



**APPROVED MINUTES
SUNNYVALE PLANNING COMMISSION
August 26, 2013
456 W. Olive Avenue, Sunnyvale, CA 94086**

Study Session - Cancelled

**Special Start Time 7:00 p.m.
PUBLIC HEARING - Council Chambers**

CALL TO ORDER

SALUTE TO THE FLAG

ROLL CALL

Members Present: Chair Maria Dohadwala; Vice Chair Russell W. Melton; Commissioner Gustav Larsson; Commissioner Glenn Hendricks; Commissioner Bo Chang; and Commissioner Ken Olevson.

Members Absent: Commissioner Arcadi Kolchak (excused).

Staff Present: Trudi Ryan, Planning Officer; Kathryn Berry, Senior Assistant City Attorney; Shaunn Mendrin, Senior Planner; David Hogan, Project Planner; Amber El-Hajj, Senior Planner; Shétal Divatia, Senior Planner; and Joey Mariano and Cristina Pfeffer, Recording Secretaries.

SCHEDULED PRESENTATION - none.

PUBLIC ANNOUNCEMENTS/PUBLIC COMMENTS

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 or you may orally make a request to speak. 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

1.A. Approval of Minutes: August 12, 2013

ACTION: Vice Chair Melton moved to approve the Consent Calendar. Comm. Chang seconded. Motion carried, 6-0, with Comm. Kolchak absent.

Any agenda related writings or documents distributed to members of the Planning Commission regarding any open session item on this agenda will be made available for public inspection in the Planning Division office located at 456 W. Olive Ave., Sunnyvale CA 94086 during normal business hours, and in the Council Chambers on the evening of the Planning Commission meeting pursuant to Government Code §54957.5.

PUBLIC HEARINGS/GENERAL BUSINESS

2. **FILE #:** 2013-7272
Location: 698 E. Taylor Avenue (APN: 205-30-003, 023 & 024)
Proposed Project: **SPECIAL DEVELOPMENT PERMIT** to allow 49 townhome-style condominium units.
TENTATIVE MAP to combine three lots to create 9 lots and 6 common lots for a townhouse development.
Applicant / Owner: Warmington Residential
Environmental Review: Mitigated Negative Declaration (MND)
Staff Contact: Shaunn Mendrin, (408) 730-7429, *smendrin@sunnyvale.ca.gov*
Note: This item was continued from the August 12, 2013 Planning Commission meeting.

Shaunn Mendrin, Senior Planner, presented the staff report.

Comm. Olevson confirmed with Mr. Mendrin that the only deviation on parking is one guest parking spot. Comm. Olevson asked if the deviation on building height was a result of designing for cosmetics only. Mr. Mendrin said the building height results from a site grade which tapers up at the middle where the 41-foot high structure sits. He said the rest of the buildings taper down to heights comparable to existing developments on Arques and Taylor Avenues, which are closer to 36 feet tall.

Comm. Larsson confirmed with Mr. Mendrin that Below Market Rate (BMR) units will be provided on site.

Comm. Hendricks and Mr. Mendrin discussed tandem parking spots not being counted toward requirements for parking.

Comm. Hendricks and staff discussed the fence location, possible materials and height as well as the role of the Santa Clara Valley Water District.

Comm. Hendricks asked if property access to the trail would be from the street or in the middle of the property. Mr. Mendrin said there will be access to the trail from Arques Avenue and from Taylor Avenue. He said the applicant may have a punch-through or the ability to have one in middle of the project as there is a walkway running parallel to the channel.

Comm. Hendricks inquired whether the building height deviation of 41½ feet is only for building 604 at the interior of the site. Mr. Mendrin added that buildings reached 36 feet at the street sides. Comm. Hendricks confirmed with Mr. Mendrin that there is just one setback deviation of 19½ feet on Taylor Avenue.

Vice Chair Melton noted that there is one instance where the balconies of two units are only 20 feet apart, and the Sunnyvale Municipal Code requires a distance of 26 feet

between buildings. He asked what the difference is between “building” and “balcony.” Mr. Mendrin said that “building” is generally interpreted as any element that has a structural support, which balconies do at front of these buildings. Vice Chair Melton confirmed with Mr. Mendrin the measurement between buildings. Vice Chair Melton noted that the utility poles along the street look unstable and asked about the City’s plan is for undergrounding utility lines in this neighborhood. Mr. Mendrin said utility lines would be undergrounded along the property frontage and that the remaining poles in front of existing industrial sites would be undergrounded as the sites are redeveloped. He said there is currently no district to underground those poles. **Trudi Ryan**, Planning Officer, provided details of the undergrounding requirements. In response to Vice Chair Melton’s earlier question regarding the number of BMR units required for the project, Ms. Ryan said 6.125 units are required, 6 units would be provided on-site, and a fee for the remaining 0.125 would be paid.

