Commission and the public as the report for this item is not yet completed. She said staff is requesting a continuance of this item to the November 10, 2008 Planning Commission meeting. She said staff was able to contact a few members of the public that had previously expressed interest in this item to advise them of the change. She said because this is a very last minute request that she recommends the Chair open the public hearing for anyone to speak on this item. She encouraged the public to check for the staff report before the November 10, 2008 meeting.

**Chair Rowe** opened the public hearing.

**Arthur Schwartz**, a Sunnyvale resident, said this is a very important issue to him as he lives in an Eichler home, which is covered under CC&Rs that were issued in the 1950s. He said the CC&Rs provide single-story overlay districts without having to do anything as the CC&Rs state that the design and style of the Eichler has to be maintained. He said Joe Eichler as his successor appointed the current head of the CC&Rs for the Eichler tracts. Mr. Schwartz said he would like to see the CC&Rs favor the original plans that were covered by the CC&Rs.

**Comm. McKenna** asked Mr. Schwartz if there was a sunset clause for the CC&Rs. Mr. Schwartz said there is no sunset clause, but if Mr. Eichler had not appointed a successor to himself then the CC&Rs would not be enforceable.

**Ms. Ryan** commented that this particular CC&R Study Issue will focus on common interest developments so single-family detached homes would not be covered in this study. She said that single-family detached homes would be a different issue and that only common interest developments with common

property would be included in this Study Issue. Ms. Ryan said the Eichler tracts are not part of common interest developments.

**Chair Rowe closed the public hearing.**

**Comm. Klein moved to postpone this item to November 10, 2008. Comm. Sulser seconded the motion.**

**ACTION: Comm. Klein made a motion on 2008-0482 to continue the item to November 10, 2008. Comm. Sulser seconded. Motion carried unanimously, 7-0.**

**APPEAL OPTIONS: This action serves as legal notification of the continuance of this item to November 10, 2008.**

Ms. Ryan advised that this portion of the meeting would need to be adjourned until 8 p.m. as the remaining items were advertised for 8 p.m.

The meeting was adjourned at 7:15 p.m.

**The items listed below began after 8:00 PM**

**RECONVENED AT 8:00 P.M.**

**PUBLIC ANNOUNCEMENTS/CITIZENS TO BE HEARD**

Speakers are limited to three (3) minutes. If you wish to address the Planning Commission, please complete a speaker's card and give it to the Recording Secretary. If your subject is not on the agenda, you will be recognized at this time; but the Brown Act (Open Meeting Law) does not allow action by Planning Commission Members. If you wish to speak to a subject listed on the agenda, you will be recognized at the time the item is being considered by the Planning Commission.

**CONSENT CALENDAR**

**2.A. APPROVAL OF MINUTES of September 22, 2008**

**2.B. 2008-0851 - Application for a Design Review to allow a 340 square foot addition resulting in a total Floor Area Ratio (FAR) of approximately 46.5% where 45% FAR may be allowed without Planning Commission Review. The property is located at **1381 Arleen Avenue** (near Carlisle Wy.) in an R-0 (Low Density Residential) Zoning District. (APN: 309-08-026) SB**

- 2.C. 2008-0761 – Arbor Terrace Apartments [Applicant] EQR-Connor LLC**  
[Owner]: Application for a Special Development Permit to allow the conversion of an existing laundry room to a new studio apartment. The property is located at **555 East El Camino Real** (S. Fair Oaks Ave.) in an R-4/ECR (High Density Residential/Precise Plan for El Camino Real) Zoning District. (APN: 211-01-041) SB (***Staff requests continuance to November 10, 2008***)

Comm. Sulser moved to approve the consent calendar. Comm. Klein seconded the motion. Comm. McKenna asked that the motion include the language “with the minutes as corrected”, which was acceptable to the maker and seconder of the motion.

Comm. Sulser moved to approve project 2008-0851, 2008-0761 and the minutes of September 22, 2008 as corrected. Comm. Klein seconded. Motion carried unanimously, 7-0.

#### **PUBLIC HEARINGS/GENERAL BUSINESS**

- 3. 2006-0712 – Trumark Companies [Applicant] Ray Street Office, LLC.**  
[Owner]: Application for related proposals on a 6.63 acre site located at **1275 and 1287 Lawrence Station Road** (near Elko Drive) in an M-S (Industrial & Service) Zoning District. (APNs: 110-15-045, 110-15-044) GC, SL

- **Resolution** to Certify the Environmental Impact Report
- **Introduction of an Ordinance** to Amend Title 19 of the Sunnyvale Municipal Code (Zoning) to create a Mixed Use Zoning Combining District (MU), which may be combined with the R-3, R-4, and R-5 Residential Zoning Districts.
- **General Plan Amendment** to change the land use designation from Industrial to Very High Density Residential,
- **Rezone** the site from M-S (Industrial & Service) to R-5/MU (High Density Residential and Office/Mixed Use),
- **Special Development Permit** to allow development of 338 condominium units and 16,000 square feet of commercial space,
- **Vesting Tentative Map** for condominium purposes.

