

PLANNING COMMISSION MINUTES OF OCTOBER 13, 2008

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.

Gerri Caruso, Principal Planner, presented the staff report. She advised that this is the first of three related reports tonight that will be presented regarding this development and that this portion of the presentation will be for the Planning Commission to consider the recommendation to City Council regarding the certification of the Environmental Impact Report (EIR). She said there are two impacts that are considered significant and unavoidable: impacts to project residents related to diesel particulate matter (DPM); and the project generated impacts on cumulative regional air quality. She said what this means is later this evening when the Commission considers the development for this project, in order to approve the development the Commission must make findings to adopt statements of overriding consideration. These statements of overriding consideration state that there are other reasons that make this project beneficial to the City even though there would be significant unavoidable environmental impacts. She said these findings do not need to be made to certify the EIR and they are required as part of the third hearing tonight when considering the development. She said staff is recommending the Planning Commission recommend to City Council that the EIR be certified.

Comm. Hungerford said that the report indicates that a mitigation to the DPM issue is to delay occupancy of the affected units. He asked staff if this is something that the Commission should address in this portion of the action tonight or during the development portion. Ms. Caruso said that the Commission could address this during the development portion and could include the mitigation as

part of the recommendation. She said the mitigation is not part of certifying the EIR.

Comm. McKenna asked if staff has any statistics about whether persons actually live in areas for 70 years. Ms. Caruso said staff does not have the information about how long people live in one place or how often they move. Ms. Caruso explained that the standard measuring the DPM is based on if a person were outside for 70 years in the same location. Comm. McKenna said it is difficult to think that someone would live in one place for 70 years and be outside most of that time. **James Reyff**, with Illingworth & Rodkin, Inc. said they are the sub-consultant who prepared the Air Quality Study. He said EPA (Environmental Protection Agency) statistics show that a resident stays on the average in a location about nine years with the upper end range being about 30 years. He said the State uses the 70 year lifetime exposure standard, which is meant to be a conservative standard. Comm. McKenna confirmed with Mr. Reyff that statistically people tend to live in an area about nine years.

Comm. Hungerford asked Mr. Reyff if the standard being discussed is the same standard that is uniformly applied by the Bay Area Air Quality Management District (BAAQMD) when it reviews projects or issues air permits. Mr. Reyff said for air permits this standard is the BAAQMD's health risk policy and for CEQA (California Environmental Quality Act) projects, like this, there is a little more grey area. Mr. Reyff further discussed the standard with Comm. Hungerford.

Chair Rowe confirmed with Mr. Reyff that the nine years per resident timeframe applies to rental units and homeowner units and that the statistics are the statistics that are used with the Air District, or were the State-developed risk criteria.

Comm. Hungerford asked about references to noise levels within the report, attachments, and the EIR, which indicate that the interior noise levels would be 45 dBA (A-weighted decibels). He said in another section of the documents the reference is about an *average* of 45 dBA. Mr. Reyff said their firm prepared the noise study, that the noise levels are based on an energy average of the day/night interior noise levels within a 24 hour period, and are based on the State's Title 24 requirements. Comm. Hungerford further discussed issues that might increase the average noise levels, i.e. traffic. **Trudi Ryan**, Planning Officer, added that the EIR report, page 108 indicates that maximum interior noise level would of 45 dBA L_{dn} (day/night average).

Chair Rowe opened the public hearing.

Chair Rowe disclosed that she met with the developer.

Comm. Klein disclosed the he met with applicant.

Comm. Sulser disclosed that he met with the applicant.

Comm. McKenna disclosed that she met with the developer.

Aaron Yakligian, applicant with Trumark Companies introduced **Miles Imwalle** of Morrison & Foerster, their CEQA attorney. Mr. Imwalle said that in general this EIR is well written and that they would like to clarify their understanding of the DPM issue. He pointed out that they think there is substantial evidence in the record that the DPM impact is less than significant with mitigation. He referred to the Air Quality Study on page 18 that indicates with mitigation that the impact would be less than significant due to the filtration device. He said that the only issue the EIR takes with the finding on page 106 is that the City cannot guarantee that the system would be installed and maintained properly.

Arthur Schwartz, a Sunnyvale resident, commented that he has a problem with the noise limits. He said that the dBA does not measure the impact of deep bass noise on people living in an area.

Chair Rowe closed the public hearing.

Comm. McKenna moved to adopt a resolution recommending certification of the EIR and adopting the Mitigation Monitoring and Reporting Program. **Comm. Hungerford** seconded the motion.

Comm. Hungerford commented that he is seconding the motion with the understanding that they are voting on whether the EIR is an adequate document describing the environmental impact of the project. He said he thinks this is a nice, thorough document.

ACTION: Comm. McKenna made a motion on 2006-0712 to recommend to City Council to adopt a resolution recommending certification of 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.