Comm. Larsson discussed the fence between the trail and the property indicating that it would be nice to see through onto the trail for security. Mr. Mendrin said it may be worth it for the Commission to consider Alternative 2, modifying the conditions to add clarification for the applicant via two points: revision to the plans and the feasibility study to ensure openness for security.

Comm. Olevson asked who will decide the fence design. Ms. Ryan said that the Water District has its own minimum safety requirements and ultimately makes the decision, but the City and the Water District can discuss accepting something other than the standard chain link fence.

Comm. Hendricks confirmed with Mr. Mendrin that there would be two fences, one on the private property side and one on the trail side. Ms. Ryan added that the two fences would be on either side of the walkway demarcating private and public space.

Chair Dohadwala asked if it is necessary to have a fence between the trail and property line, and said that a leisurely walk between two fences is difficult to imagine. Ms. Ryan said the Water District will likely want a fence on their side, and suggested hearing the perspective of the applicant.

Chair Dohadwala opened the public hearing.

Rodger Miller, applicant with Warmington Residential, presented illustrations while discussing project information about the balconies, the paseo and the fence along the trail which would delineate homeowner property from public property. He said that he believes a small fence allows openness and provides the separation meant to define responsibility for maintenance. Mr. Miller said his landscape architect was available to answer questions. He described the roof elements and the site grade, and said they are shooting for a green point rating of 120 without interest in incentives from the City. He confirmed that they will be building six BMR units on onsite and providing a fee for the remaining fraction. He also said that they are working with the Regional Water

Quality Control Board on remediation and anticipate completion before the houses are built. Mr. Miller said they agree with all conditions.

Comm. Olevson confirmed with Mr. Miller that remediation efforts are standard and consistent with those done in the neighborhood.

Comm. Larsson confirmed with Mr. Miller that the tallest building is 36½ feet when measured from grade.

Comm. Hendricks confirmed with Mr. Miller that the sidewalk along E. Taylor Avenue extends across the project frontage.

Vice Chair Melton asked how it would work if the Planning Commission said balconies would need to be 26 feet apart per City code. Mr. Miller said reducing balconies with a depth of 6-7 feet down to a depth of 3-4 feet would significantly reduce the livability of units, and that the airiness and openness of the balconies combined with the buildings being further apart than required would allow consideration of the exception.

Comm. Larsson confirmed with Mr. Miller that open-rail balconies are intended to provide an open and airy environment to the project.

Comm. Hendricks asked if the applicant envisioned in the Codes, Covenants and Restrictions (CC&Rs) a rule that says residents cannot use the balconies for storage. Mr. Miller said he would be motivated to make sure the Homeowners Association (HOA) enforces storage rules so that nothing unsightly is stored on the balconies. Comm. Hendricks confirmed with staff that it would be appropriate to add a condition for the HOA to enforce a storage rule.

Chair Dohadwala asked for input from the landscape architect about providing a seating wall and assurance that the height of the landscape next to the wall would not grow beyond three feet, six inches. **Annika Carpenter**, landscape architect for the project from Ripley Design Group described the fence design and interface with the trail and project. Chair Dohadwala asked if the design of the fence could include seat walls. Ms. Carpenter said there are a few benches on their side of the property and that the Sense of Place has a provision for benches and designates placement. Chair Dohadwala asked staff to comment. Ms. Ryan said the trail will have benches but it may be appropriate to wait for complete design to understand placement of the benches. Chair Dohadwala said she likes the idea of the fence. **Comm. Hendricks** said he too likes the fence and suggests the benches stand separate from the fence.

Chair Dohadwala confirmed with staff an addition to modify the landscape condition.

Chair Dohadwala closed the public hearing.

Comm. Larsson confirmed with staff that the Sense of Place fee designated for the Feasibility and Design study is sufficient enough to cover the study. Comm. Larsson also confirmed with staff that a standard park in-lieu fee is being paid.

Comm. Hendricks moved for Alternative 2 to adopt the Mitigated Negative Declaration, to approve the Special Development Permit and Vesting Tentative Maps with the modified condition of prohibiting balcony storage. Comm. Larsson seconded.

Comm. Hendricks said the setback deviation of 19½ feet versus 20 feet is nominal and the deviations on building height and balcony distance are located in the middle of property where they are not interfacing with other properties. He says that people understand that when they purchase the units. He said he likes what the applicant is doing with the green building points, and is fine with the tandem parking spots as they are not being counted. He said he can make the findings, likes that BMR units will be part of the project and likes that the project is next to the channel.

Comm. Larsson said when he initially saw the project in the study session he was concerned that there were too many units packed in too closely and is glad the applicant increased the distance between the buildings. He said he likes that the applicant is creating an airy feel with the balconies and the fence along the trail. He said he also likes that the applicant will be doing 2-for-1 tree replacement and is voluntarily building to a higher green point standard which are benefits to the community. He says the more he learns about the project, the more attractive it becomes, and that he likes that the applicant is bringing a variety of architecture to Sunnyvale. Comm. Larsson said he can make the recommended findings.