#### ***Resolution to Certify the Environmental Impact Report***

**ACTION:** Comm. McKenna made a motion on 2006-0712 to recommend to City Council to adopt a resolution recommending certification for the EIR and adopting the Mitigation Monitoring and Reporting Program. Comm. Hungerford seconded. Motion carried unanimously, 7-0.

**APPEAL OPTIONS:** This recommendation will be forwarded to City Council for consideration at the November 18, 2008 City Council meeting.

*Introduction of an Ordinance to Amend Title 19 of the Sunnyvale Municipal Code (Zoning) to create a Mixed Use Zoning Combining District (MU), which may be combined with the R-3, R-4, and R-5 Residential Zoning Districts*

**ACTION:** Comm. Klein made a motion on 2008-0712 to recommend to City Council to introduce an ordinance (Attachment A) to amend Title 19 of the Sunnyvale Municipal Code (Zoning) to create a Mixed Use Combining District for the R-3, R-4, and R-5, Residential Zoning Districts with the following requirements: Minimum lot size shall be two acres; Commercial/office shall be 10% to 25% of the lot area (Floor Area Ratio); Allowance for an increase in height of 10 feet above the base zoning maximum; Allowance for an increase in the number of stories of one story above the base zoning maximum; Uses in the C-1 (Neighborhood Commercial) Zoning District can be considered; Allow live/work units with attached SMC regulations; 50% of the non-residential area of the live/work unit may be counted towards the minimum commercial requirement (10%); and an SDP is required for any new Mixed Use Combining District project. Comm. McKenna seconded. Motion carried unanimously, 7-0

**APPEAL OPTIONS:** This recommendation will be forwarded to City Council for consideration at the November 18, 2008 City Council meeting.

*Consideration of Statements of Overriding Consideration*

**ACTION:** Comm. Hungerford made a motion on 2008-0712 to recommend to City Council to adopt as a mitigation measure that the fourteen units in question not be occupied for five years, and to adopt Statements of Overriding Consideration for the cumulative regional air quality impacts. Comm. Klein seconded. Motion carried, 6-1, with Comm. McKenna dissenting.

*General Plan Amendment to change the land use designation from Industrial to Very High Density Residential;*

*Rezone the site from M-S (Industrial & Service) to R-5/MU (High Density Residential and Office/Mixed Use);*

*Special Development Permit to allow development of 338 condominium units and 16,000 square feet of commercial space;*

*Vesting Tentative Map for condominium purposes.*

**ACTION:** Comm. McKenna made a motion on 2008-0712 to recommend to City Council to change the land use designation from Industrial to very High Density Residential. Comm. Klein seconded. Motion carried unanimously, 7-0.

**ACTION:** Comm. Klein made a motion on 2008-0712 to recommend to City Council to introduce an ordinance to amend Sunnyvale Municipal Code Title 19 to Rezone the site from M-S (Industrial & Service) to R-5/MU (High Density Residential and Office/Mixed Use. Comm. Sulser seconded. Motion carried unanimously, 7-0.

**ACTION:** Comm. Hungerford made a motion on 2008-0712 to recommend to City Council to approve the Special Development Permit and Vesting Tentative Map with modified conditions: to remove condition 2.B (requiring a redesign to be the maximum of 40% lot coverage). Comm. Klein seconded. Motion carried unanimously, 7-0.

**APPEAL OPTIONS:** The recommendations for the Statements of Overriding Consideration, the change in land use designation, the introduction of the ordinance to Rezone, the approval of the Special Development Permit and the Vesting Tentative Map will be forwarded to City Council for consideration at the November 18, 2008 City Council meeting.