Comm. Olevson said he will be supporting the motion and can clearly make the findings. He said the architecture and the closeness of the trail make the project an attractive construction and make the trail more attractive for use. He said he likes the open and airiness of the balconies and thinks it is a great way to overcome the requested deviation from a visual standpoint.

Comm. Chang says he can make the findings and that this is a huge improvement from the last meeting. He said the number of deviations is more acceptable and is looking forward to the project's fruition.

Vice Chair Melton said he will be supporting the motion and is looking forward to the project's completion. He said he loves the exterior architecture, the roofline and the color. He said this project is a benchmark he can hold for future large-scale residential projects. He said he can make the findings and is comfortable with deviations when contextualized against the entire project, which he says is fabulous.

Chair Dohadwala said she would be supporting the motion, and **offered a friendly amendment that landscaping along the fence line between the trail and property line should not be higher than four feet to maintain visual openness.** Comm.

Hendricks accepted the friendly amendment. Chair Dohadwala said she likes the project and thanked the applicant for the visual aids that allowed them to fully appreciate the project. She said she likes the architecture and understands the paseos better. She said she was concerned about the buildings being too close and is glad the applicant increased their separation. She said the north-south orientation of the buildings allows more light to come in, and that the project is a wonderful addition to community.

ACTION: Comm. Hendricks moved to adopt the Mitigated Negative Declaration, to approve the Special Development Permit and Vesting Tentative Maps with modified conditions: prohibiting storage on balconies; and that landscaping at the fence line between the trail and the property line of the applicant's project should not be higher than four feet. Comm. Larsson seconded. Motion carried, 6-0 with Comm. Kolchak absent.

APPEAL OPTIONS: This action is final unless appealed to the City Council no later than September 10, 2013.

3. **File #:** 2013-7522
Location: 435 Toyama Drive (APN 110-14-057)
Proposed Project: **SPECIAL DEVELOPMENT PERMIT** to allow 18
Townhouse units, and
TENTATIVE MAP for 18 Townhouse units and one
Common Lot in an M-S/ITR/R-3/PD Zone
Applicant/Owner Classic Communities
Environmental Review: Categorical Exemption
Staff Contact: David Hogan, (408) 730-7659,
dhogan@sunnyvale.ca.gov
Note: Applicant requests continuance to September 23, 2013.

Trudi Ryan, Planning Officer, said the applicant requested a continuance to the Planning Commission meeting on September 23 in order to address the concerns raised during the study session at the last meeting.

Comm. Melton moved to continue the item to September 23, 2013. Comm. Hendricks seconded.

ACTION: Vice Chair Melton moved to continue the item to September 23, 2013. Comm. Hendricks seconded. Motion carried, 6-0 with Comm. Kolchak absent.

APPEAL OPTIONS: This action serves as legal notification of the continuance of the public hearing.

4. **File #:** 2013-7468
Location: 822-830 E. Evelyn Ave. (APN: 209-14-007 & -011)
Proposed Project: **SPECIAL DEVELOPMENT PERMIT** to allow 31 townhome units, including the removal of two existing light industrial buildings.
TENTATIVE MAP to subdivide one property into 31 condominium lots and one common lot.
Applicant/Owner: Classic Communities / Scott Ward
Environmental Review: Negative Declaration
Staff Contact: David Hogan, (408) 730-7659, dhogan@sunnyvale.ca.gov
Note: This item was continued from the August 12, 2013 Planning Commission meeting.

David Hogan, Contract Planner, presented the staff report.

Comm. Hendricks and **Trudi Ryan**, Planning Officer, discussed solar access requirements and why staff could support a deviation. Ms. Ryan said the project is a multifamily development with three-story buildings except for the carports on the perimeter near the trees, and are thus not the best location for solar panels. She said that because 98% of the roof area on-site has the ability to accept solar panels, staff does not anticipate damage to the property owner.

Comm. Hendricks asked staff to discuss groundwater contamination. Mr. Hogan explained the history of contamination of the groundwater and the remediation. Mr. Hogan explained that the area met the Regional Water Quality Control Board (RWQCB) standards and the applicant voluntarily chose to avoid development in that area. Mr. Hogan clarified that the area runs from near the trash enclosure up to the recreation sign. **Comm. Hendricks** and **Kathryn Berry**, Senior Assistant City Attorney, discussed soil and groundwater remediation.

Comm. Olevson noted that mitigation measures have allowed builders to construct on top of contaminated areas. He said this project requires the contaminated area to remain open and asked why the same efforts cannot be utilized. Mr. Hogan said the builder proposed to take this approach.

Comm. Larsson asked how many BMR units will be provided on site. Mr. Hogan said the project is required to have 3.85 unit equivalents, and suggested asking the applicant if they will be building the units or paying the in-lieu fee.

Vice Chair Melton asked staff for historical context to understand how an R-3 zone is next to an R-0 zone on Ajax. Ms. Ryan provided history on the zoning. Vice Chair Melton confirmed with staff that the developer is meeting the minimum zoning requirement to fill 75% of the development with the proposed 31 units. Vice Chair Melton noted that there is only a distance of 10 feet between the balconies of units 20

and 21, noting that the minimum required distance between buildings is 20 feet. Mr. Hogan said one option would be to add a condition to eliminate one balcony.

Comm. Hendricks asked why staff thinks it is okay that the applicant does not have the trash enclosure within the 150 feet maximum distance. Mr. Hogan said moving it to the property line would place it closer to the homes on Ajax and trash trucks would create a lot of noise for those homes.

Chair Dohadwala opened the public hearing.

Scott Ward, of Classic Communities, described the proposed project within the context of Sunnyvale's General Plan, trends in the job and housing markets and proximity to transit. He said they are proposing the minimum number of units. He said they will not be building over the area of the site previously affected by plume from the neighboring property, and that they will also be installing vapor barriers in all of the homes. Mr. Ward said their Environmental Consultant, Tim Costello, was available to answer questions. He said the project casts shadows on a neighboring single-story carport that is already in shade, and that the project will not have a functional impact on the roofs except for 2% of total roof area. He said multiple building types add to the architectural variety of the community, and the layout allows more light to enter the units and reduces the impact of buildings amassing on properties to the south. Mr. Ward said they are open to changing the tree species to Brisbane boxes along one edge of the property, setting those 15 feet apart rather than 20.

Comm. Hendricks and Mr. Ward discussed the changes made after the study session. Comm. Hendricks said all non-guest parking is in garages and that he is concerned residents will use their garages for something else and then use guest spaces for parking. Mr. Ward said there is a restriction on parking use established in Homeowners Association (HOA) documents and they have experienced groups managing HOA responsibilities.

Comm. Larsson confirmed with the applicant that they will be building four BMR units on-site.

Vice Chair Melton and the applicant discussed the balcony placement and the tree species placement.

Walter Strach, a resident of Sunnyvale, said he wants to stress the importance of screen trees and their maintenance, and that they should be evergreen, fast growing and dense. He asked for the 15 foot distance between the trees.

Comm. Larsson confirmed with Mr. Strach that the glare shield condition of approval addressed his concern about glare from street lights.

Comm. Hendricks confirmed with Mr. Strach that changing the tree species to Brisbane box addresses his concern regarding screen trees.

Comm. Hendricks said that if the applicant offsets the balconies, we still end up with 11 feet between the kitty corners, and asked if they would just eliminate one of the balconies. Mr. Ward said that he thinks it is important to provide a visual interest on at least one building.

Vice Chair Melton confirmed with Mr. Ward that it is not feasible to have same-level balconies set at different heights. Mr. Ward said they have proposed privacy screens to south to obscure the visual connection from the rear balcony to the forward balcony.

Chair Dohadwala closed the public hearing.

Vice Chair Melton moved for **Alternative 2 to adopt the Negative Declaration, to approve the Special Development Permit and Vesting Tentative Map with modified conditions of approval: the Brisbane box trees should be 15 feet apart and to work with staff on testing different scenarios to either offset the balconies or potentially remove one with the aim of achieving a minimum balcony separation of 20 feet. Comm. Hendricks seconded.**

Vice Chair Melton said he thinks this is a wonderful project and that he appreciates the flexibility of the applicant regarding landscaping and balcony separation. He said he is looking forward to seeing the project come to fruition and that he can make the recommended findings.

Comm. Hendricks said he would be supporting motion. He said he would give the applicant the 20 feet on the trash enclosure, but that the applicant has continuously submitted projects that cannot seem to fit the trash enclosure requirements into the equation. He said that he would have a different perspective on internal deviations if the applicant was building rental units. He said he was glad that Mr. Strach was satisfied with the changes, and that he can make the findings.

Ms. Ryan suggested phrasing the condition on the balconies to: redesign balconies on units 21-20 to achieve a minimum balcony separation of 20 feet, removing one balcony if needed.

Vice Chair Melton said he would like to include units 22 and 23 which has a balcony separation of 18½ feet.

Chair Dohadwala confirmed with Comm. Hendricks that he will accept the friendly amendment.

Comm. Olevson said he can make the findings. He said this project fits in with the General Plan, that he likes the design and is appreciative that the applicant decided to refrain from building over the contaminated area. He said he supported the motion when Vice Chair Melton said the applicant would work with staff on achieving the balcony separation minimum, but he no longer supports the motion with a hard and fast

rule to obtain separation. Comm. Olevson said that is designing on the fly and is not a good idea and that if the applicant and staff decide to have two walls, it is a greater negative than having the balconies as proposed in the design. He said he will not support the motion if the hard and fast rule remains.