4. **2008-0637 – Downtown Sunnyvale Mixed Use, LLC.** [Applicant/Owner]: Application located at **2502 Town Center Lane** in the DSP-18 (Downtown Specific Plan Block 18) Zoning District. (APN: 209-34-009, 010, 015, 016, 017, 018 and 209-35-001, 005, 007, 010, 011, 012) SL

- **Resolution to Consider** a General Plan Amendment to Block 18 of the Downtown Specific Plan to allow an increase in the number of stories from five to six (no height increase).
- **Resolution to Consider** a General Plan Amendment to Block 18 of the Downtown Specific Plan to allow an increase in the allowed sign area and type.
- **Introduction of an Ordinance to Amend** Title 19.28.090, 19.28.100(c), and 19.28.130 of the Sunnyvale Municipal Code in accordance with the Specific Plan Amendment.
- **Special Development Permit** for: **a)** review of architecture for Block 6 (between Sunnyvale Ave, Washington Ave, Murphy Ave, and McKinley Ave); **b)** to modify condition of approval G11.d.3 to exclude designated outdoor dining from the 90,000 square foot restaurant limitation; and **c)** to modify condition of approval G11.d to remove the 425 seat limitation for any one auditorium in the cinema.

**ACTION:** Comm. McKenna made a motion on 2008-0637 to recommend to City Council to approve the following with modifications: the Specific Plan Amendment and Ordinance to allow an increase in the number of stories from five to six; Specific Plan Amendment and Ordinance to allow an increase in the allowed sign area and type; Special Development Permit for Block 6 architecture with the modified findings and conditions of approval; Special Development Permit to modify condition of approval G11.d.3 to exclude all designated outdoor dining from the 90,000 square foot restaurant limitation with the attached findings; Special Development Permit to modify condition of approval G11.d.2 to remove the 425 seat limitation for any one auditorium in the cinema with the attached findings; to add a condition that the applicant work with staff to redesign the brick canopies on the hotel to provide a more traditional look; to remove condition A32.4 (duplicate); and to add a condition to redesign the upper level of the northeast corner of the parking garage to have an appropriate design similar to the design of the northwest corner of the parking garage. Comm. Klein seconded. Motion carried unanimously, 7-0.

**APPEAL OPTIONS:** This recommendation will be forwarded to City Council for consideration at the October 21, 2008 City Council meeting.

#### **5. Proposed Study Issues and Budget Issues for 2008**

The Commission discussed the existing proposed Study and Budget Issues for 2008 and by majority vote added one potential Budget Issue and two potential Study Issues for further consideration.

The budget issue added is that a yearly budget item to be added to allow budget to send all the Planning Commissioners to yearly training.

The study issues to be added are: that the BMR requirements should be examined, specifically looking at the percent and terms of units required for ownership and rental and to consider having the two percentages be the same; and that the front yard fence policies and requirements be examined as there seem to be problems with fencing around the City.

#### **NON-AGENDA ITEMS AND COMMENTS**

- COMMISSIONERS ORAL COMMENTS
- STAFF ORAL COMMENTS

City Council Meeting Report

**Ms. Ryan** said that at the September 30, 2008 Council meeting City Council considered the three ordinances recently considered by the Planning Commission regarding bounce houses, solar energy plan policies and parking standards and approved all three in accordance with the Planning Commission recommendation.

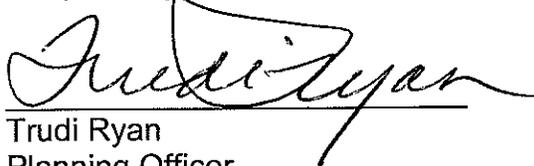
Other Staff Oral Report

**INFORMATION ONLY ITEMS**

**ADJOURNMENT**

With no further business, the Commission meeting was adjourned at 1:24 a.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Trudi Ryan", is written over a horizontal line.

Trudi Ryan  
Planning Officer



## ADMINISTRATIVE HEARING

**ACTION SUMMARY**  
**Wednesday, October 15, 2005**

A public hearing was held by the Administrative Hearing Officer at 2:00 p.m. in the West Conference Room, City Hall, 456 W. Olive Avenue, Sunnyvale, CA for the purpose of considering the following applications:

**2008-0938** – Application for a Use Permit to allow a 9' fence in the rear yard. The property is located at **1521 Flamingo Way** (near Dunholme Wy) in an R-0 (Low Density Residential) Zoning District. (APN: 309-35-015) EH

**ACTION: Approved with an added condition that the fence be no taller than seven feet as measured from grade.**

**APPEAL OPTIONS: May be appealed to the Planning Commission by Thursday, October 30, 2008.**

**2008-1003 - Faultline Brewery** [Applicant] **Diamond Properties** [Owner]: Application for a Use Permit to allow full liquor service at an existing restaurant with existing beer and wine service. The property is located at **1235 Oakmead Parkway** (at lakeside Dr.) in an M-S (Industrial & Service) Zoning District. (APN: 216-51-018) NC

**ACTION: Approved**

**APPEAL OPTIONS: May be appealed to the Planning Commission by Thursday, October 30, 2008.**