Comm. Larsson said he agrees with everything in the motion except the balconies, which he also views as designing on the fly. He said he does not think the Planning Commission needs to be involved in the balcony issue if it is only in a couple of spots. He said that for some people, the 10 foot separation may be an issue, but for others it may not. He commended the applicant for the outreach efforts and design changes, and said he wanted to make it clear that he is only objecting to the balcony issue.

Comm. Chang said he can make the findings and will be supporting the motion. He said the changes made from the study session to today make this project better and that he is looking forward to the project's completion.

Chair Dohadwala said she likes the project very much and believes the applicant has worked hard trying to make an effort to listen to the Planning Commission and make suggested changes. She said she does not like balcony aspect of the current motion, and will not be supporting it.

Comm. Olevson asked if the motion is to review balcony design and if no agreement is reached to continue with both balconies as originally designed.

Ms. Ryan explained that reviewing the design of the balconies to consider reducing the distance to 20 feet does not give staff direction. She said she heard Comm. Olevson suggest continuing with original balcony design if no compromise is reached, while she heard Vice Chair Melton suggest removing balconies.

Comm. Hendricks said what he thinks he seconded was the offsetting of balconies to keep both, and if that did not work to remove one.

Vice Chair Melton said that was his motion.

ACTION: Vice Chair Melton moved to adopt the Negative Declaration, to approve the Special Development Permit and Vesting Tentative Map with two modified conditions of approval: a distance of 15 feet between Brisbane box trees along the southern property line; and a redesign of the balconies on units 21-20 and 23-22 to either offset them to achieve a minimum balcony separation of 20 feet, or remove one balcony. Comm. Hendricks seconded. Motion carried 5-1 with Comm. Larsson dissenting and Comm. Kolchak absent.

APPEAL OPTIONS: This action is final unless appealed to the City Council no later than September 10, 2013.

Ms. Ryan informed the Commission that there are two more items on the agenda, and a request was received from the public to hear the next two items in reverse.

Vice Chair Melton said because the Commission received 19 speaker cards for the Payday Lending Study Issue, he moved to switch the order of the remaining items to hear item 6 before item 5. **Comm. Larsson** seconded.

ACTION: Comm. Melton moved to switch the agenda order to hear item 6 before item 5. Comm. Larsson seconded. Motion carried, 5-1 with Comm. Chang dissenting and Comm. Kolchak absent.

5. **File #:** 2013-7353
Location: 1221 Crossman Avenue (APN: 110-34-025)
Proposed Project: Major Moffett Park Design Review for the redevelopment of an existing industrial site with two new 7-story office buildings totaling 541,214 square feet floor area resulting in 80% floor area ratio and one parking structure.
Environmental Review: Mitigated Negative Declaration
Staff Contact: Shétal Divatia, (408) 730-7637, sdivatia@sunnyvale.ca.gov

Shétal Divatia, Senior Planner, presented the staff report.

Comm. Hendricks discussed with staff the reduction of the number of travel lanes to include a new bike lane along Crossman Avenue, the TDM reduction in trips, and the condition that prohibits the use of loudspeakers on-site. **Comm. Hendricks** confirmed with that that the project will have electric car chargers and will utilize purple water for landscaping purposes.

Comm. Olevson discussed with staff the rules concerning compact parking spaces, and asked staff for clarification of CEQA terms.

Comm. Larsson confirmed with staff that the housing mitigation fee is used for various aspects of affordable housing programs, and discussed the two traffic fees.

In response to **Vice Chair Melton**, **Ms. Ryan** said staff does not think glass is overused in the Moffett Park area and discussed the uses of glass in construction.

Chair Dohadwala and **Ms. Ryan** discussed the various perspectives of using glass as a building material. **Chair Dohadwala** asked about whether more parking spaces were needed with Transit-Oriented Developments (TOD). **Ms. Ryan** said the applicant is providing the minimum number of parking spaces. **Chair Dohadwala** clarified with staff the location of the property line on the map.

Comm. Hendricks discussed with staff the calculation of the number of parking spaces.

Chair Dohadwala discussed her concerns about parking and the assumption that because this is a TOD project, people are less likely to drive their cars.

Chair Dohadwala opened the public hearing.

Janette D'ELia, COO of Jay Paul Company, made a presentation of the project and stated that she thinks they have addressed the concerns that arose during the study session.

Dawn Jedkins, DES Architects and Engineers, presented information about the project, including a map of transit lines to the project site, proposed bike lanes, parking, and open green space for recreation. She said they have worked closely with brokers and tenants to understand the types of buildings they are looking for, and that glassy buildings are successful because of their transparency, the lighting provided and the lightweight feel of the building.

Ms. D'ELia said these buildings are energy efficient and do not get hot inside.

Comm. Hendricks confirmed with the applicant that a cafeteria will not be provided in the amenities building. Ms. D'ELia said the tenant would have to add a cafeteria, and that the intent is to provide a fitness center where employees can relax and work out, which would alter the traffic flow by keeping employees onsite. Comm. Hendricks asked the applicant if solar would be placed on top of the building. Ms. D'ELia said solar was not the most cost effective way to spend dollars, and they would be using other measures to reduce energy consumption. Comm. Hendricks discussed with the applicant how the mechanical shades work. Comm. Hendricks asked if one could walk all the way around the project, from Innsbruck to Java Drive. Ms. D'ELia said that they are not currently proposing a sidewalk there and to do so may require more research.

Chair Dohadwala discussed with the applicant the security and privacy of the open space.

Comm. Hendricks confirmed with staff and the applicant that a condition of approval could be added to link the sidewalk between Innsbruck and Java.

Comm. Larsson asked the applicant if the 40 parking spaces that were removed were turned into a basketball court and moved from elsewhere. Ms. D'ELia said the court was moved to the roof when the project still had the 40 spaces. She said when the spaces were removed, they increased the size of the green space by 8,000 square feet on grade.

Chair Dohadwala closed the public hearing.

Comm. Hendricks moved to adopt the Mitigated Negative Declaration and approve the Moffett Park Major Design Review Permit with modified conditions:

complete a pedestrian loop around the entire project, and remove condition AT-4 to prohibit the use of outdoor loudspeakers. Comm. Larsson seconded.

Comm. Hendricks said he likes the project and thinks it is in a good space. He said he thinks glass as a building material is the style that corporations are looking for. He said the project is near transit which creates the opportunity for people to utilize it, and it may encourage the Valley Transportation Authority (VTA) to link more to the light rail system. He said he is looking forward to more projects from the applicant.

Comm. Larsson said he thinks the project is in the right place and that putting office space near the light rail can coordinate well with housing near the light rail. He said he understands the importance of bringing in natural light and having a connection to the outside, and that technology has improved so that it can still be energy efficient. He said it is nice to have a project without deviations and thinks it is a good addition to city.

Comm. Olevson said he can support the motion because the project fully complies with the Moffett Plan and the City's goals of bringing in the right kind of business, and because no deviations were requested. He said he can make the findings recommended by the staff.

Comm. Chang said he can make the findings and will be supporting the motion. He said it is a beautiful building in a perfect location and will be a great addition and is looking forward to its completion.

Vice Chair Melton said he will be supporting the motion and thinks it is a beautiful project, especially because there are no deviations. He said he can make the findings. He said that we may be seeing the onset of glass overdose syndrome with future developments in the Moffett Park area, though not with the Moffett Gateway project. He said he is looking forward to the project coming to fruition.

Chair Dohadwala said she will be supporting the motion but that she has many concerns. She said she is concerned with how the whole area has been developed, and that specific plans are created for the city which are visions of Sunnyvale's future. She said it is as if we are betting on it and she wants to make sure the Commission is placing the right bet. She said that it matters that the project succeeds. She also said that developers question their premises, thinking people are going to drive cars anyway, hence they continue with the provision of parking. She said success does not depend on people driving cars in this area, and asked if staff is worried about public safety. She said as the global population increases, developments and cities change, and that one of her concerns is that cities have had issues with areas being deserted in the night. She said she has seen Jay Paul come up with superior projects with excellent architectural designs, and that her questions are attempting to get at the basics of their decisions and the premise of how a project will work.

ACTION: Comm. Hendricks moved to adopt the Mitigated Negative Declaration and approve the Moffett Park Major Design Review Permit with modified conditions: complete a pedestrian loop around the entire project, and remove condition AT-4 to prohibit the use of outdoor loudspeakers. Comm. Larsson seconded. Motion carried, 6-0 with Comm. Kolchak absent.

APPEAL OPTIONS: This action is final unless appealed to the City Council no later than September 10, 2013.

This item was heard before item 5.

- 6. File #:** 2013-7139
Location: Citywide
Proposed Project: Payday Lending Establishments (Study Issue): A study to review land use options for possible regulation of payday lending establishments.
Environmental Review: Exempt Under CEQA Section 15061.3
Staff Contact: Amber El-Hajj, (408) 730-2723,
ael-hajj@sunnyvale.ca.gov

Amber El-Hajj, Senior Planner, presented the staff report.

Comm. Hendricks confirmed with Ms. El-Hajj the distance requirement between establishments. Comm. Hendricks and Ms. El-Hajj discussed “No Loitering” signs and uniformed guards.

Comm. Olevson and Ms. El-Hajj discussed the relationship of crimes to payday lending and state and federal regulations of Payday Lending establishments. Comm. Olevson asked if it is staff’s position that it is the City’s job to take care of people. Ms. El-Hajj said that while there is a social concern, staff’s conclusion was based on land use and overconcentration. Comm. Olevson asked if it is our job to restrict how people spend their money. **Trudi Ryan**, Planning Officer, said it is not directly the City’s responsibility, but through zoning there are ways to contribute to the health, safety and general welfare of the community, as with the Below Market Rate (BMR) program. **Kathryn Berry**, Senior Assistant City Attorney, asked what kind of city Sunnyvale is envisioned to be, and discussed the role of using Land Use tools to achieve that vision of Sunnyvale. Comm. Olevson commented on the correlation between crime and these establishments and hiring uniformed guards.

Comm. Larsson asked how many Payday Lending establishments have left Sunnyvale within the last 5-10 years. Ms. El-Hajj said that she only pulled business licenses for the last five years and that all of the eight current establishments had been in Sunnyvale during that time.

Comm. Hendricks discussed with Ms. El-Hajj federal-level restrictions on Payday Lending that are in place for people in the military and not in place for the rest of the population. Comm. Hendricks confirmed with staff that the Planning Commission does not have the purview to look at percentage caps.

Vice Chair Melton asked about SB 515. Ms. El-Hajj said the bill was continued for revisions, not voted down as the State Finance Committee thought the bill was too restrictive. In response to Vice Chair Melton, Ms. El-Hajj explained the controversy on the payday lending issue. Vice Chair Melton asked where the proposal suggests borrowers go if lenders are banned. Ms. El-Hajj says the recommendation is not for an outright ban because staff is not convinced that there is no need for payday lenders.

Chair Dohadwala asked staff why the recommendation was not an outright ban. Ms. El-Hajj said she believes there is no exact replication of this service that you can get from a community group.

Comm. Larsson confirmed with staff that it is within the Planning Commission's purview to require lenders to provide community specific information about alternatives to borrowing or financial counseling.

Chair Dohadwala opened the public hearing.

Vanessa Lugo, Government Affairs Director of Check into Cash, said she opposes utilizing land use options for regulation of payday lending establishments.

Sofia Garcia, Director of Government Affairs with Advance America, said she urges the Planning Commission to reconsider taking action to regulate payday lending establishments.

Almaz Negash, Managing Director of Step-Up Silicon Valley, said she supports utilizing land use options for regulation of payday lending establishments. Chair Dohadwala confirmed with Ms. Negash that her organization provides one-time emergency funding.

Donna Beres, volunteer with Our Daily Bread and St. Vincent de Paul, said she supports any action that would stop the proliferation of Payday Lending establishments.

Eleanor Clement Glass, Chief Giving Officer of the Silicon Valley Community Foundation, said she supports the recommendation to restrict Payday Lending establishments.

Dixie Larson, with the Church of Jesus Christ of Latter-Day Saints, said she supports an ordinance that sets a cap on the number of lenders in Sunnyvale. Comm. Larsson asked what Ms. Larson's suggestion is for the number of establishments that should be allowed in Sunnyvale. Ms. Larson said Sunnyvale has more establishments per capita than the City of San Jose, which suggests that we currently have too many.

Lucia Gonzalez, Organizer with Working Partnerships USA, said she supports the recommendation to restrict Payday Lending establishments.

Comm. Hendricks discussed with Ms. Ryan that the hours of operation condition in option 1 would apply to new establishments, and that if existing establishments currently operate within those time limits they are bound by them. She said establishments currently exceeding those time limits would be allowed to continue as a non-conforming use.

Jenny Dantanavantawong, with Working Partnership, said she supports restrictions on Payday Lending establishments.

Jay Pecot, with Sacred Heart Community Service, said he supports the restriction of Payday Lending stores.

Ana Rosa Camacho, Income Specialist with United Way Silicon Valley, said she supports restrictions on Payday Lending establishments.

Wendy Ho, Advocacy and Public Policy Program Manager with United Way, said she supports the regulation and restriction of Payday Lending establishments. Comm. Larsson asked Ms. Ho what the cap on the establishments should be. Ms. Ho said she would like to see the cap at the number of existing establishments in Sunnyvale.

James Zahradka, reading Linda Batton's written comment, said Linda supports the strongest possible ordinance to limit payday lending in Sunnyvale.

Marie Bernard, Executive Director of Sunnyvale Community Services, said she supports the strongest possible ordinance to limit payday lending in Sunnyvale.

Maria Buenrostro, Case Worker with Sunnyvale Community Services, said she supports restricting Payday Lending establishments.

Yen Dang, Deputy Supervising District Attorney for Santa Clara County, said she urges the Planning Commission's support of the strongest possible ordinance restricting Payday Lending establishments.

Liana Molina, Organizer with the California Reinvestment Coalition, said she supports the regulation and restriction of Payday Lending establishments.

Melissa Morris, Attorney with the Law Foundation of Silicon Valley, said she urges the Planning Commission to accept the staff recommendation while adding requirements for lending establishments to obtain use permits and provide information on alternatives to borrowing. Comm. Hendricks discussed with staff the inclusion of an operational standard requiring establishments to provide information to borrowers.

Stan Hendrix, a Sunnyvale resident, said he supports the regulation and restriction of Payday Lending establishments.

Kyra Kazantzis, with the Law Foundation of Silicon Valley, said she supports the regulation and restriction of Payday Lending establishments.

Chair Dohadwala closed the public hearing.

Comm. Hendricks asked if staff had any suggestions for the language of the educational material. Ms. Ryan said that if the Planning Commission wanted to include the material as an operational standard, staff would need more time to produce a recommendation before going to council.

Vice Chair Melton asked staff about opinions on a potential land-based requirement based on low-income census tracts. Ms. El-Hajj said it may be difficult to regulate and that similar requirements only include distance requirements. Ms. Ryan said staff recommends establishments locate within C-2 zones only, and that the Planning Commission could recommend a distance requirement on top of a cap.

Comm. Olevson said he likes the staff recommendations to limit the location of establishments to C-2 zones and the minimum distance requirement. He said that because there is no clear definition of what a payday lending establishment is and because there is no identifiable problem with crime and overconcentration, he suggests minimal regulation until that no longer works.

Comm. Larsson moved to adopt options 1 and 3 to restrict new payday lending establishments and cap the number of establishments in the city at six, with existing establishments being grandfathered in, and that the City develop language for education materials to advise patrons of other options.

Comm. Hendricks offered a friendly amendment to strike the uniformed security guard and "No Loitering" sign standards. Comm. Larsson accepted the friendly amendment and Comm. Hendricks seconded the motion.

Comm. Larsson thanked the speakers for their comments, and said he is concerned that having too many payday lending establishments would affect the character of the City. He said he believes that loans are often borrowed under duress, and he wants to see the development of alternatives. He said he wanted to set the cap at a lower number to reduce the number of establishments over time, and that after a better system is developed and the state makes changes in legislation, perhaps the number of establishments could again be increased.

Comm. Hendricks said he will be supporting the motion and thanked the speakers. He said that he agrees with one of the speakers that this is one tool to address the issue, and that he is looking forward to the development of the educational material.

Vice Chair Melton said he will be supporting the motion and thanked the public for speaking. He said sometimes questions come down to the free market versus social benefit. He said he thinks there is a necessary social benefit we need to achieve through land use policy that overrides the forces of market demand. He said a valid loan is between a willing lender and a willing borrower who are both aware of the material terms and conditions of the loan and he thinks that is where we are falling short. He said he is skeptical that lenders are meeting regulatory compliance. He referenced a fact sheet statistic that stated there are more payday lenders than stand-alone Starbucks stores in the nation and he discovered that there are eight Starbucks stores in Sunnyvale. Vice Chair Melton said that whenever there is explosive growth in a business, something is askew. He said talking about short term loans in terms of an APR is not a valid argument. He said he is more inclined to believe that the default rate

on these loans is 37%, as one speaker mentioned, which indicates that almost half of the loans are defaulting under duress.

Comm. Olevson said he will be supporting the motion. He said he is concerned with limiting businesses, and that a majority of his motion goes to giving staff clear direction on what the policy should be in the City.

Comm. Chang said he will be supporting the motion. He said that restrictions, the permitting process and caps are a good way of managing this type of business, and that he is looking forward to staff guidance on the development of informational material that lets patrons know about alternatives to borrowing from these establishments.

Comm. Larsson said his rationale for a cap at six establishments is based on the number of payday lending establishments in, and the population of San Jose. He said our population is almost 150,000 so it would translate to 6.

Chair Dohadwala said she would be supporting the motion, and that the Commission is trying to handle a social problem with land use tools which is not perfect, but is the best attempt to exert a measure of control over the establishments.

ACTION: Comm. Larsson moved to recommend to City Council: to adopt Option 1 to restrict new payday lending establishments, removing the operational standards of requiring one posted "No Loitering" sign on establishment premises and the requirement to have one uniformed security guard present during hours of operation; to adopt Option 3 to cap the number of payday lending establishments in the City at 6, with existing establishments being grandfathered in; and that the business be required to provide customers with educational material on alternatives to payday lending. Comm. Hendricks seconded. Motion carried, 6-0 with Comm. Kolchak absent.

APPEAL OPTIONS: This recommendation will be forwarded to City Council for consideration at the September 24, 2013 City Council meeting.

7. Standing Item Potential Study Issues

Comm. Hendricks suggested a study session for commissioners to understand current policies in the Moffett Park Specific Plan.

Trudi Ryan, Planning Officer, said that Planning Commission meetings in September mark the final opportunities for commissioners to raise study issues for the following year.

NON-AGENDA ITEMS AND COMMENTS

- COMMISSIONERS ORAL COMMENTS – None.
- STAFF ORAL COMMENTS

City Council Meeting Report

Ms. Ryan discussed Planning-related items considered at the August 20, 2013 City Council meeting, and those that will be considered at the August 27, 2013 meeting, including the annexation of unincorporated islands.

INFORMATION ONLY ITEMS - None

ADJOURNMENT

With no further business, the Commission meeting adjourned at 1:09 a.m.

Respectfully submitted,

Trudi Ryan
Planning Officer